
SENATE BILL 6726

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; amending RCW
2 90.64.030; and adding a new section to chapter 43.21A RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.21A RCW
5 to read as follows:

6 (1) For complaints received by the department against a dairy farm
7 for any reason, the department shall require a one hundred dollar
8 security deposit if:

9 (a) The person making the complaint has filed a complaint against
10 the same dairy farm within the immediately preceding calendar year; and

11 (b) The department made a determination that the activity that was
12 the subject of the prior complaint was not a violation of state law or
13 rule, a permit condition, or a notice of corrective action.

14 (2)(a) If the department determines that there was no violation of
15 state law or rule, a permit condition, or a notice of corrective
16 action, the security deposit shall be forfeited.

17 (b) If the department determines that there was a violation of
18 state law or rule, a permit condition, or a notice of corrective
19 action, the security deposit shall be returned.

1 **Sec. 2.** RCW 90.64.030 and 1998 c 262 s 11 are each amended to read
2 as follows:

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

11 (2) The department shall investigate a written complaint filed with
12 the department within three working days and shall make a written
13 report of its findings including the results of any water quality
14 measurements, photographs, or other pertinent information. A copy of
15 the findings shall be provided to the dairy producer subject to the
16 complaint within twenty days. Only findings of violations shall be
17 entered into the data base identified in RCW 90.64.130. If, upon
18 investigation on the basis of a complaint received under this
19 subsection, the department determines that a confined animal feeding
20 operation has not violated a provision of this chapter, or chapter
21 90.48 RCW, or rules adopted under chapter 90.48 RCW, or the conditions
22 of a permit issued under chapter 90.48 RCW, the department shall
23 require that any additional complaint filed by the same person in the
24 same calendar year be accompanied by a security deposit of one hundred
25 dollars. If, after investigation, the department determines that a
26 violation has occurred, the security deposit shall be returned to the
27 person who filed the complaint. If the department determines that a
28 violation has not occurred, the security deposit shall be forfeited.

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

34 (4) If the department determines that an unresolved water quality
35 problem from a dairy farm requires immediate corrective action, the
36 department shall notify the producer and the district in which the
37 problem is located. When corrective actions are required to address
38 such unresolved water quality problems, the department shall provide
39 copies of all final dairy farm inspection reports and documentation of

1 all formal regulatory and enforcement actions taken by the department
2 against that particular dairy farm to the local conservation district
3 and to the appropriate dairy farm within twenty days.

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

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

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

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

32 (9) A dairy producer who fails to have an approved dairy nutrient
33 management plan by July 1, 2002, or a certified dairy nutrient
34 management plan by December 31, 2003, and for which no appeals have
35 been filed with the pollution control hearings board, is in violation
36 of this chapter. Each month beyond these deadlines that a dairy
37 producer is out of compliance with the requirement for either plan
38 approval or plan certification shall be considered separate violations
39 of chapter 90.64 RCW that may be subject to penalties. Such penalties

1 may not exceed one hundred dollars per month for each violation up to
2 a combined total of five thousand dollars. Failure to register as
3 required in RCW 90.64.017 shall subject a dairy producer to a maximum
4 penalty of one hundred dollars. Penalties shall be levied by the
5 department.

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