

SSB 5602 - H AMD 536

By Representatives Pettigrew, Holmquist, Kretz, Linville

ADOPTED 04/14/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) This chapter applies to all operations
4 that meet the definition of an animal feeding operation.

5 (2)(a) This chapter creates specific permit requirements consistent
6 with state and federal water quality laws for concentrated animal
7 feeding operations.

8 (b) All dairies are required to implement nutrient management plans
9 and perform certain reporting.

10 (c) AFOs that are not CAFOs or dairies are not required to have a
11 plan under this chapter and are only required to obtain a permit if it
12 has been determined by the department that they are discharging to the
13 waters of the state. However, no AFO is allowed to pollute waters of
14 the state, and all AFOs may be inspected by the department under this
15 chapter.

16 **Sec. 2.** RCW 90.64.005 and 1998 c 262 s 1 are each amended to read
17 as follows:

18 The legislature finds that there is a need (~~to establish a clear~~
19 ~~and understandable process that provides for the proper and effective~~
20 ~~management of dairy nutrients that affect the quality of surface or~~
21 ~~ground waters in the state of Washington. The legislature finds that~~
22 ~~there is a need for a program that will provide a stable and~~
23 ~~predictable business climate upon which dairy farms may base future~~
24 ~~investment decisions.~~

25 ~~The legislature finds that federal regulations require a permit~~
26 ~~program for dairies with over seven hundred head of mature cows and,~~
27 ~~other specified dairy farms that directly discharge into waters or are~~
28 ~~otherwise significant contributors of pollution. The legislature finds~~

1 that significant work has been ongoing over a period of time and that
2 the intent of this chapter is to take the consensus that has been
3 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)) for an effective livestock
22 nutrient management program for all AFOs that meets federal and state
23 water quality rules. The goals of the program are to provide clear
24 guidance to animal feeding operations about their responsibilities
25 under state and federal water quality laws and to implement the
26 necessary program requirements in a consistent manner that will
27 maintain a healthy and productive livestock industry in Washington
28 state while preventing degradation of water quality. It is the intent
29 of the legislature that the department of agriculture continues the
30 existing program for all licensed dairies, implements the revised
31 program for CAFOs and AFOs, and carries out effective, fair, and
32 equitable enforcement.

33 **Sec. 3.** RCW 90.64.010 and 1998 c 262 s 2 are each amended to read
34 as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

1 (1) (~~"Advisory and oversight committee" means a balanced committee~~
2 ~~of agency, dairy farm, and interest group representatives convened to~~
3 ~~provide oversight and direction to the dairy nutrient management~~
4 ~~program.~~

5 (2) ~~"Bypass" means the intentional diversion of waste streams from~~
6 ~~any portion of a treatment facility.~~

7 (3) ~~"Catastrophic" means a tornado, hurricane, earthquake, flood,~~
8 ~~or other extreme condition that causes an overflow from a required~~
9 ~~waste retention structure.~~

10 (4)) "Department" means the department of agriculture of the state
11 of Washington.

12 (2) "Director" means the director of the department or the
13 director's designee.

14 (3) "Animal feeding operation" or "AFO" means a lot or facility,
15 other than an aquatic animal production facility, where the following
16 conditions are met:

17 (a) Animals, other than aquatic animals, have been, are, or will be
18 stabled or confined and fed or maintained for a total of forty-five
19 days or more in any twelve-month period; and

20 (b) Crops, vegetation, forage growth, or postharvest residues are
21 not sustained in the normal growing season over any portion of the lot
22 or facility.

23 (4) "Certification" means:

24 (a) The acknowledgment by (~~a local conservation district~~) the
25 department that a (~~dairy~~) livestock producer has constructed or
26 otherwise put in place the elements and management necessary to
27 implement his or her (~~dairy~~) livestock nutrient management plan; and

28 (b) The acknowledgment by a (~~dairy~~) livestock producer that he or
29 she is managing (~~dairy~~) livestock nutrients and maintaining records
30 as specified in his or her approved (~~dairy~~) livestock nutrient
31 management plan.

32 (5) (~~"Chronic" means a series of wet weather events that precludes~~
33 ~~the proper operation of a dairy nutrient management system that is~~
34 ~~designed for the current herd size.~~

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

37 ((+7)) (6) "Conservation districts" or "district" means a
38 subdivision of state government organized under chapter 89.08 RCW.

1 ~~((8))~~ (7) "Concentrated (~~(dairy)~~) animal feeding operation" or
2 "CAFO" means ~~((a dairy animal feeding operation subject to regulation~~
3 ~~under this chapter which the director designates))~~ an AFO that is
4 defined as a large CAFO or as a medium CAFO under this section, or that
5 is designated as a CAFO under RCW 90.64.020 ~~((or meets the following~~
6 ~~criteria:~~

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

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

11 ~~(i) From which pollutants are discharged into navigable waters~~
12 ~~through a manmade ditch, flushing system, or other similar manmade~~
13 ~~device; or~~

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

18 ~~(9) "Dairy animal feeding operation" means a lot or facility where~~
19 ~~the following conditions are met:~~

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

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

29 ~~(10))~~ (as recodified by this act). Two or more AFOs under common
30 ownership are considered to be a single AFO for the purposes of
31 determining the number of animals at an operation, if they adjoin each
32 other or if they use a common area or system for the disposal of
33 livestock nutrients.

34 (8) "Dairy ((farm))" means any farm that is licensed to produce
35 milk under chapter 15.36 RCW.

36 ~~((11) "Dairy nutrient" means any organic waste produced by dairy~~
37 ~~cows or a dairy farm operation.~~

1 ~~(12) "Dairy nutrient management plan" means a plan meeting the~~
2 ~~requirements established under RCW 90.64.026.~~

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

7 ~~(14) "Dairy producer" means a person who owns or operates a dairy~~
8 ~~farm.~~

9 ~~(15) "Department" means the department of ecology under chapter~~
10 ~~43.21A RCW.~~

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

13 ~~(17) "Upset" means an exceptional incident in which there is an~~
14 ~~unintentional and temporary noncompliance with technology based permit~~
15 ~~effluent limitations because of factors beyond the reasonable control~~
16 ~~of the dairy. An upset does not include noncompliance to the extent~~
17 ~~caused by operational error, improperly designed treatment facilities,~~
18 ~~inadequate treatment facilities, lack of preventive maintenance, or~~
19 ~~careless or improper operation.~~

20 ~~(18) "Violation" means the following acts or omissions: (a) A~~
21 ~~discharge of pollutants into the waters of the state, except those~~
22 ~~discharges that are due to a chronic or catastrophic event, or to an~~
23 ~~upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided~~
24 ~~in 40 C.F.R. Sec. 122.41, and that occur when:~~

25 ~~(i) A dairy producer has a current national pollutant discharge~~
26 ~~elimination system permit with a wastewater system designed, operated,~~
27 ~~and maintained for the current herd size and that contains all process-~~
28 ~~generated wastewater plus average annual precipitation minus~~
29 ~~evaporation plus contaminated storm water runoff from a twenty five~~
30 ~~year, twenty four hour rainfall event for that specific location, and~~
31 ~~the dairy producer has complied with all permit conditions, including~~
32 ~~dairy nutrient management plan conditions for appropriate land~~
33 ~~application practices; or~~

34 ~~(ii) A dairy producer does not have a national pollutant discharge~~
35 ~~elimination system permit, but has complied with all of the elements of~~
36 ~~a dairy nutrient management plan that: Prevents the discharge of~~
37 ~~pollutants to waters of the state, is commensurate with the dairy~~

1 ~~producer's current herd size, and is approved and certified under RCW~~
2 ~~90.64.026;~~
3 ~~(b) Failure to register as required under RCW 90.64.017; or~~
4 ~~(c) The lack of an approved dairy nutrient management plan by July~~
5 ~~1, 2002; or~~
6 ~~(d) The lack of a certified dairy nutrient management plan for a~~
7 ~~dairy farm after December 31, 2003.)~~
8 (9) "Large concentrated animal feeding operation" or "large CAFO"
9 means an AFO that stables or confines as many as or more than the
10 numbers of animals specified in any of the following categories:
11 (a) 700 mature dairy cows, whether milked or dry;
12 (b) 1,000 veal calves;
13 (c) 1,000 cattle other than mature dairy cows or veal calves.
14 Cattle includes but is not limited to heifers, steers, bulls, and
15 cow/calf pairs;
16 (d) 2,500 swine each weighing 55 pounds or more;
17 (e) 10,000 swine each weighing less than 55 pounds;
18 (f) 500 horses;
19 (g) 10,000 sheep or lambs;
20 (h) 55,000 turkeys;
21 (i) 30,000 laying hens or broilers, if the AFO uses a liquid manure
22 handling system;
23 (j) 125,000 chickens, other than laying hens, if the AFO uses other
24 than a liquid manure handling system;
25 (k) 82,000 laying hens, if the AFO uses other than a liquid manure
26 handling system;
27 (l) 30,000 ducks, if the AFO uses other than a liquid manure
28 handling system; or
29 (m) 5,000 ducks, if the AFO uses a liquid manure handling system.
30 (10) "Livestock nutrient" means manure, bedding, compost, and raw
31 materials or other materials commingled with manure or set aside for
32 disposal or process wastewater, which means water directly or
33 indirectly used in the operation of the AFO for any or all of the
34 following: Spillage or overflow from animal or poultry watering
35 systems; washing, cleaning, or flushing pens, barns, manure pits, or
36 other AFO facilities; direct contact swimming, washing, or spray
37 cooling of animals; or dust control. Process wastewater also includes

1 any water which comes into contact with any raw materials, products, or
2 byproducts including manure, litter, feed, milk, eggs, or bedding.

