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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2915

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State of Washington

55th Legislature

1998 Regular Session

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

Read first time 02/07/98. 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 new sections; 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 affect((s)) 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) "Catastrophic" means a tornado, hurricane, earthquake, flood,  
31 or other extreme condition that would cause an overflow from a required  
32 waste retention structure.

33 (3) "Certification" means:

34 (a) The acknowledgment by a local conservation district that a  
35 dairy producer has constructed or otherwise put in place the elements  
36 necessary to implement his or her dairy nutrient management plan; and

1 (b) The acknowledgment by a dairy producer that he or she is  
2 managing dairy nutrients as specified in his or her approved dairy  
3 nutrient management plan.

4 (4) "Chronic" means a series of wet weather events that precludes  
5 the proper operation of a dairy nutrient management system that is  
6 designed with adequate volume for the current herd size and is also  
7 properly maintained.

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

10 ~~((+2))~~ (6) "Conservation districts" or "district" means a  
11 subdivision of state government organized under chapter 89.08 RCW.

12 ~~((+3))~~ (7) "Concentrated dairy animal feeding operation" means a  
13 dairy animal feeding operation subject to regulation under this chapter  
14 which the director designates under RCW ~~((90.64.030))~~ 90.64.020 or  
15 meets the following criteria:

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

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

20 (i) From which pollutants are discharged into navigable waters  
21 through a manmade ditch, flushing system, or other similar manmade  
22 device; or

23 (ii) From which pollutants are discharged directly into surface or  
24 ground waters of the state that originate outside of and pass over,  
25 across, or through the facility or otherwise come into direct contact  
26 with the animals confined in the operation.

27 ~~((+4))~~ (8) "Dairy animal feeding operation" means a lot or  
28 facility where the following conditions are met:

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

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

38 ~~((+5))~~ (9) "Dairy farm" means any farm that is licensed to produce  
39 milk under chapter 15.36 RCW.

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

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

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

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

11       (14) "Department" means the department of ecology under chapter  
12 43.21A RCW.

13       ~~((+6+))~~ (15) "Director" means the director of the department of  
14 ecology, or his or her designee.

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

18       (17) "Violation" means a discharge of pollutants into the waters of  
19 the state, except those discharges that are regulated under the terms  
20 of a national pollutant discharge elimination system permit and that  
21 are:

22       (a) Caused by a twenty-four-hour, twenty-five year or greater storm  
23 event, or by catastrophic or chronic weather events; or

24       (b) The result of practices that are approved in a certified dairy  
25 nutrient management plan, or that are likely to be approved in such a  
26 plan no later than December 1, 2000.

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

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

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

1 (a) The name and address of the operator of the dairy farm;  
2 (b) The name and address of the dairy farm;  
3 (c) The telephone number of the dairy farm;  
4 (d) The number of cows in the dairy farm;  
5 (e) The number of young stock in the dairy farm;  
6 (f) The number of acres owned and rented in the dairy farm;  
7 (g) Whether the dairy producer, to the best of his or her  
8 knowledge, has a plan for managing dairy nutrient discharges that is  
9 tailored to the size of his or her herd, and whether the plan is being  
10 fully implemented; and

11 (h) If the fields where dairy nutrients are being applied belong to  
12 someone other than the dairy producer whose farm operation generated  
13 the nutrients, the name, address, and telephone number of the owners of  
14 the property accepting the dairy nutrients shall be included in the  
15 registration form. Of this information, the department shall only  
16 require the registrant to provide information that is not already  
17 available from other sources accessible to the department, such as  
18 dairy licensing information.

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

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

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

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

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

4        (a) Survey for evidence of significant dairy nutrient discharges;

5        (b) Identify corrective actions for actual or imminent discharges  
6 that threaten to violate the state's water quality requirements;

7        (c) Monitor the development of dairy nutrient management plans; and

8        (d) Identify dairy producers who would benefit from technical  
9 assistance programs.

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

13       (3) Follow-up inspections shall be conducted by the department to  
14 ensure that corrective and other actions as identified in the course of  
15 initial inspections are being carried out. The department shall also  
16 conduct such additional inspections as are necessary to ensure  
17 compliance with state and federal water quality requirements, provided  
18 that all licensed dairy farms shall be inspected once within two years  
19 of the start of this program. The department, in consultation with the  
20 advisory and oversight committee, shall develop performance-based  
21 criteria to determine the frequency of inspections.

