
SUBSTITUTE HOUSE BILL 2915

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Koster, Chandler, Honeyford and Linville)

Read first time 02/04/98. Referred to Committee on .

1 AN ACT Relating to dairy nutrients management; amending RCW
2 90.64.005, 90.64.010, 90.64.030, 90.64.050, 90.64.060, 90.64.070,
3 90.64.080, 90.48.144, and 90.48.465; adding new sections to chapter
4 90.64 RCW; creating a new section; repealing RCW 90.64.090; prescribing
5 penalties; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 90.64.005 and 1993 c 221 s 1 are each amended to read
8 as follows:

9 The legislature finds that there is a need to establish a clear and
10 understandable process that provides for the proper and effective
11 management of dairy ((waste)) nutrients that affects the quality of
12 surface or ground waters in the state of Washington. The legislature
13 finds that there is a need for a program that will provide a stable and
14 predictable business climate upon which dairy farms may base future
15 investment decisions.

16 The legislature finds that federal regulations require a permit
17 program for dairies ((~~with~~)) with over seven hundred head of mature
18 cows and, other specified dairy farms that directly discharge into
19 waters or are otherwise significant contributors of pollution. The

1 legislature finds that significant work has been ongoing over a period
2 of time and that the intent of this chapter is to take the consensus
3 that has been developed and place it into statutory form.

4 It is also the intent of this chapter to establish an inspection
5 and technical assistance program for dairy farms to address the
6 discharge of pollution to surface and ground waters of the state that
7 will lead to water quality compliance by the industry. A further
8 purpose is to create a balanced program involving technical assistance,
9 regulation, and enforcement with coordination and oversight of the
10 program by a committee composed of industry, agency, and other
11 representatives. Furthermore, it is the objective of this chapter to
12 maintain the administration of the water quality program as it relates
13 to dairy operations at the state level.

14 It is also the intent of this chapter to recognize the existing
15 working relationships between conservation districts, the conservation
16 commission, and the department of ecology in protecting water quality
17 of the state. A further purpose of this chapter is to provide
18 statutory recognition of the coordination of the functions of
19 conservation districts, the conservation commission, and the department
20 of ecology pertaining to development of dairy waste management plans
21 for the protection of water quality.

22 **Sec. 2.** RCW 90.64.010 and 1993 c 221 s 2 are each amended to read
23 as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

26 (1) "Advisory and oversight committee" means a balanced committee
27 of agency, dairy farm, and interest group representatives convened to
28 provide oversight and direction to the dairy nutrient management
29 program.

30 (2) "Bypass" means the intentional diversion of waste streams from
31 any portion of the facility and does not constitute a violation of an
32 individual or general national pollution discharge elimination system
33 permit or a state waste discharge permit, provided the requirements of
34 40 C.F.R. Part 122.41(m) are met.

35 (3) "Catastrophic" means a tornado, hurricane, earthquake, flood,
36 or other extreme condition that would cause an overflow from a required
37 waste retention structure.

1 (4) "Chronic" means a series of wet weather events that precludes
2 dewatering of a waste retention structure that is designed and
3 constructed with adequate volume for the current herd size and is also
4 properly maintained.

5 (5) "Conservation commission" or "commission" means the
6 conservation commission under chapter 89.08 RCW.

7 ~~((+2))~~ (6) "Conservation districts" or "district" means a
8 subdivision of state government organized under chapter 89.08 RCW.

9 ~~((+3))~~ (7) "Concentrated dairy animal feeding operation" means a
10 dairy animal feeding operation subject to regulation under this chapter
11 which the director designates under RCW 90.64.030 or meets the
12 following criteria:

13 (a) Has more than seven hundred mature dairy cows, whether milked
14 or dry cows, that are confined; or

15 (b) Has more than two hundred head of mature dairy cattle, whether
16 milked or dry cows, that are confined and either:

17 (i) From which pollutants are discharged into navigable waters
18 through a manmade ditch, flushing system, or other similar manmade
19 device; or

20 (ii) From which pollutants are discharged directly into surface or
21 ground waters of the state that originate outside of and pass over,
22 across, or through the facility or otherwise come into direct contact
23 with the animals confined in the operation, except that no dairy animal
24 feeding operation as defined under this section or designated under RCW
25 90.64.020(1) may be classified as a concentrated dairy animal feeding
26 operation if it discharges to surface waters of the state only during
27 a twenty-five year, twenty-four-hour storm event.