3 (11) "Livestock producer" means an owner or operator of an AFO,
4 CAFO, or dairy.

5 (12) "Medium concentrated animal feeding operation" or "medium
6 CAFO" means any AFO with the type and number of animals that fall
7 within any of the ranges listed below and which has been defined or
8 designated as a CAFO. An AFO is defined as a medium CAFO if:

9 (a) The type and number of animals that it stables or confines
10 falls within any of the following ranges:

11 (i) 200 to 699 mature dairy cows, whether milked or dry;

12 (ii) 300 to 999 veal calves;

13 (iii) 300 to 999 cattle other than mature dairy cows or veal
14 calves. Cattle includes but is not limited to heifers, steers, bulls,
15 and cow/calf pairs;

16 (iv) 750 to 2,499 swine each weighing 55 pounds or more;

17 (v) 3,000 to 9,999 swine each weighing less than 55 pounds;

18 (vi) 150 to 499 horses;

19 (vii) 3,000 to 9,999 sheep or lambs;

20 (viii) 16,500 to 54,999 turkeys;

21 (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a
22 liquid manure handling system;

23 (x) 37,500 to 124,999 chickens, other than laying hens, if the AFO
24 uses other than a liquid manure handling system;

25 (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a
26 liquid manure handling system;

27 (xii) 10,000 to 29,999 ducks, if the AFO uses other than a liquid
28 manure handling system; or

29 (xiii) 1,500 to 4,999 ducks, if the AFO uses a liquid manure
30 handling system; and

31 (b) Either one of the following conditions are met:

32 (i) Pollutants are discharged into waters of the state through a
33 man-made ditch, flushing system, or other similar man-made device; or

34 (ii) Pollutants are discharged directly into waters of the state
35 which originate outside of and pass over, across, or through the
36 facility or otherwise come into direct contact with the animals
37 confined in the operation.

1 (13) "Permit" means either a state waste discharge permit or a
2 national pollutant discharge elimination system (NPDES) permit, or
3 both.

4 (14) "Person" means any political subdivision, government agency,
5 municipality, industry, public or private corporation, partnership,
6 association, firm, individual, or any other entity whatsoever.

7 (15) "Plan" means a livestock nutrient management plan.

8 (16) "Pollution" means contamination, or other alteration of the
9 physical, chemical, or biological properties, of any waters of the
10 state, including change in temperature, taste, color, turbidity, or
11 odor of the waters, or such discharge of any liquid, gaseous, solid,
12 radioactive, or other substance into any waters of the state as will or
13 is likely to create a nuisance or render the waters harmful,
14 detrimental, or injurious to the public health, safety, or welfare, or
15 to domestic, commercial, industrial, agricultural, recreational, or
16 other legitimate beneficial uses, or to livestock, wild animals, birds,
17 fish, or other aquatic life.

18 (17) "Small concentrated animal feeding operation" or "small CAFO"
19 means an AFO that is designated as a CAFO and is not a medium CAFO.

20 (18) "Waters" or "waters of the state" means lakes, rivers, ponds,
21 streams, inland waters, underground waters, saltwaters, and all other
22 surface waters and watercourses within the jurisdiction of the state of
23 Washington.

24 **Sec. 4.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read
25 as follows:

26 (1) The director (~~(of the department of ecology may)~~) shall
27 designate any (~~(dairy animal feeding operation as a concentrated dairy~~
28 ~~animal feeding operation)~~) AFO as a CAFO upon determining that it is a
29 significant contributor of pollution to the (~~(surface or ground)~~)
30 waters of the state.

31 (2) The director may designate any AFO as a CAFO upon determining
32 that it is discharging to the waters of the state.

33 (3) In making (~~(this)~~) a designation, the director shall consider
34 the following factors:

35 (a) The size of the (~~(animal feeding operation)~~) AFO and the amount
36 of (~~(wastes)~~) livestock nutrients reaching waters of the state;

1 (b) The location of the (~~animal feeding operation~~) AFO relative
2 to waters of the state;

3 (c) The means of conveyance of (~~animal wastes and process waters~~)
4 livestock nutrients into the waters of the state;

5 (d) The slope, vegetation, rainfall, and other factors affecting
6 the likelihood or frequency of discharge of (~~animal wastes and process~~
7 ~~wastewaters~~) livestock nutrients into the waters of the state; (~~and~~)

8 (e) The effort by the AFO to stop the discharge; and

9 (f) Other relevant factors as established by the department by
10 rule.

11 (~~(2) A notice of intent to apply for a permit shall not be~~
12 ~~required from a concentrated dairy animal feeding operation designated~~
13 ~~under this section until the director has conducted an on-site~~
14 ~~inspection of the operation and determined that the operation should~~
15 ~~and could be regulated under the permit program.))~~

16 (4) An AFO shall not be designated as a CAFO under this section
17 unless the director has conducted an on-site inspection of the
18 operation and determined that the operation should be regulated under
19 the permit program. In addition, no AFO with numbers of animals below
20 those for a medium CAFO may be designated as a CAFO unless:

21 (a) Pollutants are discharged into waters of the state through a
22 man-made ditch, flushing system, or other similar man-made device; or

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

27 (5) Any AFO designated as a CAFO shall apply for a permit as
28 described in section 22 of this act.

29 **Sec. 5.** RCW 90.64.023 and 1998 c 262 s 5 are each amended to read
30 as follows:

31 (1) (~~By October 1, 1998, the department shall initiate an~~
32 ~~inspection program of all dairy farms in the state. The purpose of the~~
33 ~~inspections is to:~~

34 (a)) The department has the authority to conduct inspections under
35 this chapter to:

36 (a) Determine if an animal feeding operation meets the definition
37 of a CAFO under this chapter;

1 (b) Ensure compliance by AFOs, CAFOs, and dairies with state and
2 federal water quality laws and rules, including those adopted under
3 chapter 90.48 RCW;

4 (c) Determine whether a permitted CAFO is complying with the terms
5 and conditions of its permit;

6 (d) Survey for evidence of violations;

7 ~~((b))~~ (e) Identify corrective actions for actual or imminent
8 discharges that violate or could violate the state's water quality
9 standards or this chapter;

10 ~~((e))~~ (f) Monitor the development and implementation of ((dairy))
11 livestock nutrient management plans; and

12 ~~((d))~~ (g) Identify ((dairy producers who would benefit from))
13 AFOs, CAFOs, and dairies that are eligible for technical assistance or
14 education programs.

15 ~~(2) ((Local conservation district employees may, at their~~
16 ~~discretion, accompany department inspectors on any scheduled inspection~~
17 ~~of dairy farms except random, unannounced inspections.~~

18 ~~(3) Follow up inspections shall be conducted by the department to~~
19 ~~ensure that corrective and other actions as identified in the course of~~
20 ~~initial inspections are being carried out. The department shall also~~
21 ~~conduct such additional inspections as are necessary to ensure~~
22 ~~compliance with state and federal water quality requirements, provided~~
23 ~~that all licensed dairy farms shall be inspected once within two years~~
24 ~~of the start of this program. The department, in consultation with the~~
25 ~~advisory and oversight committee established in section 8 of this act,~~
26 ~~shall develop performance based criteria to determine the frequency of~~
27 ~~inspections.~~

28 ~~(4) Dairy farms))~~ The department shall inspect all dairies and
29 permitted CAFOs at least once every two years.

30 (3) Dairies and permitted CAFOs shall be prioritized for inspection
31 based on ((the development of)) criteria that include, but are not
32 limited to, the following factors:

33 (a) Existence or implementation of a ((dairy)) livestock nutrient
34 management plan;

35 (b) Proximity to impaired waters of the state; ((and))

36 (c) Proximity to all other waters of the state((. The criteria
37 developed to implement this subsection (4) shall be reviewed by the
38 advisory and oversight committee.));

1 (d) Proximity to shellfish beds;

2 (e) Permit status;

3 (f) Compliance history; and

4 (g) Other relevant factors as may be determined by the department.

5 (4)(a) All permitted CAFOs must make available during inspection
6 those records required to be kept by the permit.

7 (b) Dairies not covered by a permit and AFOs shall make available
8 during inspection records including, but not limited to, animal
9 inventories for purposes of determining if the dairy or AFO is subject
10 to regulation as a CAFO, to assess compliance with state and federal
11 water quality laws, and to verify qualification for technical
12 assistance programs, education programs, or any tax exemptions
13 available under state law.

14 (5) The department may conduct follow-up inspections to ensure that
15 corrective actions identified in the course of an inspection are being
16 carried out. The department may conduct such additional inspections as
17 are necessary to ensure compliance with administrative orders issued by
18 the department and compliance with permit conditions and state and
19 federal water quality laws and rules.

20 NEW SECTION. Sec. 6. (1) All CAFOs required to apply for a permit
21 and all dairies are required to develop a livestock nutrient management
22 plan. These plans must be approved by the department and certified as
23 fully implemented by the department and the livestock producer. If at
24 any time compliance with a livestock nutrient management plan fails to
25 prevent the discharge of pollutants or if complying with the plan would
26 still pose a significant potential to discharge pollutants to waters of
27 the state, the livestock producer must revise the plan as directed by
28 the department.

29 (2) Plans must be developed using natural resource conservation
30 service (NRCS) practice standards. Equivalent practices and standards
31 may be used if the department determines they meet or exceed NRCS
32 standards and there is a substantial likelihood that, once implemented,
33 the alternative practices and standards would meet state and federal
34 water quality standards. The department shall establish by rule a
35 technical review process to make determinations on proposed equivalent
36 practices and standards.