22       NEW SECTION.    **Sec. 6.**    (1) All dairy producers licensed under  
23 chapter 15.36 RCW shall prepare a dairy nutrient management plan. Such  
24 plans shall be submitted for approval to the local conservation  
25 district where the dairy farm is located for approval by July 1, 1999,  
26 and shall be certified and fully implemented by October 1, 2001. If a  
27 plan meets the requirements identified in subsection (2) of this  
28 section, a conservation district shall approve the plan.

29       (2) By November 1, 1998, the department in conjunction with the  
30 advisory and oversight committee established in section 8 of this act  
31 shall develop a document clearly describing the elements that a dairy  
32 nutrient management plan must contain to gain local conservation  
33 district approval.

34       (3) In developing the elements that an approved dairy nutrient  
35 management plan must contain, the commission may authorize the use of  
36 methods and technologies other than those developed by the natural  
37 resources conservation service, provided that, once implemented, such

1 methods and technologies achieve compliance with water quality  
2 requirements.

3 (4) An approved plan shall be certified by a conservation district  
4 and a dairy producer when the elements necessary to implement the plan  
5 have been constructed or otherwise put in place, and are being used as  
6 designed and intended. A certification form shall be developed by the  
7 conservation commission for use state-wide and shall provide for a  
8 signature by both a conservation district representative and a dairy  
9 producer. Signed certification forms shall be dated by October 1,  
10 2001, and a copy provided to the department.

11 NEW SECTION. **Sec. 7.** Dairy nutrient management plans shall be  
12 considered orders of the department and shall be subject to appeal to  
13 the pollution control hearings board according to the procedure in  
14 chapter 43.21B RCW.

15 NEW SECTION. **Sec. 8.** (1) A dairy nutrient management program  
16 advisory and oversight committee is established. The committee shall  
17 be cochaired by the executive director of the conservation commission  
18 and a dairy industry representative. The purpose of the committee is  
19 to provide direction to and oversight of the dairy nutrient management  
20 inspection program, as well as to encourage the use of appropriate  
21 alternative technologies and methods for managing dairy nutrients.  
22 Members shall be appointed by the commission.

23 (2) The committee shall include no less than eleven, and no more  
24 than thirteen members, including one representative from the  
25 department, one representative of the dairy industry from each of up to  
26 four geographic areas as referenced in section 10 of this act, one  
27 representative from the conservation commission, two representatives  
28 from local conservation districts, one representative from a local  
29 health department, one representative of an environmental organization,  
30 and one representative from the shellfish industry. In addition, the  
31 natural resources conservation service and the federal environmental  
32 protection agency shall each be invited to appoint a representative to  
33 the committee.

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

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

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

4 (c) Review the quarterly data base summary and annual report  
5 provided by the department under section 9 of this act and RCW  
6 90.64.050;

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

10 (e) Review and recommend standardized dairy farm nutrient  
11 management facility inspection procedures and a reporting format to be  
12 used by the department; and

13 (f) Review and recommend dairy nutrient management technologies and  
14 methods other than those approved or provided by the natural resources  
15 conservation service, as components of nutrient management plans under  
16 this chapter. In evaluating new technologies and methods, the  
17 principal objective of the evaluation shall be determining whether  
18 there is a substantial likelihood that, once implemented, the  
19 technologies and methods will achieve compliance with water quality  
20 requirements.

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

24 NEW SECTION. **Sec. 9.** (1) By September 1, 1998, the department in  
25 consultation with the advisory and oversight committee shall develop  
26 and maintain a data base to account for the implementation of the  
27 inspection program identified in section 5 of this act.

28 (2) The data base shall track registration; inspection dates and  
29 results, including findings of compliance and noncompliance with water  
30 quality requirements; regulatory and enforcement actions; and the  
31 status of dairy nutrient management plans. A summary of data base  
32 information shall be provided quarterly to the advisory and oversight  
33 committee.

34 (3) Complaints that have been filed with the department or  
35 pollution control hearings board shall not be recorded into the data  
36 base if, upon the conclusion of an investigation, they are found to be  
37 without merit or basis. Any information entered into the data base by  
38 the department about any aspect of a particular dairy operation may be



1 reviewed by the affected dairy producer upon request. The department  
2 shall correct any information in the data base upon a showing that the  
3 information is faulty or inaccurate.

4 NEW SECTION. **Sec. 10.** (1) The conservation commission shall  
5 establish up to four dairy nutrient management technical assistance  
6 teams by May 1, 1998. The teams shall be geographically located  
7 throughout the state. Each team shall consist of one or more  
8 professional engineers, local conservation district employees, and  
9 representatives of county agricultural extension service offices.