28 ~~((+4))~~ (8) "Dairy animal feeding operation" means a lot or
29 facility where the following conditions are met:

30 (a) Dairy animals that have been, are, or will be stabled or
31 confined and fed for a total of forty-five days or more in any twelve-
32 month period; and

33 (b) Crops, vegetation forage growth, or postharvest residues are
34 not sustained in the normal growing season over any portion of the lot
35 or facility. Two or more dairy animal feeding operations under common
36 ownership are considered, for the purposes of this chapter, to be a
37 single dairy animal feeding operation if they adjoin each other or if
38 they use a common area for land application of wastes.

1 ~~((5))~~ (9) "Dairy farm" means any farm that is licensed to produce
2 milk under chapter 15.36 RCW.

3 (10) "Dairy nutrient" means any organic waste produced by dairy
4 cows or a dairy farm operation.

5 (11) "Dairy nutrient management plan" means a plan meeting the
6 requirements established under section 5 of this act.

7 (12) "Dairy nutrient management technical assistance team" means
8 one or more professional engineers and local conservation district
9 employees convened to serve one of up to four distinct geographic areas
10 in the state.

11 (13) "Dairy producer" means a person who owns or operates a dairy
12 farm.

13 (14) "Department" means the department of ecology under chapter
14 43.21A RCW.

15 ~~((6))~~ (15) "Director" means the director of the department of
16 ecology, or his or her designee.

17 (16) "Upset" means an exceptional incident in which there is an
18 unintentional and temporary noncompliance because of factors beyond the
19 reasonable control of the dairy.

20 (17) "Violation" means a discharge into the waters of the state,
21 except those caused by a twenty-four hour, twenty-five year or greater
22 storm event, or by catastrophic or chronic weather events, and that is
23 not regulated under a national pollutant discharge elimination system
24 permit.

25 NEW SECTION. Sec. 3. (1) Every dairy producer licensed under
26 chapter 15.36 RCW shall register with the department by September 1,
27 1998, and shall reregister with the department by September 1st of
28 every even-numbered year. Every dairy producer licensed after
29 September 1, 1998, shall register with the department within sixty days
30 of licensing.

31 (2) To facilitate registration, the department shall obtain from
32 the food safety and animal health division of the department of
33 agriculture a current list of all licensed dairy producers in the state
34 and mail a registration form to each licensed dairy producer no later
35 than July 15, 1998.

36 (3) At a minimum, the form shall require the following information:

37 (a) The name and address of the operator of the dairy farm;

38 (b) The name and address of the dairy farm;

- 1 (c) The telephone number of the dairy farm;
2 (d) The number of cows in the dairy farm;
3 (e) The number of young stock in the dairy farm;
4 (f) The number of acres owned and rented in the dairy farm;
5 (g) Whether the dairy producer has a plan for managing dairy
6 nutrient discharges that is tailored to the size of his or her herd,
7 and whether the plan is being fully implemented; and
8 (h) If the fields where dairy nutrients are being applied belong to
9 someone other than the dairy producer whose farm operation generated
10 the nutrients, the name, address, and telephone number of the owners of
11 the property accepting the dairy nutrients shall be included in the
12 registration form.

13 (4) In the mailing to dairy producers containing the registration
14 form, the department shall also provide information regarding the
15 requirements of this chapter in a manner that is clear and
16 comprehensive.

17 (5) The department's failure to reach a dairy producer by mail
18 shall not alter the obligation of the producer to register with the
19 department within the time required.

20 (6) Failure of a dairy producer to register with the department is
21 a violation of this chapter.

22 NEW SECTION. **Sec. 4.** Prior to October 1, 1998, the department and
23 conservation commission shall jointly sponsor and hold an educational
24 workshop for conservation districts from around the state. The purpose
25 of the workshop is to inform local conservation districts about the
26 requirements of this chapter, and for local conservation districts, the
27 conservation commission, and the department to clearly understand their
28 respective roles and responsibilities in carrying out these
29 requirements.