1 (3) Prior to approval and certification, a nutrient management plan
2 must be verified by a conservation district as meeting the NRCS
3 standards except that, at the request of the producer, verification may
4 be by a technical review team convened by the director. The team must
5 include a representative of a conservation district.

6 NEW SECTION. **Sec. 7.** The following requirements apply to all
7 CAFOs required to apply for a permit.

8 (1) All CAFOs required to apply for a permit must meet livestock
9 nutrient management plan deadlines for development and implementation
10 required by this chapter, permit, or rule.

11 (2) At a minimum, a livestock nutrient management plan for a CAFO
12 required to apply for a permit must include site-appropriate best
13 management practices including those set out in 40 C.F.R. Sec. 412.4
14 (April 14, 2003), and procedures necessary to implement applicable
15 effluent limitations including those set out in 40 C.F.R. Part 412
16 (April 14, 2003), and standards. The plan must, to the extent
17 applicable:

18 (a) Ensure adequate storage of livestock nutrients, including
19 procedures to ensure proper operation and maintenance of the storage
20 facilities;

21 (b) Ensure proper management of dead animals to ensure that they
22 are not disposed of in a liquid manure, storm water, or process
23 wastewater storage or treatment system that is not specifically
24 designed to treat animal mortalities;

25 (c) Ensure that clean water is diverted, as appropriate, from the
26 production area;

27 (d) Prevent direct contact of confined animals with waters of the
28 state;

29 (e) Ensure that chemicals and other contaminants handled on-site
30 are not disposed of in any livestock nutrients or storm water storage
31 or treatment system unless specifically designed to treat such
32 chemicals and other contaminants;

33 (f) Identify appropriate site-specific conservation practices to be
34 implemented, including as appropriate buffers or equivalent practices,
35 to control runoff of pollutants to waters of the state;

36 (g) Identify protocols for appropriate testing of livestock
37 nutrients and soil;

1 (h) Establish protocols to apply livestock nutrients in accordance
2 with site-specific nutrient management practices that ensure
3 appropriate agricultural utilization of the nutrients in the livestock
4 nutrients; and

5 (i) Identify specific records that will be maintained to document
6 the implementation and management of the minimum elements described in
7 (a) through (h) of this subsection.

8 (3) Review and approval of a plan by the department is part of the
9 permit application and issuance process. The department shall
10 determine whether a plan contains the elements identified in subsection
11 (2) of this section, meets the permit requirements, and is adequate to
12 meet applicable state and federal water quality laws, including chapter
13 90.48 RCW.

14 (4)(a) An approved plan shall be certified by the department and
15 the livestock producer when the plan is fully implemented and is being
16 used as designed and intended.

17 (b) A certification form shall be developed by the department and
18 shall provide for a signature by both the director and the livestock
19 producer. The livestock producer must submit to the department a
20 signed certification form.

21 (c) Upon receipt of the completed certification form, the
22 department shall determine within one hundred twenty days whether the
23 approved plan has been fully implemented. If the department finds the
24 plan is not fully implemented, the department shall deny certification.
25 The department shall notify the livestock producer in writing of the
26 reasons for the denial of certification.

27 NEW SECTION. **Sec. 8.** The following requirements apply to all
28 dairies not required to apply for a permit.

29 (1) A dairy that is not a CAFO required to apply for a permit has
30 six months from the date of obtaining a license under chapter 15.36 RCW
31 to submit its livestock nutrient management plan to the department and
32 eighteen months from the date of plan approval to submit the plan to
33 the department for certification.

34 (2) The plan for a dairy that is not a CAFO required to apply for
35 a permit shall include the minimum elements as defined by the
36 department by rule.

1 (3) The department shall review and determine whether a plan
2 contains the minimum elements. The department shall approve or deny
3 approval of the plan no later than ninety days after receiving the
4 plan. If the department denies approval, the department shall notify
5 the livestock producer in writing of the denial and of modifications
6 needed for plan compliance no later than ninety days after receiving
7 the plan. The livestock producer must provide a revised plan that
8 includes the needed modifications within ninety days of the date of the
9 department's notification.

10 (4)(a) An approved plan shall be certified by the department and
11 the livestock producer when the plan is fully implemented and is being
12 used as designed and intended.

13 (b) A certification form shall be developed by the department and
14 shall provide for a signature by both the director and the livestock
15 producer. The livestock producer must submit to the department a
16 signed certification form within eighteen months of plan approval.

17 (c) Upon receipt of the completed certification form, the
18 department shall determine within one hundred twenty days whether the
19 approved plan has been fully implemented. If the department finds the
20 plan is not fully implemented, the department shall deny certification.
21 The department shall notify the livestock producer in writing of the
22 reasons for the denial of certification and set a date by which full
23 implementation must occur.

24 (5) A dairy that is not a CAFO required to apply for a permit that
25 fails to have an approved or a certified livestock nutrient management
26 plan in place by the timelines specified in this section is in
27 violation of this chapter. Each month beyond these deadlines that the
28 dairy is out of compliance with the requirement for either plan
29 approval or plan certification is considered a separate violation that
30 may subject the dairy to penalties. The penalties are one hundred
31 dollars per month for each violation up to a combined total of one
32 thousand two hundred dollars and then the penalty is two hundred
33 dollars per month for each violation up to a combined maximum of five
34 thousand dollars.

35 NEW SECTION. **Sec. 9.** AFOs that are not dairies may voluntarily
36 develop and implement livestock nutrient management plans. If an AFO
37 requests that the department approve and certify the plan, then the

1 plan must meet the minimum elements required in section 8 of this act.
2 Plan approval and certification shall follow the same process as
3 identified in section 8 of this act.

4 **Sec. 10.** RCW 90.64.028 and 1998 c 262 s 7 are each amended to read
5 as follows:

6 (1) ~~((Conservation district))~~ (a) Department decisions pertaining
7 to denial of approval or denial of certification of a ~~((dairy))~~
8 livestock nutrient management plan for a facility not required to have
9 a permit, including a denial of the use of alternative standards and
10 practices; modification or amendment of a plan; conditions contained in
11 a plan; application of any ~~((dairy))~~ livestock nutrient management
12 practices, standards, methods, and technologies to a particular AFO,
13 CAFO, or dairy ~~((farm))~~; and the failure to adhere to plan review and
14 approval timelines identified in ~~((RCW 90.64.026))~~ section 8 of this
15 act are appealable under this chapter. ~~((Department actions pertaining~~
16 ~~to water quality violations are appealable under chapter 90.48 RCW.~~

17 ~~In addition, a dairy producer who is constrained from complying~~
18 ~~with the planning requirements of this chapter because of financial~~
19 ~~hardship or local permitting delays may request a hearing before the~~
20 ~~conservation commission and may request an extension of up to one year~~
21 ~~beyond the approval and certification dates prescribed in this chapter~~
22 ~~for plan approval and certification.~~

23 ~~(2))~~ (b) Within thirty days of receiving ~~((a local conservation~~
24 ~~district))~~ notification regarding any of the decisions identified in
25 (a) of this subsection ~~((1) of this section)),~~ a ~~((dairy))~~ livestock
26 producer who disagrees with any of these decisions ~~((may request an~~
27 ~~informal hearing before the conservation commission or))~~ may appeal
28 ~~((directly))~~ to the pollution control hearings board. ~~((The commission~~
29 ~~shall issue a written decision no later than thirty days after the~~
30 ~~informal hearing.~~

31 ~~(3) If the conservation commission reverses the decision of the~~
32 ~~conservation district, the conservation district may appeal this~~
33 ~~reversal to the pollution control hearings board according to the~~
34 ~~procedure in chapter 43.21B RCW within thirty days of receipt of the~~
35 ~~commission's decision.~~

36 ~~(4))~~ (c) When an appeals process is initiated under this section,
37 the length of time extending from the start of the appeals process to

1 its conclusion shall be added onto the timelines provided in this
2 chapter for plan development, approval, and certification (~~(only if an~~
3 ~~appeal is heard by the pollution control hearings board)~~).

4 (2) For facilities applying for a permit, department decisions
5 pertaining to those elements of a livestock nutrient management plan
6 that are conditions of a permit are made as part of the permit
7 application and issuance process and are appealable by any person to
8 the pollution control hearings board under RCW 43.21B.110.

9 **Sec. 11.** RCW 90.64.030 and 2003 c 325 s 3 are each amended to read
10 as follows:

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

19 ~~(2))~~ (a) The department shall investigate a ~~((written))~~ complaint
20 filed with the department within three working days and shall make a
21 written report of its findings including the results of any water
22 quality measurements, photographs, or other pertinent information.
23 Within twenty days of receiving a ~~((written))~~ complaint, a copy of the
24 findings shall be provided to the ~~((dairy))~~ livestock producer subject
25 to the complaint, and, if requested, to the complainant if the person
26 gave his or her name and address to the department at the time the
27 complaint was filed.

28 ~~((3))~~ (b) The department may consider past complaints against the
29 same AFO, CAFO, or dairy ~~((farm))~~ from the same person and the results
30 of its previous inspections, and has the discretion to decide whether
31 to conduct an inspection if:

32 ~~((a))~~ (i) The same or a similar complaint or complaints have been
33 filed against the same AFO, CAFO, or dairy ~~((farm))~~ within the
34 immediately preceding six-month period; and

35 ~~((b))~~ (ii) The department made a determination that the activity
36 that was the subject of the prior complaint was not a violation.

1 ~~((4))~~ (c) If the decision of the department is not to conduct an
2 inspection, it shall document the decision and the reasons for the
3 decision within twenty days. The department shall provide the decision
4 to the complainant if the name and address were provided to the
5 department, and to the ~~((dairy))~~ livestock producer subject to the
6 complaint, and the department shall place the decision in the
7 department's administrative records.