10 (2) By September 1, 1998, each team shall develop one or more sets  
11 of standards and specifications to assist dairy producers in developing  
12 and implementing dairy nutrient management plans. Standards and  
13 specifications developed by a technical assistance team shall be  
14 appropriate to the soils and other conditions within that geographic  
15 area and shall be reviewed by the advisory and oversight committee.

16 **Sec. 11.** RCW 90.64.030 and 1993 c 221 s 4 are each amended to read  
17 as follows:

18 ~~((Upon receiving a complaint or upon its own determination that a  
19 dairy animal feeding operation is a likely source of water quality  
20 degradation,))~~ (1) Under the inspection program established in section  
21 5 of this act, the department may investigate a dairy ((animal feeding  
22 operation)) farm to determine whether the operation is discharging  
23 ((directly)) pollutants or ((recently)) has ((discharged directly)) a  
24 record of discharging pollutants into surface or ground waters of the  
25 state. Upon concluding an investigation, the department shall make a  
26 written report of its findings, including the results of any water  
27 quality measurements, photographs, or other pertinent information, and  
28 provide a copy of the report to the dairy producer within twenty days  
29 of the investigation.

30 (2) The department shall investigate a written complaint filed  
31 with the department within ~~((ten))~~ three working days and shall make a  
32 written report of its findings including the results of any water  
33 quality measurements, photographs, or other pertinent information. A  
34 copy of the findings shall be provided ~~((upon request))~~ to the dairy  
35 ~~((animal feeding operation))~~ producer subject to the complaint within  
36 twenty days. Only findings of noncompliance with water quality laws

1 shall be entered into the data base identified in section 9 of this  
2 act.

3 ~~((Those dairy animal feeding operations that are))~~ (3) A dairy farm  
4 that is determined to be a significant contributor of pollution based  
5 on actual water quality tests, photographs, or other pertinent  
6 information ((if immediate corrective actions are not possible, shall  
7 be designated as a concentrated dairy animal feeding operation and  
8 shall be)) is subject to the provisions of this chapter and to the  
9 enforcement provisions of chapters 43.05 and 90.48 RCW, including civil  
10 penalties levied under RCW 90.48.144.

11 (4) For a violation of water quality laws that is a first offense  
12 for a dairy producer, the penalty may be waived to allow the producer  
13 to come into compliance with water quality laws. The department shall  
14 record all legitimate violations and subsequent enforcement actions.

15 (5) A discharge to surface waters of the state shall not be  
16 considered a violation of chapter 90.48 RCW, chapter 173-201A WAC, or  
17 a violation of the federal clean water act, and shall therefore not be  
18 enforceable by the department of ecology or a third party, if at the  
19 time of the discharge, the following conditions are met:

20 (a) The dairy producer has a current national pollution discharge  
21 elimination system permit with a wastewater system designed, operated,  
22 and maintained for the current herd size to contain all process-  
23 generated wastewater plus average annual precipitation minus  
24 evaporation plus contaminated storm water runoff from a twenty-five  
25 year, twenty-four-hour rainfall event for that specific location; and

26 (i) The discharge is due to a chronic or catastrophic event or is  
27 due to an upset; or

28 (ii) The dairy producer has complied with the national pollution  
29 discharge elimination system permit conditions or the dairy waste  
30 management plan conditions regarding appropriate land application  
31 practices.

32 (b) A dairy producer shall not be held liable for violations of  
33 chapter 90.48 RCW, chapter 173-201A WAC, or the federal clean water act  
34 due to the discharge of dairy nutrients to waters of the state  
35 resulting from spreading these materials on lands other than where the  
36 nutrients were generated, when the nutrients are spread by persons  
37 other than the dairy producer, employee, or contractor.

38 (c) This section specifically acknowledges that if a national  
39 pollution discharge elimination system permit holder complies with the

1 permit and the dairy waste management plan conditions for appropriate  
2 land application practices, the permit provides compliance with the  
3 federal clean water act and acts as a shield against citizen or agency  
4 enforcement for any additions of pollutants to waters of the state or  
5 of the United States that may occur. The department shall issue a  
6 permit to any dairy farm of any size that applies for one.