30 NEW SECTION. **Sec. 5.** (1) By October 1, 1998, the department shall
31 initiate an inspection program of all dairy farms in the state. The
32 purpose of the inspections is to:

- 33 (a) Survey for evidence of significant dairy nutrient discharges;
34 (b) Identify corrective actions for actual or imminent discharges
35 that threaten to violate the state's water quality standards;

1 (c) Identify producers who do not have an approved dairy nutrient
2 management plan or are not implementing a previously approved dairy
3 nutrient management plan; and

4 (d) Identify dairy producers who would benefit from technical
5 assistance programs.

6 (2) Local conservation district employees may, at their discretion,
7 accompany department inspectors on any scheduled inspection of dairy
8 farms except random, unannounced inspections.

9 (3) Follow-up inspections shall be conducted by the department to
10 ensure that corrective and other actions as identified in the course of
11 initial inspections are being carried out. The department shall also
12 conduct such additional inspections as are necessary to ensure
13 compliance with state and federal water quality requirements, provided
14 that all licensed dairy farms shall be inspected once within two years
15 of the start of this program.

16 NEW SECTION. **Sec. 6.** (1) All dairy producers licensed under
17 chapter 15.36 RCW shall prepare a dairy nutrient management plan. Such
18 plans shall be prepared and fully implemented by December 1, 2000.

19 (2) By November 1, 1998, the commission in conjunction with the
20 advisory and oversight committee established in section 7 of this act
21 shall develop a document clearly describing the elements that a dairy
22 nutrient management plan must contain to gain local conservation
23 district approval.

24 (3) In developing the elements that an approved dairy nutrient
25 management plan must contain, the commission shall authorize the use of
26 the standards and specifications developed by the natural resources
27 conservation service, those approved under section 7(3) of this act, or
28 those developed under section 9 of this act.

29 (4) A completed dairy nutrient management plan shall be provided to
30 the local conservation district where the dairy farm producing the plan
31 is located. After finding that a plan meets the standards identified
32 in subsection (3) of this section, a conservation district shall
33 approve the plan.

34 (5) An approved plan shall be certified by a conservation district
35 and a dairy producer when the elements necessary to implement the plan
36 have been constructed or otherwise put in place, and are being used as
37 designed and intended. A certification form shall be developed by the
38 conservation commission for use state-wide and shall provide for a

1 signature by both a conservation district representative and a dairy
2 producer. Signed certification forms shall be dated by December 1,
3 2000, and a copy provided to the department.

4 NEW SECTION. **Sec. 7.** (1) A dairy nutrient management program
5 advisory and oversight committee is established. The committee shall
6 be cochaired by the executive director of the conservation commission
7 and a dairy industry representative. The purpose of the committee is
8 to provide direction to and oversight of the dairy nutrient management
9 inspection program, as well as to encourage the use of appropriate
10 alternative technologies and methods for managing dairy nutrient.
11 Members shall be appointed by the commission.

12 (2) The committee shall include representatives of the department,
13 the dairy industry, the conservation commission, conservation
14 districts, the local health department, an environmental organization,
15 and the shellfish industry. In addition, the natural resources
16 conservation service and the federal environmental protection agency
17 shall each be invited to appoint a representative to the committee.

18 (3) The committee shall perform the following functions:

19 (a) Meet at least four times per calendar year;

20 (b) Maintain meeting minutes and account for the resolution of
21 issues jointly identified by the committee chairs as needing to be
22 addressed;

23 (c) Review the quarterly data base summary and annual report
24 provided by the department under sections 8 and 11 of this act;

25 (d) Act as a forum to hear suggestions from any interested parties,
26 including dairy farmers, regarding implementation of the dairy nutrient
27 management program;

28 (e) Review the standards and specifications developed under section
29 9 of this act;

30 (f) Create and recommend standardized dairy farm nutrient
31 management facility inspection procedures and a reporting format to be
32 used by the department;

33 (g) Develop performance-based criteria to determine the frequency
34 of inspections initiated under section 5 of this act; and

35 (h) Approve the use of dairy nutrient management technologies and
36 methods other than those approved or provided by the natural resources
37 conservation service, as components of nutrient management plans under
38 this chapter. In evaluating new technologies and methods, the

1 principal objective of the evaluation shall be determining whether
2 there is a substantial likelihood that, once implemented, the
3 technologies and methods will achieve compliance with water quality
4 standards.