8 ~~((5))~~ (2) The report of findings of any inspection conducted as
9 the result of ~~((either an oral or a written))~~ a complaint shall be
10 placed in the department's administrative records. ~~((Only findings of
11 violations shall be entered into the data base identified in RCW
12 90.64.130.~~

13 ~~(6) A)~~ (3) An AFO, CAFO, or dairy ~~((farm))~~ that is determined to
14 be a significant contributor of pollution based on actual water quality
15 tests, photographs, or other pertinent information, or that violates
16 the terms and conditions of a permit is subject to the provisions of
17 this chapter and to the enforcement provisions of chapters 43.05 and
18 90.48 RCW, including civil penalties levied under RCW 90.48.144 or this
19 chapter.

20 ~~((7))~~ (4) If the department determines that an unresolved water
21 quality problem from ~~((a))~~ an AFO, CAFO, or dairy ~~((farm))~~ requires
22 immediate corrective action, the department shall notify the livestock
23 producer ~~((and the district in which the problem is located))~~. When
24 corrective actions are required to address such unresolved water
25 quality problems, the department shall provide copies of all final
26 ~~((dairy farm))~~ inspection reports and documentation of all formal
27 regulatory and enforcement actions taken by the department against that
28 particular ~~((dairy farm to the local conservation district and to the
29 appropriate dairy farm))~~ facility to the livestock producer within
30 twenty days.

31 ~~((8) 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))~~ (5) The penalty may
34 be waived for the first violation of water quality laws on an AFO,
35 CAFO, or dairy to allow the livestock producer to promptly come into
36 compliance. The department shall record all ~~((legitimate))~~ violations
37 and subsequent enforcement actions.

1 ~~((9))~~ (6) A discharge of pollutants, including ((a)) an
2 agricultural storm water discharge, ~~((to surface))~~ into waters of the
3 state by an AFO, CAFO, or dairy shall not be considered a violation of
4 this chapter~~((, chapter 90.48 RCW, or chapter 173-201A WAC,))~~ and shall
5 therefore not be enforceable by the department, the department of
6 ecology, or a third party, if at the time of the discharge, a violation
7 is not occurring under ~~((RCW 90.64.010(18))~~ section 34 of this act.
8 In addition, a ~~((dairy))~~ livestock producer shall not be held liable
9 for violations of this chapter~~((, chapter 90.48 RCW, chapter 173-201A~~
10 ~~WAC, or the federal clean water act))~~ due to the discharge of ~~((dairy))~~
11 livestock nutrients to waters of the state resulting from spreading
12 these materials on lands other than where the nutrients were generated,
13 when the nutrients are spread by persons other than the ~~((dairy))~~
14 livestock producer or the ~~((dairy))~~ producer's agent.

15 ~~((10))~~ (7) As provided under RCW 7.48.305, agricultural
16 activities associated with the management of ~~((dairy))~~ livestock
17 nutrients are presumed to be reasonable and shall not be found to
18 constitute a nuisance unless the activity has a substantial adverse
19 effect on public health and safety.

20 ~~((11))~~ (8) This section specifically acknowledges that if a
21 holder of a general or individual national pollutant discharge
22 elimination system permit complies with the permit and the ~~((dairy))~~
23 livestock nutrient management plan conditions for appropriate land
24 application practices, the permit provides compliance with the federal
25 clean water act and acts as a shield against citizen or agency
26 enforcement for any additions of pollutants to waters ~~((of the state~~
27 ~~or))~~ of the United States as authorized by the permit.

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

1 ~~approval or plan certification if the failure to comply is due to lack~~
2 ~~of state funding for implementation of the program. Failure to~~
3 ~~register as required in RCW 90.64.017 shall subject a dairy producer to~~
4 ~~a maximum penalty of one hundred dollars. Penalties shall be levied by~~
5 ~~the department.)~~)

6 **Sec. 12.** RCW 90.64.040 and 1993 c 221 s 5 are each amended to read
7 as follows:

8 Enforcement actions and administrative orders issued by the
9 department (~~of ecology~~) may be appealed to the pollution control
10 hearings board in accordance with the provisions of chapter 43.21B RCW.

11 **Sec. 13.** RCW 90.64.050 and 1998 c 262 s 12 are each amended to
12 read as follows:

13 (1) The department has the (~~following duties~~) duty to implement
14 and administer a livestock nutrient management program including the
15 duty to:

16 (a) Enforce this chapter including carrying out inspections and
17 enforcement actions, and assessing penalties;

18 (b) Identify existing or potential water quality problems resulting
19 from a dairy farm(~~s~~) or CAFO through implementation of the inspection
20 program in (~~RCW 90.64.023~~) this chapter;

21 (~~(b) Inspect a dairy farm upon the request of a dairy producer;~~)

22 (c) Receive, process, and verify complaints concerning discharge of
23 pollutants from (~~all dairy farms~~) any AFO, CAFO, or dairy;

24 (d) (~~Determine if a dairy related water quality problem requires~~
25 ~~immediate corrective action under the Washington state water pollution~~
26 ~~control laws, chapter 90.48 RCW, or the Washington state water quality~~
27 ~~standards adopted under chapter 90.48 RCW. The department shall~~
28 ~~maintain the lead enforcement responsibility;~~)

29 (e)) Upon delegation, administer and enforce (~~(national pollutant~~
30 ~~discharge elimination system)~~) permits for (~~(operators of)~~)
31 concentrated (~~(dairy)~~) animal feeding operations, where required by
32 federal regulations and state laws or upon request of a (~~(dairy)~~)
33 livestock producer;

34 (~~(f) Participate on the advisory and oversight committee;~~)

35 (g) ~~Encourage communication and cooperation between local~~

1 ~~department personnel and the appropriate conservation district~~
2 ~~personnel;~~

3 ~~(h))~~ (e) Require the ((use of dairy)) development of livestock
4 nutrient management plans as required under this chapter ((for entities
5 required to plan under this chapter)); and

6 ~~((i) Provide to the commission and the advisory and oversight~~
7 ~~committee an annual report of dairy farm inspection and enforcement~~
8 ~~activities))~~ (f) Approve and certify livestock nutrient management
9 plans that meet the minimum standards developed under this chapter.

10 (2) The department ~~((may not delegate its responsibilities in~~
11 ~~enforcement))~~ has the authority to:

12 (a) Inspect a facility upon the request of the livestock producer;

13 (b) Provide technical assistance to AFOs, CAFOs, and dairies in
14 gaining compliance with this chapter and in implementing livestock
15 nutrient management plans to protect water quality;

16 (c) Maintain and manage data necessary to administer the program
17 effectively and to track compliance activity;

18 (d) Provide communication and outreach to representatives of
19 agricultural and environmental organizations; and

20 (e) Coordinate with conservation districts or other agencies and
21 organizations that provide education and technical or financial
22 assistance programs for AFOs, CAFOs, and dairies.

23 **Sec. 14.** RCW 90.64.110 and 1993 c 221 s 12 are each amended to
24 read as follows:

25 (1) In addition to the specific grants of rule-making authority in
26 this chapter, the department may adopt rules as necessary to implement
27 this chapter, including rules concerning the administration of permit
28 programs.

29 (2) The department has the authority to adopt in rule any
30 provisions in the following federal regulations: 40 C.F.R. parts 9,
31 122, 123, 124, and 412 (April 14, 2003). The department is authorized
32 to adopt rules to accommodate changes to federal regulations that are
33 subsequently adopted by the United States environmental protection
34 agency.

35 **Sec. 15.** RCW 90.64.150 and 2003 c 325 s 5 are each amended to read
36 as follows:

1 (~~The livestock nutrient management account is created in the~~
2 ~~custody of the state treasurer.~~) All receipts from monetary penalties
3 levied pursuant to violations of this chapter must be deposited into
4 the livestock nutrient management grant account hereby created within
5 the agricultural local fund. Expenditures from the account may be used
6 only to provide grants for research or education proposals that assist
7 livestock operations to achieve compliance with state and federal water
8 quality laws. The director (~~of agriculture~~) shall accept and
9 prioritize research proposals and education proposals. Only the
10 director or the director's designee may authorize expenditures from the
11 account. The account is subject to allotment procedures under chapter
12 43.88 RCW, but an appropriation is not required for expenditures.

13 NEW SECTION. Sec. 16. Any residual balance of funds remaining in
14 the livestock nutrient management account on the effective date of this
15 section shall be transferred to the livestock nutrient management grant
16 account within the agricultural local fund.

17 NEW SECTION. Sec. 17. (1) Permitted CAFOs shall maintain and make
18 available to the department the records and annual reports as described
19 in 40 C.F.R. Sec. 122.42(e) (2), (3), and (4) (April 14, 2003). The
20 department shall develop a standard annual reporting form and a
21 submittal date by rule for the annual report from CAFOs.

22 (2) Dairies that are not a CAFO required to apply for a permit
23 shall maintain and make available to the department all records
24 required by their livestock nutrient management plans. These dairies
25 must also submit a completed summary report to the department every two
26 years beginning in 2006. The department shall develop and send out a
27 standard reporting form and designate a submittal date by rule for the
28 report. If the producer fails to submit a completed summary report by
29 the submittal date, the department shall levy a penalty of one hundred
30 dollars.

31 NEW SECTION. Sec. 18. The department may coordinate with
32 Washington State University, the conservation commission, conservation
33 districts, the department of ecology, other federal, state, and local
34 agencies, and private organizations and individuals in implementing an
35 education program for improvement of nutrient management by dairies,

1 AFOs, and CAFOs and to prevent livestock nutrients from degrading the
2 quality of waters of the state. The department may refer livestock
3 producers to conservation districts, Washington State University, and
4 other entities for educational programs, technical assistance, or
5 financial assistance.