7 **Sec. 12.** RCW 90.64.050 and 1993 c 221 s 6 are each amended to read  
8 as follows:

9 (1) The department has the following duties:

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

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

15 (c) Determine if a dairy-related water quality problem requires  
16 immediate corrective action under the Washington state water pollution  
17 control laws, chapter 90.48 RCW, or the Washington state water quality  
18 standards adopted under chapter 90.48 RCW~~((, or other authorities)).~~  
19 The department shall maintain the lead enforcement responsibility;

20 (d) Administer and enforce national pollutant~~((s))~~ discharge  
21 elimination system permits for operators of concentrated dairy animal  
22 feeding operations and other dairy producers, where required by federal  
23 regulations~~((,))~~ and ~~((administer))~~ state laws or upon request of a  
24 dairy producer;

25 ~~((Appoint representatives, including dairy industry~~  
26 ~~representatives, to participate in the compliance review committee that~~  
27 ~~will annually review and update policy and disseminate information as~~  
28 ~~needed)) Participate on the advisory and oversight committee;~~

29 (f) Encourage communication and cooperation between local  
30 department personnel and the appropriate conservation district  
31 personnel;

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

37 (i) The natural resource conservation service;

1 (ii) The natural resource conservation service as modified by the  
2 geographically based standards developed under section 10 of this act;  
3 or

4 (iii) A professional engineer with expertise in the area of dairy  
5 nutrient management, soil science, or land application of biosolids or  
6 liquids, provided these standards meet a goal of zero discharge of  
7 pollutants;

8 (h) Provide to the commission and the advisory and oversight  
9 committee an annual report of dairy ((waste pollution)) nutrient  
10 management planning, inspection, and enforcement activities; and

11 (i) Oversee the conservation districts' review, approval, and  
12 certification of dairy nutrient management plans.

13 (2) The department may not delegate its responsibilities in  
14 enforcement.

15 **Sec. 13.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to read  
16 as follows:

17 (1) If the department determines that the operator of a dairy  
18 ((animal feeding operation)) farm has the means to correct a water  
19 quality problem in a manner that will prevent future contamination and  
20 does so promptly and such correction is maintained, the department  
21 shall cease pursuit of the complaint. If a discharge cannot be  
22 corrected promptly, the department shall require the dairy producer to  
23 obtain a national pollution discharge elimination system permit.

24 (2) If the department determines that an unresolved water quality  
25 problem from a dairy ((animal feeding operation)) farm requires  
26 immediate corrective action, the department shall notify the  
27 ((operator)) producer and the district in which the problem is located.  
28 When corrective actions are required, the department shall provide  
29 copies of all final dairy farm inspection reports and documentation of  
30 all formal regulatory and enforcement actions taken by the department  
31 to the local conservation district and to the appropriate dairy farm  
32 within twenty days.

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

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

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

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

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

11       **Sec. 14.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read  
12 as follows:

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

14       (a) ~~((Adopt and annually update the water quality section in the~~  
15 ~~conservation district dairy waste management plan)) Provide technical~~  
16 ~~assistance to the department in identifying existing water quality~~  
17 ~~problems resulting from dairy farms through implementation of the~~  
18 ~~inspection program in section 5 of this act;~~

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

24       (c) Encourage communication and cooperation between the  
25 conservation district personnel and local department personnel;

26       (d) ~~((Adopt and carry out a compliance option from level 1, level~~  
27 ~~2, level 3, or level 4)) Provide technical assistance to dairy~~  
28 ~~producers in developing and implementing a dairy nutrient management~~  
29 ~~plan; and~~

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

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

36       **Sec. 15.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to read  
37 as follows:

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

2 (a) ~~((Forward to the department the dairy waste management plan~~  
3 ~~progress reports;~~

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

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

10 ~~((d))~~ (c) Inform conservation districts of activities and  
11 experiences of other conservation districts relative to agricultural  
12 water quality protection, and facilitate an interchange of advice,  
13 experience, and cooperation between the districts;

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

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

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

22 ~~(h))~~ (f) Provide a cochair to the advisory and oversight  
23 committee; and

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

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

30 **Sec. 16.** RCW 90.48.144 and 1995 c 403 s 636 are each amended to  
31 read as follows:

32 Except as provided in RCW 43.05.060 through 43.05.080 and  
33 43.05.150, every person who:

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

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

1 (3) Violates the provisions of RCW 90.48.080, or other sections of  
2 this chapter, chapter 90.64 RCW, or chapter 90.56 RCW or rules or  
3 orders adopted or issued pursuant to (~~either of~~) those chapters,  
4 shall incur, in addition to any other penalty as provided by law, a  
5 penalty in an amount of up to ten thousand dollars a day for every such  
6 violation. Each and every such violation shall be a separate and  
7 distinct offense, and in case of a continuing violation, every day's  
8 continuance shall be and be deemed to be a separate and distinct  
9 violation. Every act of commission or omission which procures, aids or  
10 abets in the violation shall be considered a violation under the  
11 provisions of this section and subject to the penalty herein provided  
12 for. The penalty amount shall be set in consideration of the previous  
13 history of the violator and the severity of the violation's impact on  
14 public health and/or the environment in addition to other relevant  
15 factors. The penalty herein provided for shall be imposed pursuant to  
16 the procedures set forth in RCW 43.21B.300.