5 (4) The advisory and oversight committee does not replace or
6 infringe upon the authority, duties, or responsibilities of the
7 pollution control hearings board.

8 NEW SECTION. **Sec. 8.** By September 1, 1998, the department in
9 consultation with the advisory and oversight committee shall develop
10 and maintain a data base to account for the implementation of the
11 inspection program identified in section 5 of this act. The data base
12 shall track registration, inspection, regulatory and enforcement
13 actions, and the status of dairy nutrient management plans. A summary
14 of data base information shall be provided quarterly to the advisory
15 and oversight committee.

16 NEW SECTION. **Sec. 9.** (1) The conservation commission shall
17 establish up to four dairy nutrient management technical assistance
18 teams by May 1, 1998. The teams shall be geographically located
19 throughout the state. Each team shall consist of one or more
20 professional engineers and local conservation district employees.

21 (2) By September 1, 1998, each team shall develop a set of
22 standards and specifications to assist dairy producers in developing
23 and implementing dairy nutrient management plans. Standards and
24 specifications developed by a technical assistance team shall be
25 appropriate to the soils and other conditions of that geographic area
26 and shall be reviewed by the advisory and oversight committee. Any
27 information entered into the data base by the department about any
28 aspect of a particular dairy operation may be reviewed by the affected
29 dairy producer upon request. The department shall correct any
30 information in the data base upon a showing that the information is
31 faulty or inaccurate.

32 **Sec. 10.** RCW 90.64.030 and 1993 c 221 s 4 are each amended to read
33 as follows:

34 (~~Upon receiving a complaint or upon its own determination that a~~
35 ~~dairy animal feeding operation is a likely source of water quality~~
36 ~~degradation,~~) (1) Under the inspection program established in section

1 5 of this act, the department may investigate a dairy ((animal feeding
2 operation)) farm to determine whether the operation is discharging
3 ((directly)) pollutants or ((recently)) has ((discharged directly)) a
4 record of discharging pollutants into surface or ground waters of the
5 state. The department may also investigate a dairy farm to determine
6 whether a dairy producer is registered, is in the process of developing
7 a dairy nutrient management plan, or is implementing a certified plan.
8 Upon concluding an inspection, the department shall make a written
9 report of its findings, including the results of any water quality
10 measurements, photographs, or other pertinent information, and provide
11 a copy of the report to the dairy producer within twenty days of the
12 inspection.

13 (2) The department shall investigate a written complaint filed with
14 the department within ((ten)) three working days and shall make a
15 written report of its findings including the results of any water
16 quality measurements, photographs, or other pertinent information. A
17 copy of the findings shall be provided ((upon request)) to the dairy
18 ((animal feeding operation)) producer subject to the complaint within
19 twenty days. All findings shall be entered into the data base
20 identified in section 8 of this act.

21 ((Those dairy animal feeding operations that are)) (3) A dairy farm
22 that is determined to be a significant contributor of pollution based
23 on actual water quality tests, photographs, or other pertinent
24 information ((if immediate corrective actions are not possible, shall
25 be designated as a concentrated dairy animal feeding operation and
26 shall be)) is subject to the provisions of this chapter. In addition,
27 those operations that are determined to be in violation of water
28 quality laws are subject to the enforcement provisions of chapters
29 43.05 and 90.48 RCW, including civil penalties levied under RCW
30 90.48.144.

31 (4) For a violation of water quality laws that is a first offense
32 for a dairy producer, the penalty may be waived to allow the producer
33 to come into compliance with water quality laws. The department shall
34 record all violations and enforcement actions, including minor first
35 offenses.

36 (5) A discharge to surface waters of the state shall not be
37 considered a violation of chapter 90.48 RCW, chapter 173-201A WAC, or
38 a violation of the federal clean water act, and shall therefore not be

1 enforceable by the department of ecology or a third party, if at the
2 time of the discharge, the following conditions are met:

3 (a) The dairy producer has a current national pollution discharge
4 elimination system permit with a wastewater system designed to contain
5 process-generated wastewater plus average annual precipitation minus
6 evaporation plus contaminated storm water runoff from a twenty-five
7 year, twenty-four-hour rainfall event for that specific location; and

8 (i) The discharge is due to a chronic or catastrophic event or is
9 due to an upset or bypass; or

10 (ii) The dairy producer has complied with the national pollution
11 discharge elimination system permit conditions or the dairy waste
12 management plan conditions regarding appropriate land application
13 practices; or

14 (iii) The discharge occurs as a result of solid or liquid manure
15 spreading on property other than the property where the manure was
16 generated.