6 NEW SECTION. **Sec. 19.** (1) Conservation districts may, at the
7 request of a livestock producer, provide technical or financial
8 assistance in developing or revising and implementing the producer's
9 livestock nutrient management plan.

10 (2) The conservation commission and conservation districts shall,
11 to the extent practical and to the extent that funding allows, provide
12 technical and financial assistance to livestock producers to assist
13 them in complying with this chapter.

14 NEW SECTION. **Sec. 20.** When the environmental protection agency
15 delegates authority under the federal clean water act to the department
16 and the department of ecology relinquishes its authority under RCW
17 90.48.260 to administer its national pollutant discharge elimination
18 permit system authority and other duties regarding animal feeding
19 operations and concentrated animal feeding operations, the department
20 is hereby authorized to participate fully in the programs of the
21 federal clean water act as well as to take all action necessary to
22 secure to the state the benefits and to meet the requirements of that
23 act for AFOs and CAFOs. Implementation shall be accomplished so that
24 compliance with AFO and CAFO rules, permits, programs, and directives
25 will achieve compliance with all federal and state water pollution
26 control laws. The powers granted in this section include, among
27 others, and notwithstanding any provisions of chapter 90.48 RCW or
28 otherwise, the following:

29 (1) Complete authority to establish and administer a livestock
30 nutrient management program, including a pollution discharge
31 elimination permit program which will allow the department to be the
32 sole agency issuing permits required by such national system operating
33 in the state of Washington. Program elements authorized may include,
34 but are not limited to: (a) Issuance of permits; (b) termination and
35 modification of permits for cause; (c) requirements for public notices
36 and opportunities for public hearings; (d) requirements for inspection,

1 monitoring, entry, and reporting; (e) enforcement of the program
2 through penalties, emergency powers, and criminal sanctions; (f) a
3 continuing planning process; and (g) user charges.

4 (2) The power to establish and administer a state program in a
5 manner which will ensure the procurement of moneys, whether in the form
6 of grants, loans, or otherwise, to assist in the construction,
7 operation, and maintenance of various water pollution control
8 facilities and works.

9 (3) The power to develop and implement appropriate programs
10 pertaining to continuing planning processes.

11 NEW SECTION. **Sec. 21.** Until the department receives federal
12 delegation for the NPDES CAFO program, the department of ecology shall
13 remain responsible for NPDES permit administration as described under
14 a memorandum of understanding between the department and the department
15 of ecology. Sections 22 through 26 of this act are not effective until
16 federal delegation occurs.

17 NEW SECTION. **Sec. 22.** (1) Any person who owns or operates a dairy
18 or CAFO that is required to apply for a permit under RCW 90.64.020 (as
19 recodified by this act) or under the federal CAFO rule shall obtain a
20 permit from the department. Any AFO that is determined by the
21 department to be discharging into the waters of the state is required
22 to obtain a state waste discharge permit from the department.

23 (2) The permit issued by the department shall meet the requirements
24 of either the NPDES or the state waste discharge permit system, or
25 both.

26 (3) A livestock operation meeting the definition of large CAFO may
27 seek a determination from the department that the large CAFO has no
28 potential to discharge to the waters of the state. Within sixty days
29 of such a request, the director will make a determination using the
30 process and criteria of 40 C.F.R. Sec. 122.23(f) (April 14, 2003). A
31 livestock operation that receives a determination that it has no
32 potential to discharge is not required to apply for permit coverage.
33 Such a livestock operation is not relieved from liability under this
34 chapter for actual discharges.

1 NEW SECTION. **Sec. 23.** (1) Applications for permits or
2 modifications of a permit must be made on forms prescribed by the
3 department, which shall be consistent with the federal CAFO permit
4 application form. A copy of the nutrient management plan must be
5 submitted with the application. An application for a permit shall be
6 made:

7 (a) At least one hundred eighty days prior to commencement of
8 operation of any new source CAFO required to apply for a permit;

9 (b) At least one hundred eighty days prior to the permit expiration
10 date;

11 (c) Within ninety days of designation as a newly designated CAFO;
12 or

13 (d) Within ninety days of the change in circumstance that causes a
14 facility not covered by a permit to become defined as a CAFO required
15 to apply for a permit.

16 (2) The department shall establish by rule public notice and public
17 hearing requirements pertaining to department decisions on applications
18 and permits in conformance with the requirements of 40 C.F.R. Secs.
19 124.10, 124.11, and 124.12 (April 14, 2003) and any other applicable
20 federal regulation. At a minimum, the department's rules shall include
21 providing notice of permit application. These rules shall also define
22 the methods of public notice including, but not limited to, electronic
23 means.

24 (3) When an application has been filed with the department that
25 complies with this chapter and its rules, the department shall
26 determine whether the management of livestock nutrients as proposed
27 will pollute waters of the state in violation of the public policy of
28 the state.

29 NEW SECTION. **Sec. 24.** The department shall issue a permit under
30 section 22 of this act unless it finds that the disposal of livestock
31 nutrients as proposed in the application will pollute or present a
32 substantial potential to pollute the waters of the state in violation
33 of state or federal law. The department shall have authority to
34 specify conditions necessary to avoid such pollution in each permit
35 under which livestock nutrients may be disposed of by the permittee.
36 Permits, whether individual or general, shall not be valid for more
37 than five years from the date of issuance.

1 NEW SECTION. **Sec. 25.** A permit under section 22 of this act shall
2 be subject to termination upon thirty days' notice in writing if the
3 department finds:

4 (1) That it was procured by misrepresentation of any material fact
5 or by lack of full disclosure in the application;

6 (2) That there has been a violation of the conditions thereof;

7 (3) That a material change in quantity or type of livestock
8 nutrient disposal exists.

9 NEW SECTION. **Sec. 26.** In the event that a material change in the
10 condition of the waters occurs, the department may, by appropriate
11 order, modify permit conditions or specify additional conditions in
12 permits previously issued. The department may modify or revoke and
13 reissue permits in accordance with 40 C.F.R. Sec. 122.62 and 63 (April
14 14, 2003). Reissued permits or permits with major modifications shall
15 be issued in accordance with section 23 of this act and subject to
16 appeal in accordance with RCW 43.21B.110. Modification of the terms
17 and conditions of the nutrient management plan included in a permit
18 constitutes a modification of the permit.

19 NEW SECTION. **Sec. 27.** It is unlawful for any person regulated by
20 this chapter to throw, drain, run, or otherwise discharge into any of
21 the waters of this state, or to cause, permit, or suffer to be thrown,
22 run, drained, allowed to seep, or otherwise discharged into such waters
23 any organic or inorganic matter, including livestock nutrients, that
24 shall cause or tend to cause pollution of such waters according to the
25 determination of the department, as provided for in this chapter.

26 NEW SECTION. **Sec. 28.** If any discharge to waters of the state
27 occurs, a permitted CAFO shall notify the department as specified in
28 the permit. A dairy or CAFO that is not a permitted CAFO shall notify
29 the department within twenty-four hours and submit a written report
30 within five days describing at a minimum: The discharge, receiving
31 water, cause, dates, estimated quantities, corrective steps taken to
32 repair impacts, and how it will prevent any future discharge.

33 NEW SECTION. **Sec. 29.** (1) The director has the authority to enter
34 any AFO, CAFO, or dairy at any reasonable time and inspect property or

1 facilities and records required under this chapter. Upon arrival at an
2 AFO, CAFO, or dairy, the department shall present identification and
3 give verbal notification of the purpose of the inspection, which may
4 include sampling and testing, to the livestock producer or his or her
5 agent.

6 (2) If the director is denied access to property, facility, or
7 records, the director may apply to a court of competent jurisdiction
8 for a search warrant authorizing access to property, facilities, or
9 records for purposes of inspections, sampling, or testing as authorized
10 in this chapter. The court may upon the application issue a search
11 warrant for the purposes requested.

12 NEW SECTION. **Sec. 30.** The department, with the assistance of the
13 attorney general, is authorized to bring any appropriate action at law
14 or in equity, including action for injunctive relief, in the name of
15 the people of the state of Washington as may be necessary to carry out
16 this chapter.

17 NEW SECTION. **Sec. 31.** (1) Whenever, in the opinion of the
18 department, any person violates or creates a substantial potential to
19 violate this chapter, or fails to control the polluting content of
20 waste discharged or to be discharged into any waters of the state, the
21 department shall notify the person of its determination by registered
22 or certified mail. Such determination shall not constitute an order or
23 directive under chapter 43.21B or 34.05 RCW. Within thirty days from
24 the receipt of notice of the determination, the person must file with
25 the department a full report stating what steps have been and are being
26 taken to control the waste or pollution or to otherwise comply with the
27 determination of the department. The department then shall issue such
28 order or directive as it deems appropriate under the circumstances, and
29 shall notify the person by registered or certified mail.

30 (2) Whenever the department deems immediate action is necessary to
31 accomplish the purposes of this chapter, it may issue such order or
32 directive, as appropriate under the circumstances, without first
33 issuing a notice or determination pursuant to subsection (1) of this
34 section. An order or directive issued pursuant to this subsection
35 shall be served by registered or certified mail or personally upon any
36 person to whom it is directed.

1 NEW SECTION. **Sec. 32.** Any person found guilty of willfully
2 violating this chapter, or any final written orders or directive of the
3 department or a court in pursuance thereof, is guilty of a gross
4 misdemeanor, and upon conviction thereof shall be punished by a fine of
5 up to ten thousand dollars and costs of prosecution, or by imprisonment
6 in the county jail for not more than one year, or by both such fine and
7 imprisonment in the discretion of the court. Each day upon which a
8 willful violation of this chapter occurs may be deemed a separate and
9 additional violation.

