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ENGROSSED SENATE BILL 6726

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State of Washington 57th Legislature

2002 Regular Session

By Senators Rasmussen and Honeyford

Read first time 01/29/2002. Referred to Committee on Agriculture & International Trade.

1 AN ACT Relating to complaints against dairy farms; and amending RCW  
2 90.64.030.

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

4 **Sec. 1.** RCW 90.64.030 and 1998 c 262 s 11 are each amended to read  
5 as follows:

6 (1) Under the inspection program established in RCW 90.64.023, the  
7 department may investigate a dairy farm to determine whether the  
8 operation is discharging pollutants or has a record of discharging  
9 pollutants into surface or ground waters of the state. Upon concluding  
10 an investigation, the department shall make a written report of its  
11 findings, including the results of any water quality measurements,  
12 photographs, or other pertinent information, and provide a copy of the  
13 report to the dairy producer within twenty days of the investigation.

14 (2) The department shall investigate a written complaint filed with  
15 the department within three working days and shall make a written  
16 report of its findings including the results of any water quality  
17 measurements, photographs, or other pertinent information. Within  
18 twenty days of receiving a written complaint, a copy of the findings  
19 shall be provided to the dairy producer subject to the complaint

1 ((within twenty days)), and to the complainant if the person gave his  
2 or her name and address to the department at the time the complaint was  
3 filed.

4 (3) The department may consider past complaints against the same  
5 dairy farm from the same person and the results of its previous  
6 inspections, and has the discretion to decide whether to conduct an  
7 inspection if:

8 (a) The same or a similar complaint or complaints have been filed  
9 against the same dairy farm within the immediately preceding six-month  
10 period; and

11 (b) The department made a determination that the activity that was  
12 the subject of the prior complaint was not a violation.

13 (4) If the decision of the department is not to conduct an  
14 inspection, it shall document the decision and the reasons for the  
15 decision within twenty days. The department shall provide the decision  
16 to the complainant if the name and address were provided to the  
17 department, and to the dairy producer subject to the complaint, and the  
18 department shall place the decision in the department's administrative  
19 records.

20 (5) The report of findings of any inspection conducted as the  
21 result of either an oral or a written complaint shall be placed in the  
22 department's administrative records. Only findings of violations shall  
23 be entered into the data base identified in RCW 90.64.130.

24 ((+3)) (6) A dairy farm that is determined to be a significant  
25 contributor of pollution based on actual water quality tests,  
26 photographs, or other pertinent information is subject to the  
27 provisions of this chapter and to the enforcement provisions of  
28 chapters 43.05 and 90.48 RCW, including civil penalties levied under  
29 RCW 90.48.144.

30 ((+4)) (7) If the department determines that an unresolved water  
31 quality problem from a dairy farm requires immediate corrective action,  
32 the department shall notify the producer and the district in which the  
33 problem is located. When corrective actions are required to address  
34 such unresolved water quality problems, the department shall provide  
35 copies of all final dairy farm inspection reports and documentation of  
36 all formal regulatory and enforcement actions taken by the department  
37 against that particular dairy farm to the local conservation district  
38 and to the appropriate dairy farm within twenty days.

1       (~~(5)~~) (8) For a violation of water quality laws that is a first  
2 offense for a dairy producer, the penalty may be waived to allow the  
3 producer to come into compliance with water quality laws. The  
4 department shall record all legitimate violations and subsequent  
5 enforcement actions.

6       (~~(6)~~) (9) A discharge, including a storm water discharge, to  
7 surface waters of the state shall not be considered a violation of this  
8 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall  
9 therefore not be enforceable by the department of ecology or a third  
10 party, if at the time of the discharge, a violation is not occurring  
11 under RCW 90.64.010(18). In addition, a dairy producer shall not be  
12 held liable for violations of this chapter, chapter 90.48 RCW, chapter  
13 173-201A WAC, or the federal clean water act due to the discharge of  
14 dairy nutrients to waters of the state resulting from spreading these  
15 materials on lands other than where the nutrients were generated, when  
16 the nutrients are spread by persons other than the dairy producer or  
17 the dairy producer's agent.

18       (~~(7)~~) (10) As provided under RCW 7.48.305, agricultural  
19 activities associated with the management of dairy nutrients are  
20 presumed to be reasonable and shall not be found to constitute a  
21 nuisance unless the activity has a substantial adverse effect on public  
22 health and safety.

23       (~~(8)~~) (11) This section specifically acknowledges that if a  
24 holder of a general or individual national pollutant discharge  
25 elimination system permit complies with the permit and the dairy  
26 nutrient management plan conditions for appropriate land application  
27 practices, the permit provides compliance with the federal clean water  
28 act and acts as a shield against citizen or agency enforcement for any  
29 additions of pollutants to waters of the state or of the United States  
30 as authorized by the permit.

31       (~~(9)~~) (12) A dairy producer who fails to have an approved dairy  
32 nutrient management plan by July 1, 2002, or a certified dairy nutrient  
33 management plan by December 31, 2003, and for which no appeals have  
34 been filed with the pollution control hearings board, is in violation  
35 of this chapter. Each month beyond these deadlines that a dairy  
36 producer is out of compliance with the requirement for either plan  
37 approval or plan certification shall be considered separate violations  
38 of chapter 90.64 RCW that may be subject to penalties. Such penalties  
39 may not exceed one hundred dollars per month for each violation up to

1 a combined total of five thousand dollars. Failure to register as  
2 required in RCW 90.64.017 shall subject a dairy producer to a maximum  
3 penalty of one hundred dollars. Penalties shall be levied by the  
4 department.

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