17 (b) This section specifically acknowledges that if a national
18 pollution discharge elimination system permit holder complies with
19 either the permit or the dairy waste management plan conditions for
20 appropriate land application practices, the permit provides compliance
21 with the federal clean water act and acts as a shield against citizen
22 or agency enforcement for any additions of pollutants to waters of the
23 state or of the United States that may occur.

24 (6) A dairy producer is in compliance with this chapter if he or
25 she has not caused a violation, and has in effect a certified dairy
26 nutrient management plan by December 1, 2000, or will have such a plan
27 by December 1, 2000.

28 **Sec. 11.** RCW 90.64.050 and 1993 c 221 s 6 are each amended to read
29 as follows:

30 (1) The department has the following duties:

31 (a) Identify existing or potential water quality problems resulting
32 from dairy farms through implementation of the inspection program in
33 section 5 of this act;

34 (b) Receive, process, and verify complaints concerning discharge of
35 pollutants from all dairy farms ~~((regardless of size))~~;

36 (c) Determine if a dairy-related water quality problem requires
37 immediate corrective action under the Washington state water pollution
38 control laws, chapter 90.48 RCW, or the Washington state water quality

1 standards adopted under chapter 90.48 RCW(~~(, or other authorities)~~).

2 The department shall maintain the lead enforcement responsibility;

3 (d) Administer and enforce national pollutant(~~(s)~~) discharge
4 elimination system permits for operators of concentrated dairy animal
5 feeding operations, where required by federal regulations(~~(7)~~) and
6 (~~administer~~) state laws;

7 (e) (~~Appoint representatives, including dairy industry~~
8 ~~representatives, to participate in the compliance review committee that~~
9 ~~will annually review and update policy and disseminate information as~~
10 ~~needed~~) Participate on the advisory and oversight committee;

11 (f) Encourage communication and cooperation between local
12 department personnel and the appropriate conservation district
13 personnel;

14 (g) (~~Encourage~~) Require the use of (~~federal soil conservation~~
15 ~~service standards and specifications in designing best management~~
16 ~~practices for~~) dairy (~~waste~~) nutrient management plans (~~to protect~~
17 ~~water quality~~) for entities required to plan under this chapter. Such
18 plans shall meet the standards and specifications of:

19 (i) The natural resources conservation service;

20 (ii) The standards of the natural resources conservation service as
21 modified by the geographically based standards developed under section
22 9 of this act;

23 (iii) Section 7(3) of this act; or

24 (iv) A professional engineer who meets the standards identified in
25 this section;

26 (h) Provide to the commission and the advisory and oversight
27 committee an annual report of dairy (~~waste pollution~~) nutrient
28 management planning, inspection, and enforcement activities.

29 (2) The department may not delegate its responsibilities in
30 enforcement.

31 **Sec. 12.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to read
32 as follows:

33 (1) If the department determines that the operator of a dairy
34 (~~animal feeding operation~~) has the means to correct a water quality
35 problem in a manner that will prevent future contamination and does so
36 promptly and such correction is maintained, the department shall cease
37 pursuit of the complaint.

1 (2) If the department determines that an unresolved water quality
2 problem from a dairy (~~(animal feeding operation))~~ farm requires
3 immediate corrective action, the department shall notify the
4 (~~(operator))~~ producer and the district in which the problem is located.
5 When corrective actions are required, the department shall provide
6 copies of all final dairy farm inspection reports and documentation of
7 all formal regulatory and enforcement actions taken by the department
8 to the local conservation district and to the appropriate dairy farm
9 within twenty days.