10 NEW SECTION. **Sec. 33.** (1) Any person who:

11 (a)(i) Violates this chapter;

12 (ii) Fails to perform any duty imposed by this chapter;

13 (iii) Violates an order or other determination of the department or
14 the director made under this chapter;

15 (iv) Violates the conditions of a permit issued under this chapter;
16 or

17 (v) Otherwise causes a reduction in the quality of the state's
18 waters below the standards set under chapter 90.48 RCW or, if no
19 standards have been set, causes significant degradation of water
20 quality, thereby damaging the state's waters; and

21 (b) Causes the death of, or injury to, fish, animals, vegetation,
22 or other resources of the state;

23 shall be liable to pay the state and affected counties and cities
24 damages in an amount determined under RCW 90.48.367.

25 (2) An action is not authorized under this section against any
26 person operating in compliance with the conditions of a permit issued
27 under this chapter.

28 NEW SECTION. **Sec. 34.** (1) Except as provided in chapter 43.05
29 RCW, every person who:

30 (a) Violates the terms or conditions of a permit issued under this
31 chapter or chapter 90.48 RCW for an AFO or a CAFO;

32 (b) Operates a CAFO without a permit as required by this chapter or
33 chapter 90.48 RCW; or

34 (c) Discharges livestock nutrients in violation of this chapter, or
35 rules or orders adopted or issued under this chapter or chapter 90.48
36 RCW,

1 shall incur, in addition to any other penalty as provided by law, a
2 penalty in an amount of up to ten thousand dollars a day for every such
3 violation. Each and every such violation shall be a separate and
4 distinct offense, and in case of a continuing violation, every day's
5 continuance shall be and be deemed to be a separate and distinct
6 violation. Every act of commission or omission which procures, aids,
7 or abets in the violation shall be considered a violation under this
8 section and subject to the penalty provided for in this section. The
9 penalty amount shall be set in consideration of the previous history of
10 the violator and the severity of the violation's impact on public
11 health or the environment in addition to other relevant factors. The
12 department is authorized to set forth the procedures and the criteria
13 for setting the penalty in rule.

14 (2) A discharge of pollutants into the waters of the state is a
15 violation of this chapter, except those discharges that occur when a
16 livestock producer has a current national pollutant discharge
17 elimination system permit with a wastewater system designed,
18 constructed, operated, and maintained for the current herd size and
19 that contains all process-generated wastewater plus average annual
20 precipitation minus evaporation plus contaminated storm water runoff
21 from a rainfall event as specified for the type of facility in 40
22 C.F.R. Part 412 (April 14, 2003) for that specific location, the
23 discharge is the result of a rainfall event as specified for the type
24 of facility in 40 C.F.R. Part 412 (April 14, 2003), and the livestock
25 producer has complied with all permit conditions, including livestock
26 nutrient management plan conditions for appropriate land application
27 practices.

28 (3) A livestock producer may assert upset as an affirmative defense
29 to allegations of discharge in violation of a permit. "Upset" means an
30 exceptional incident in which there is an unintentional and temporary
31 noncompliance with technology-based permit effluent limitations because
32 of factors beyond the reasonable control of the producer. An upset
33 does not include noncompliance to the extent caused by operational
34 error, improperly designed treatment facilities, inadequate treatment
35 facilities, lack of preventive maintenance, or careless or improper
36 operation. In any enforcement proceeding the permittee seeking to
37 establish the occurrence of an upset has the burden of proof.

1 NEW SECTION. **Sec. 35.** (1) Notwithstanding any other provisions of
2 this chapter, whenever it appears to the director that a person
3 regulated by this chapter is causing water quality conditions to exist
4 which require immediate action to protect the public health or welfare,
5 the director may issue a written temporary order to cease and desist to
6 the person responsible without prior notice or hearing, directing the
7 person to either: (a) Immediately discontinue or modify the discharge
8 into the waters of the state; or (b) appear before the department at
9 the time and place specified in the order to provide the department
10 information pertaining to the violations and conditions alleged in the
11 order. The temporary order to cease and desist is effective upon
12 service on the responsible person and will remain in effect until ten
13 days after the informational meeting. The responsible person shall be
14 given not less than twenty-four hours' notice of the informational
15 meeting.

16 (2) Following the informational meeting or if the responsible
17 person fails to attend the informational meeting, if the department
18 determines that water quality conditions exist which require immediate
19 action to protect the public health or welfare, the department may
20 issue a written permanent order to cease and desist requiring the
21 person to immediately discontinue or modify the discharge into waters.
22 The permanent order to cease and desist is effective upon service. If
23 this order is not immediately complied with, the attorney general, upon
24 request of the department, may seek enforcement of the order in the
25 superior court of the county in which the violation took place.
26 Permanent orders to cease and desist issued by the department are
27 appealable under chapter 43.21B RCW.

28 NEW SECTION. **Sec. 36.** (1) The department shall establish by rule
29 annual fees for administering permits issued under this chapter. Fees
30 shall be used for costs incurred by the department in processing permit
31 applications and modifications, monitoring and evaluating compliance
32 with permits, conducting inspections, securing laboratory analysis of
33 samples taken during inspections, reviewing plans and documents
34 directly related to operations of permittees, overseeing performance of
35 delegated pretreatment programs, and supporting the overhead expenses
36 that are directly related to these activities.

1 (2) The initial fee schedule adopted after delegation of national
2 pollutant discharge elimination system permit authority from the
3 environmental protection agency shall be the same as the fee schedule
4 established by the department of ecology except that fees may rise in
5 accordance with the fiscal growth factor as provided in chapter 43.135
6 RCW. Until the initial fee schedule is adopted, the fees established
7 by the department of ecology shall be in effect.

8 (3) All fees collected under this section shall be deposited in the
9 livestock nutrient management permit account within the agricultural
10 local fund and used only for purposes of administering permits under
11 this chapter.

12 NEW SECTION. **Sec. 37.** (1) Prior to issuing an order related to
13 discharges from agricultural activity on agricultural land, the
14 department shall consider whether an enforcement action would
15 contribute to the conversion of agricultural land to nonagricultural
16 uses. Any enforcement action shall attempt to minimize the possibility
17 of such conversion.

18 (2) As used in this section:

19 (a) "Agricultural activity" means the growing, raising, or
20 production of horticultural or viticultural crops, berries, poultry,
21 livestock, grain, mint, hay, and dairy products.

22 (b) "Agricultural land" means at least five acres of land devoted
23 primarily to the commercial production of livestock or agricultural
24 commodities.

25 NEW SECTION. **Sec. 38.** (1) The department of ecology shall develop
26 and maintain a standard protocol for water quality monitoring of the
27 waters of the state within the vicinity of dairies and CAFOs. The
28 protocol shall include sampling methods and procedures and identify the
29 water quality constituents to be monitored.

30 (2) The department of ecology shall submit the initial protocol
31 developed according to this section to the appropriate committees of
32 the legislature by December 1, 2005.

33 **Sec. 39.** RCW 43.21B.001 and 2004 c 204 s 1 are each amended to
34 read as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Business days" means Monday through Friday exclusive of any
4 state or federal holiday.

5 (2) "Date of receipt" means:

6 (a) Five business days after the date of mailing; or

7 (b) The date of actual receipt, when the actual receipt date can be
8 proven by a preponderance of the evidence. The recipient's sworn
9 affidavit or declaration indicating the date of receipt, which is
10 unchallenged by the agency, shall constitute sufficient evidence of
11 actual receipt. The date of actual receipt, however, may not exceed
12 forty-five days from the date of mailing.

13 (3) "Department" means the department of ecology, except for
14 references pertaining to chapter 16.-- RCW (created by section 48 of
15 this act), in which case "department" means the department of
16 agriculture.

17 (4) "Director" means the director of ecology, except for references
18 pertaining to chapter 16.-- RCW (created by section 48 of this act), in
19 which case "director" means the director of the department of
20 agriculture or a duly authorized representative.

21 **Sec. 40.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
22 read as follows:

23 (1) The hearings board shall only have jurisdiction to hear and
24 decide appeals from the following decisions of the department, the
25 department of agriculture, the director, local conservation districts,
26 and the air pollution control boards or authorities as established
27 pursuant to chapter 70.94 RCW, or local health departments:

28 (a) Civil penalties imposed pursuant to section 17 of this act,
29 section 34 of this act, RCW 18.104.155, 70.94.431, 70.105.080,
30 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, ~~((and))~~
31 90.56.330, and section 8 of this act.

32 (b) Orders issued pursuant to section 31 of this act, section 35 of
33 this act, RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332,
34 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.48.120, and 90.56.330.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,
36 modification, or termination of any permit, certificate, or license by
37 the department or any air authority in the exercise of its

1 jurisdiction, including the issuance or termination of a waste disposal
2 permit, the denial of an application for a waste disposal permit, the
3 modification of the conditions or the terms of a waste disposal permit,
4 or a decision to approve or deny an application for a solid waste
5 permit exemption under RCW 70.95.300.

6 (d) Decisions of local health departments regarding the grant or
7 denial of solid waste permits pursuant to chapter 70.95 RCW.

8 (e) Decisions of local health departments regarding the issuance
9 and enforcement of permits to use or dispose of biosolids under RCW
10 70.95J.080.

11 (f) Decisions of the department regarding waste-derived fertilizer
12 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
13 department regarding waste-derived soil amendments under RCW 70.95.205.