17 NEW SECTION. **Sec. 17.** The dairy waste management account is  
18 created in the custody of the state treasurer. All receipts from  
19 monetary penalties levied pursuant to violations of this chapter must  
20 be deposited into the account. Expenditures from the account may be  
21 used only for the commission to provide grants to local conservation  
22 districts for the sole purpose of assisting dairy producers to develop  
23 and fully implement dairy nutrient management plans. Only the chairman  
24 of the commission or the chairman's designee may authorize expenditures  
25 from the account. The account is subject to allotment procedures under  
26 chapter 43.88 RCW, but an appropriation is not required for  
27 expenditures.

28 **Sec. 18.** RCW 90.48.465 and 1997 c 398 s 2 are each amended to read  
29 as follows:

30 (1) The department shall establish annual fees to collect expenses  
31 for issuing and administering each class of permits under RCW  
32 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be  
33 established by rule within one year of March 1, 1989, and thereafter  
34 the fee schedule shall be adjusted no more often than once every two  
35 years. This fee schedule shall apply to all permits, regardless of  
36 date of issuance, and fees shall be assessed prospectively. All fees  
37 charged shall be based on factors relating to the complexity of permit

1 issuance and compliance and may be based on pollutant loading and  
2 toxicity and be designed to encourage recycling and the reduction of  
3 the quantity of pollutants. Fees shall be established in amounts to  
4 fully recover and not to exceed expenses incurred by the department in  
5 processing permit applications and modifications, monitoring and  
6 evaluating compliance with permits, conducting inspections, securing  
7 laboratory analysis of samples taken during inspections, reviewing  
8 plans and documents directly related to operations of permittees,  
9 overseeing performance of delegated pretreatment programs, and  
10 supporting the overhead expenses that are directly related to these  
11 activities.

12 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.  
13 Sec. 1362, for all domestic wastewater facility permits issued under  
14 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of  
15 fifteen cents per month per residence or residential equivalent  
16 contributing to the municipality's wastewater system. The department  
17 shall adopt by rule a schedule of credits for any municipality engaging  
18 in a comprehensive monitoring program beyond the requirements imposed  
19 by the department, with the credits available for five years from March  
20 1, 1989, and with the total amount of all credits not to exceed fifty  
21 thousand dollars in the five-year period.

22 (3) The department shall ensure that indirect dischargers do not  
23 pay twice for the administrative expense of a permit. Accordingly,  
24 administrative expenses for permits issued by a municipality under RCW  
25 90.48.165 are not recoverable by the department.

26 (4) In establishing fees, the department shall consider the  
27 economic impact of fees on small dischargers and the economic impact of  
28 fees on public entities required to obtain permits for storm water  
29 runoff and shall provide appropriate adjustments. The fee for a  
30 national pollutant discharge elimination system permit issued for  
31 discharges related to manure or other dairy nutrients from a dairy farm  
32 as defined under chapter 90.64 RCW shall be a fifty cents per animal  
33 unit covered by the permit.

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

38 (6) Beginning with the biennium ending June 30, 1997, the  
39 department shall present a biennial progress report on the use of



1 moneys from the account to the legislature. The report will be due  
2 December 31st of odd-numbered years. The report shall consist of  
3 information on fees collected, actual expenses incurred, and  
4 anticipated expenses for the current and following fiscal years.

5 NEW SECTION. **Sec. 19.** The department is required to report to the  
6 legislature by December 1st of each year until 2001, on progress made  
7 in implementing this act. At a minimum, the reports shall include data  
8 on inspections, the status of dairy nutrient planning, compliance with  
9 water quality standards, and enforcement actions. The report shall  
10 also provide recommendations on how implementation of this act could be  
11 facilitated for dairy producers and generally improved.

12 NEW SECTION. **Sec. 20.** RCW 90.64.090 and 1993 c 221 s 10 are each  
13 repealed.

14 NEW SECTION. **Sec. 21.** Sections 3, 5 through 10, and 17 of this  
15 act are each added to chapter 90.64 RCW.

16 NEW SECTION. **Sec. 22.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of the  
18 state government and its existing public institutions, and takes effect  
19 immediately.

20 NEW SECTION. **Sec. 23.** If specific funding for the purposes of  
21 this act, referencing this act by bill or chapter number, is not  
22 provided by June 30, 1998, in the omnibus appropriations act, this act  
23 is null and void.

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