10 (~~((3) If immediate action is not necessary by the department, the~~
11 ~~handling of complaints will differ depending on the amount of~~
12 ~~information available and the compliance option selected by the~~
13 ~~conservation district involved.~~

14 (~~(a) When the name and address of the party against whom the~~
15 ~~complaint was registered are known:~~

16 (~~(i) Districts operating at levels 1 and 2 will receive a copy of~~
17 ~~complaint information, and compliance letter if one was sent out.~~

18 (~~(ii) Districts operating at levels 3 and 4 will receive a copy of~~
19 ~~complaint information and the letter sent by the department to the~~
20 ~~operator informing the operator of the complaint and providing the~~
21 ~~operator with the opportunity to work with the conservation district on~~
22 ~~a voluntary basis.~~

23 (~~(b) The department and the conservation district will work together~~
24 ~~at the local level to resolve complaints when the name and address of~~
25 ~~the party against whom the complaint was registered are unknown.))~~

26 **Sec. 13.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read
27 as follows:

28 (1) The conservation district has the following duties:

29 (a) (~~(Adopt and annually update the water quality section in the~~
30 ~~conservation district dairy waste management plan))~~ Provide technical
31 assistance to the department in identifying existing water quality
32 problems resulting from dairy farms through implementation of the
33 inspection program in section 5 of this act;

34 (b) (~~(As part of the district annual report, include a water~~
35 ~~quality progress report on dairy waste management activities conducted~~
36 ~~that are related to this chapter))~~ Immediately refer complaints
37 received from the public regarding discharge of pollutants to the
38 department;

1 (c) Encourage communication and cooperation between the
2 conservation district personnel and local department personnel;

3 ~~((Adopt and carry out a compliance option from level 1, level~~
4 ~~2, level 3, or level 4)) Provide technical assistance to dairy
5 producers in developing and implementing a dairy nutrient management
6 plan; and~~

7 (e) Review, approve, and certify dairy nutrient management plans
8 that meet the minimum standards developed under RCW 90.64.050(1)(g).

9 (2) The district's capability to carry out its responsibilities
10 ~~((in the four levels of compliance)) under this chapter is contingent
11 upon the availability of funding and resources to implement a dairy
12 ~~((waste)) nutrient management program.~~~~

13 **Sec. 14.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to read
14 as follows:

15 (1) The conservation commission has the following duties:

16 ~~((Forward to the department the dairy waste management plan~~
17 ~~progress reports;~~

18 ~~(b))~~ Provide assistance as may be appropriate to the conservation
19 districts in the discharge of their responsibilities as management
20 agencies in dairy ~~((waste)) nutrient management program implementation;~~

21 ~~((e))~~ (b) Provide coordination for conservation district programs
22 at the state level through special arrangements with appropriate
23 federal and state agencies;

24 ~~((d))~~ (c) Inform conservation districts of activities and
25 experiences of other conservation districts relative to agricultural
26 water quality protection, and facilitate an interchange of advice,
27 experience, and cooperation between the districts;

28 ~~((e))~~ (d) Encourage communication between the conservation
29 district personnel and local department personnel;

30 ~~((f))~~ (e) Appoint conservation district representatives to serve
31 on the ~~((compliance review)) advisory and oversight committee with
32 advice of the Washington association of conservation districts;~~

33 ~~((g) Appoint a commission representative to participate on the~~
34 ~~compliance review committee that will annually review and update policy~~
35 ~~and disseminate information as needed;~~

36 ~~(h))~~ (f) Provide a cochair to the advisory and oversight
37 committee; and

1 (g) Work with the department to provide communication outreach to
2 representatives of agricultural and environmental organizations to
3 receive feedback on implementation of this chapter.

4 (2) The commission's capability to carry out its responsibilities
5 under this chapter is contingent upon the availability of funding and
6 resources to implement a dairy ((waste)) nutrient management program.

7 **Sec. 15.** RCW 90.48.144 and 1995 c 403 s 636 are each amended to
8 read as follows:

9 Except as provided in RCW 43.05.060 through 43.05.080 and
10 43.05.150, every person who:

11 (1) Violates the terms or conditions of a waste discharge permit
12 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

13 (2) Conducts a commercial or industrial operation or other point
14 source discharge operation without a waste discharge permit as required
15 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

16 (3) Violates the provisions of RCW 90.48.080, or other sections of
17 this chapter, chapter 90.64 RCW, or chapter 90.56 RCW or rules or
18 orders adopted or issued pursuant to ((either of)) those chapters,
19 shall incur, in addition to any other penalty as provided by law, a
20 penalty in an amount of up to ten thousand dollars a day for every such
21 violation. Each and every such violation shall be a separate and
22 distinct offense, and in case of a continuing violation, every day's
23 continuance shall be and be deemed to be a separate and distinct
24 violation. Every act of commission or omission which procures, aids or
25 abets in the violation shall be considered a violation under the
26 provisions of this section and subject to the penalty herein provided
27 for. The penalty amount shall be set in consideration of the previous
28 history of the violator and the severity of the violation's impact on
29 public health and/or the environment in addition to other relevant
30 factors. The penalty herein provided for shall be imposed pursuant to
31 the procedures set forth in RCW 43.21B.300.