14 (g) Decisions of (~~local conservation districts~~) the department of
15 agriculture related to the denial of approval or denial of
16 certification of a (~~dairy~~) livestock nutrient management plan;
17 conditions contained in a plan; application of any (~~dairy~~) livestock
18 nutrient management practices, standards, methods, and technologies to
19 a particular (~~dairy farm~~) facility; and failure to adhere to the plan
20 review and approval timelines in (~~RCW 90.64.026~~) section 8 of this
21 act.

22 (h) Any other decision by the department or an air authority which
23 pursuant to law must be decided as an adjudicative proceeding under
24 chapter 34.05 RCW.

25 (2) The following hearings shall not be conducted by the hearings
26 board:

27 (a) Hearings required by law to be conducted by the shorelines
28 hearings board pursuant to chapter 90.58 RCW.

29 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
30 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

31 (c) Proceedings conducted by the department, or the department's
32 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

33 (d) Hearings conducted by the department to adopt, modify, or
34 repeal rules.

35 (e) Appeals of decisions by the department as provided in chapter
36 43.21L RCW.

37 (3) Review of rules and regulations adopted by the hearings board

1 shall be subject to review in accordance with the provisions of the
2 Administrative Procedure Act, chapter 34.05 RCW.

3 **Sec. 41.** RCW 43.21B.300 and 2004 c 204 s 4 are each amended to
4 read as follows:

5 (1) Any civil penalty provided in section 8 of this act, section 17
6 of this act, section 34 of this act, RCW 18.104.155, 70.94.431,
7 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
8 90.56.330 shall be imposed by a notice in writing, either by certified
9 mail with return receipt requested or by personal service, to the
10 person incurring the penalty from the department, the department of
11 agriculture, or the local air authority, describing the violation with
12 reasonable particularity. Within thirty days after the notice is
13 received, the person incurring the penalty may apply in writing to the
14 department, the department of agriculture, or the authority, as
15 appropriate, for the remission or mitigation of the penalty. Upon
16 receipt of the application, the department, the department of
17 agriculture, or authority may remit or mitigate the penalty upon
18 whatever terms the department, the department of agriculture, or the
19 authority in its discretion deems proper. The department, the
20 department of agriculture, or the authority may ascertain the facts
21 regarding all such applications in such reasonable manner and under
22 such rules as it may deem proper and shall remit or mitigate the
23 penalty only upon a demonstration of extraordinary circumstances such
24 as the presence of information or factors not considered in setting the
25 original penalty.

26 (2) Any penalty imposed under this section may be appealed to the
27 pollution control hearings board in accordance with this chapter if the
28 appeal is filed with the hearings board and served on the department,
29 the department of agriculture, or authority thirty days after the date
30 of receipt by the person penalized of the notice imposing the penalty
31 or thirty days after the date of receipt of the notice of disposition
32 of the application for relief from penalty.

33 (3) A penalty shall become due and payable on the later of:

- 34 (a) Thirty days after receipt of the notice imposing the penalty;
- 35 (b) Thirty days after receipt of the notice of disposition on
36 application for relief from penalty, if such an application is made; or

1 (c) Thirty days after receipt of the notice of decision of the
2 hearings board if the penalty is appealed.

3 (4) If the amount of any penalty is not paid to the department or
4 the department of agriculture, as appropriate, within thirty days after
5 it becomes due and payable, the attorney general, upon request of the
6 department or the department of agriculture, shall bring an action in
7 the name of the state of Washington in the superior court of Thurston
8 county, or of any county in which the violator does business, to
9 recover the penalty. If the amount of the penalty is not paid to the
10 authority within thirty days after it becomes due and payable, the
11 authority may bring an action to recover the penalty in the superior
12 court of the county of the authority's main office or of any county in
13 which the violator does business. In these actions, the procedures and
14 rules of evidence shall be the same as in an ordinary civil action.

15 (5) All penalties recovered shall be paid into the state treasury
16 and credited to the general fund except those penalties imposed
17 pursuant to RCW 18.104.155, which shall be credited to the reclamation
18 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
19 disposition of which shall be governed by that provision, RCW
20 70.105.080, which shall be credited to the hazardous waste control and
21 elimination account, created by RCW 70.105.180, (~~and~~) RCW 90.56.330,
22 which shall be credited to the coastal protection fund created by RCW
23 90.48.390 and chapter 16.-- RCW (created by section 48 of this act)
24 which shall be credited to the livestock nutrient management grant
25 account created by RCW 90.64.150 (as recodified by this act).

26 **Sec. 42.** RCW 43.21B.310 and 2004 c 204 s 5 are each amended to
27 read as follows:

28 (1) Except as provided in RCW 90.03.210(2), any order issued by the
29 department, the department of agriculture, or local air authority
30 pursuant to section 31 of this act, section 35 of this act, RCW
31 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or
32 90.48.120(2) or any provision enacted after July 26, 1987, or any
33 permit, certificate, or license issued by the department may be
34 appealed to the pollution control hearings board if the appeal is filed
35 with the board and served on the department, the department of
36 agriculture, or authority within thirty days after the date of receipt

1 of the order. Except as provided under chapter 70.105D RCW and RCW
2 90.03.210(2), this is the exclusive means of appeal of such an order.

3 (2) The department, the department of agriculture, or the authority
4 in its discretion may stay the effectiveness of an order during the
5 pendency of such an appeal.

6 (3) At any time during the pendency of an appeal of such an order
7 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the
8 hearings board for a stay of the order or for the removal thereof.

9 (4) Any appeal must contain the following in accordance with the
10 rules of the hearings board:

11 (a) The appellant's name and address;

12 (b) The date and docket number of the order, permit, or license
13 appealed;

14 (c) A description of the substance of the order, permit, or license
15 that is the subject of the appeal;

16 (d) A clear, separate, and concise statement of every error alleged
17 to have been committed;

18 (e) A clear and concise statement of facts upon which the requester
19 relies to sustain his or her statements of error; and

20 (f) A statement setting forth the relief sought.

21 (5) Upon failure to comply with any final order of the department
22 or the department of agriculture, the attorney general, on request of
23 the department or the department of agriculture, may bring an action in
24 the superior court of the county where the violation occurred or the
25 potential violation is about to occur to obtain such relief as
26 necessary, including injunctive relief, to insure compliance with the
27 order. The air authorities may bring similar actions to enforce their
28 orders.

29 (6) An appealable decision or order shall be identified as such and
30 shall contain a conspicuous notice to the recipient that it may be
31 appealed only by filing an appeal with the hearings board and serving
32 it on the department or the department of agriculture within thirty
33 days of the date of receipt.

34 **Sec. 43.** RCW 90.64.813 and 2003 c 325 s 2 are each amended to read
35 as follows:

36 (1) A livestock nutrient management program development and

1 oversight committee is created comprised of the following members,
2 appointed as follows:

3 (a) The director of the department of agriculture, or the
4 director's designee, who shall serve as committee chair;

5 (b) The director of the department of ecology, or the director's
6 designee;

7 (c) A representative of the United States environmental protection
8 agency, appointed by the regional director of the agency unless the
9 agency chooses not to be represented on the committee;

10 (d) One member from each of the two major caucuses of the house of
11 representatives, appointed by the speaker of the house of
12 representatives, and one member from each of the two major caucuses of
13 the senate, appointed by the president of the senate;

14 (e) A representative of commercial shellfish growers, nominated by
15 an organization representing these growers, appointed by the
16 ~~((governor))~~ director;

17 ~~((+e))~~ (f) A representative of an environmental interest
18 organization with familiarity and expertise in water quality issues as
19 nominated by a statewide environmental organization, appointed by the
20 ~~((governor))~~ director;

21 ~~((+f))~~ (g) A representative of tribal governments as nominated by
22 an organization representing tribal governments(~~(, appointed by the~~
23 ~~governor))~~);

24 ~~((+g))~~ (h) A representative of Washington State University
25 appointed by the dean of the college of agriculture and home economics;

26 ~~((+h))~~ (i) A representative of the Washington association of
27 conservation districts, appointed by the association's board of
28 officers;

29 ~~((+i))~~ (j) Three representatives of dairy producers nominated by
30 a statewide organization representing dairy producers in the state,
31 appointed by the ~~((governor))~~ director;

32 ~~((+j))~~ (k) Two representatives of beef cattle producers nominated
33 by a statewide organization representing beef cattle producers in the
34 state, appointed by the ~~((governor))~~ director;

35 ~~((+k))~~ (l) One representative of poultry producers nominated by a
36 statewide organization representing poultry producers in the state,
37 appointed by the ~~((governor))~~ director;

1 (~~(l)~~) (m) One representative of the commercial cattle feedlots
2 nominated by a statewide organization representing commercial cattle
3 feedlots in the state, appointed by the (~~(governor)~~) director; and

4 (~~(m)~~) (n) A representative of any other segment of the livestock
5 industry determined by the director of agriculture to be subject to
6 federal rules regulating animal feeding or concentrated animal feeding
7 operations.

8 (2) The state department of agriculture shall provide staff for the
9 committee. The department of agriculture may request staff assistance
10 be assigned by the United States environmental protection agency to
11 assist the director in staffing the committee.

12 (3) The committee shall establish a work plan that includes a list
13 of tasks and a projected completion date for each task.

14 (4) The committee may establish a subcommittee for each of the
15 major industry segments that is covered by the recently adopted federal
16 regulations that pertain to animal feeding operations and concentrated
17 animal feeding operations. The subcommittee shall be composed of
18 selected members of the full committee and additional representatives
19 from that major segment of the livestock industry as determined by the
20 director. The committee shall assign tasks to the subcommittees and
21 shall establish dates for each subcommittee to report back to the full
22 committee.