32 NEW SECTION. **Sec. 16.** The dairy waste management account is
33 created in the custody of the state treasurer. All receipts from
34 monetary penalties levied pursuant to violations of this chapter must
35 be deposited into the account. Expenditures from the account may be
36 used only for the commission to provide grants to local conservation
37 districts for the sole purpose of assisting dairy producers to develop

1 and fully implement dairy nutrient management plans. Only the chairman
2 of the commission or the chairman's designee may authorize expenditures
3 from the account. The account is subject to allotment procedures under
4 chapter 43.88 RCW, but an appropriation is not required for
5 expenditures.

6 **Sec. 17.** RCW 90.48.465 and 1997 c 398 s 2 are each amended to read
7 as follows:

8 (1) The department shall establish annual fees to collect expenses
9 for issuing and administering each class of permits under RCW
10 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be
11 established by rule within one year of March 1, 1989, and thereafter
12 the fee schedule shall be adjusted no more often than once every two
13 years. This fee schedule shall apply to all permits, regardless of
14 date of issuance, and fees shall be assessed prospectively. All fees
15 charged shall be based on factors relating to the complexity of permit
16 issuance and compliance and may be based on pollutant loading and
17 toxicity and be designed to encourage recycling and the reduction of
18 the quantity of pollutants. Fees shall be established in amounts to
19 fully recover and not to exceed expenses incurred by the department in
20 processing permit applications and modifications, monitoring and
21 evaluating compliance with permits, conducting inspections, securing
22 laboratory analysis of samples taken during inspections, reviewing
23 plans and documents directly related to operations of permittees,
24 overseeing performance of delegated pretreatment programs, and
25 supporting the overhead expenses that are directly related to these
26 activities.

27 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
28 Sec. 1362, for all domestic wastewater facility permits issued under
29 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
30 fifteen cents per month per residence or residential equivalent
31 contributing to the municipality's wastewater system. The department
32 shall adopt by rule a schedule of credits for any municipality engaging
33 in a comprehensive monitoring program beyond the requirements imposed
34 by the department, with the credits available for five years from March
35 1, 1989, and with the total amount of all credits not to exceed fifty
36 thousand dollars in the five-year period.

37 (3) The department shall ensure that indirect dischargers do not
38 pay twice for the administrative expense of a permit. Accordingly,

1 administrative expenses for permits issued by a municipality under RCW
2 90.48.165 are not recoverable by the department.

3 (4) In establishing fees, the department shall consider the
4 economic impact of fees on small dischargers and the economic impact of
5 fees on public entities required to obtain permits for storm water
6 runoff and shall provide appropriate adjustments. The fee for a
7 national pollutant discharge elimination system permit issued for
8 discharges related to manure or other dairy nutrient from a dairy farm
9 as defined under chapter 90.64 RCW shall be fifty cents per head of
10 cattle covered by the permit.

11 (5) All fees collected under this section shall be deposited in the
12 water quality permit account hereby created in the state treasury.
13 Moneys in the account may be appropriated only for purposes of
14 administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

15 (6) Beginning with the biennium ending June 30, 1997, the
16 department shall present a biennial progress report on the use of
17 moneys from the account to the legislature. The report will be due
18 December 31st of odd-numbered years. The report shall consist of
19 information on fees collected, actual expenses incurred, and
20 anticipated expenses for the current and following fiscal years.

21 NEW SECTION. Sec. 18. RCW 90.64.090 and 1993 c 221 s 10 are each
22 repealed.

23 NEW SECTION. Sec. 19. Sections 3, 5 through 9, and 16 of this act
24 are each added to chapter 90.64 RCW.

25 NEW SECTION. Sec. 20. This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and takes effect
28 immediately.

--- END ---