23 (5) The committee shall examine the recently adopted federal
24 regulations that provide for the regulation of animal feeding
25 operations and concentrated animal feeding operations and develop a
26 program to be administered by the department of agriculture that meets
27 the requirements and time frames contained in the federal rules.
28 Elements that the committee shall evaluate include:

29 (a) A process for adopting standards and for developing plans for
30 each operation that meet these standards;

31 (b) A process for revising current national pollution discharge
32 elimination system permits currently held by livestock operations and
33 to transition these permits into the new system; and

34 (c) In consultation with the director, a determination of what
35 other work is needed and what other institutional relationships are
36 needed or desirable. The committee shall consult with representatives
37 of the statewide association of conservation districts regarding any

1 functions or activities that are proposed to be provided through local
2 conservation districts.

3 (6) The committee shall review and comment on proposals for grants
4 from the livestock nutrient management account created in RCW
5 90.64.150.

6 (7) The committee shall develop draft proposed legislation that
7 includes:

8 (a) Statutory changes, including a timeline to achieve the phased-
9 in levels of regulation under federal law, to comply with the minimum
10 requirements under federal law and the minimum requirements under
11 chapter 90.48 RCW. These changes must meet the requirements necessary
12 to enable the department of agriculture and the department of ecology
13 to pursue the United States environmental protection agency's approval
14 of the transfer of the permitting program as it relates to the
15 concentrated animal feeding operations from the department of ecology
16 to the department of agriculture;

17 (b) Statutory changes necessitated by the transfer of functions
18 under chapter 90.64 RCW from the department of ecology to the
19 department of agriculture;

20 (c) Continued inspection of dairy operations at least once every
21 two years;

22 (d) An outreach and education program to inform the various animal
23 feeding operations and concentrated animal feeding operations of the
24 program's elements; and

25 (e) Annual reporting to the legislature on the progress of the
26 state strategy for implementing the animal feeding operation and
27 concentrated animal feeding operation.

28 (8) The committee shall provide a report by December 1, 2003, to
29 appropriate committees of the legislature that includes the results of
30 the committee's evaluation under subsection (5) of this section and
31 draft legislation to initiate the program.

32 (9) The committee shall evaluate simplified nutrient management
33 planning tools and systematic practices that can be offered to those
34 livestock operations not required to have permits or farm plans. The
35 goal shall be to introduce these practical models through technical
36 assistance, education, and outreach so that all livestock owners will
37 have clear guidance on how to meet basic responsibilities to protect

1 water quality. The committee shall report its recommendations on tools
2 and service delivery options to appropriate committees of the
3 legislature during the September 2005 assembly.

4 (10) With respect to the federal requirement that livestock
5 nutrient management plans contain a component ensuring proper
6 management of dead animals, the committee shall review issues
7 concerning routine animal carcass disposal in Washington, including
8 composting, rendering, burying, landfills, and incineration. The
9 committee may appoint a subcommittee including appropriate technical
10 staff from state agencies to undertake this task and make
11 recommendations back to the full committee. At the legislative
12 assembly in September 2005, the department of agriculture, the
13 department of ecology, the state board of health, and committee
14 representatives shall present reports as follows to the appropriate
15 legislative committees:

16 (a) The department of ecology shall report on the status of off-
17 site animal composting options that meet the livestock industry's need
18 for disposal alternatives while assuring consumer protection and equity
19 with other composters;

20 (b) The department of agriculture shall report on the status of a
21 comprehensive, clearly written guidance document for the livestock
22 industry on alternatives currently available for routine disposal of
23 animal carcasses. The guidance document shall include, at a minimum,
24 the disposal alternatives of rendering, burying, landfills, and
25 composting; and

26 (c) The state board of health shall report on the status of rule
27 making that clarifies burial depth, location of burial sites in
28 relation to drinking water wells, and incineration.

29 (11) The committee shall evaluate the use of ranges as a means for
30 state and local agencies to respond to public records requests made
31 under chapter 42.17 RCW for information obtained from dairies and AFOs
32 not required to apply for a permit. The ranges must provide meaningful
33 information while ensuring confidentiality of business information
34 regarding the following characteristics of livestock operations: (a)
35 Number of animals; (b) volume of livestock nutrients generated; (c)
36 number of acres covered by the plan or used for land application of
37 livestock nutrients; (d) livestock nutrients transferred to other

1 persons; and (e) crop yields. The committee shall make recommendations
2 and provide draft legislation regarding the use of ranges to the
3 appropriate committees of the legislature by December 1, 2005.

4 (12) This section expires ((June 30, 2006)) when the federal
5 environmental protection agency delegates authority for the NPDES CAFO
6 program to the department. The department shall provide notice to the
7 legislature of the date of any such delegation of authority.

8 NEW SECTION. Sec. 44. (1) By July 1, 2005, the department and the
9 department of agriculture, in consultation with the department of
10 health, shall make available to livestock producers clearly written
11 guidelines for the composting of bovine and equine carcasses for
12 routine animal disposal.

13 (2) Composters of bovine and equine carcasses are exempt from the
14 metals testing and permit requirements under the solid waste handling
15 rules for compost that is distributed off-site if the following
16 conditions are met:

17 (a) The carcasses to be composted are not known or suspected to be
18 affected with a prion-protein disease such as bovine spongiform
19 encephalopathy, a spore-forming disease such as anthrax or other
20 diseases designated by the state veterinarian;

21 (b) The composter follows the written guidelines provided for in
22 subsection (1) of this section;

23 (c) The composter does not accept for composting animal mortalities
24 from other sources not directly affiliated with the composter's
25 operation;

26 (d) The composter provides information to the end-user that
27 includes the source of the material; the quality of the compost as to
28 its nutrient content, pathogens, and stability; and the restrictions on
29 use of the compost as stated in (f) of this subsection;

30 (e) The composter reports annually to the department the number of
31 bovines and equines and the amounts of other material composted,
32 including the composter's best estimate of the tonnage or yardage
33 involved; and

34 (f) The end-user applies the compost only to agricultural lands
35 that are not used for the production of root crops except as prescribed
36 in the guidelines and ensures no compost comes into contact with the
37 crops harvested from the lands where the compost is applied.

1 (3) If a compost production facility does not operate in compliance
2 with the terms and conditions established for an exemption in this
3 section, the facility shall be subject to the permitting requirements
4 for solid waste handling under this chapter.

5 **Sec. 45.** RCW 70.95.315 and 1998 c 156 s 7 are each amended to read
6 as follows:

7 The department may assess a civil penalty in an amount not to
8 exceed one thousand dollars per day per violation to any person exempt
9 from solid waste permitting in accordance with RCW 70.95.300 (~~(or)~~)
10 70.95.305, or section 44 of this act who fails to comply with the terms
11 and conditions of the exemption. Each such violation shall be a
12 separate and distinct offense, and in the case of a continuing
13 violation, each day's continuance shall be a separate and distinct
14 violation.

15 NEW SECTION. **Sec. 46.** The following acts or parts of acts are
16 each repealed:

17 (1) RCW 90.64.015 (Environmental excellence program agreements--
18 Effect on chapter) and 1997 c 381 s 29;

19 (2) RCW 90.64.017 (Registration of dairy producers--Information
20 required--Information to producers regarding chapter) and 1998 c 262 s
21 3;

22 (3) RCW 90.64.026 (Dairy nutrient management plans--Elements--
23 Approval--Timelines--Certification) and 1998 c 262 s 6;

24 (4) RCW 90.64.070 (Duties of conservation district) and 1998 c 262
25 s 13 & 1993 c 221 s 8;

26 (5) RCW 90.64.080 (Duties of conservation commission) and 1998 c
27 262 s 14 & 1993 c 221 s 9;

28 (6) RCW 90.64.130 (Data base) and 1998 c 262 s 9;

29 (7) RCW 90.64.140 (Technical assistance teams--Standards and
30 specifications for dairy nutrient management plans) and 1998 c 262 s
31 10;

32 (8) RCW 90.64.160 (Grants for dairy producers--Statement of
33 environmental benefits--Development of outcome-focused performance
34 measures) and 2001 c 227 s 4; and

35 (9) RCW 90.64.800 (Reports to the legislature) and 1998 c 262 s 17.

1 NEW SECTION. **Sec. 47.** RCW 90.64.900 and 90.64.901 are decodified.

2 NEW SECTION. **Sec. 48.** The following sections are codified or
3 recodified in the following order as a new chapter in Title 16 RCW:

4 (1) Intent and overview/authority
5 RCW 90.64.005
6 RCW 90.64.010
7 Section 1 of this act
8 RCW 90.64.050
9 RCW 90.64.110
10 (2) Permits
11 RCW 90.64.120
12 Section 20 of this act
13 Section 21 of this act
14 Section 22 of this act
15 RCW 90.64.020
16 Section 23 of this act
17 Section 24 of this act
18 Section 26 of this act
19 Section 25 of this act
20 Section 36 of this act
21 (3) Nutrient management plans
22 Section 6 of this act
23 Section 7 of this act
24 Section 8 of this act
25 Section 9 of this act
26 RCW 90.64.028
27 Section 17 of this act
28 (4) Field inspection and compliance
29 Section 27 of this act
30 Section 28 of this act
31 RCW 90.64.023
32 Section 29 of this act
33 RCW 90.64.030
34 Section 31 of this act
35 Section 35 of this act
36 Section 34 of this act
37 Section 32 of this act

1 RCW 90.64.040
2 Section 30 of this act
3 Section 33 of this act
4 Section 37 of this act
5 RCW 90.64.100
6 (5) Miscellaneous
7 Section 18 of this act
8 Section 19 of this act
9 RCW 90.64.813
10 RCW 90.64.150
11 Section 38 of this act
12 Section 50 of this act

13 NEW SECTION. **Sec. 49.** Section 44 of this act is added to chapter
14 70.95 RCW to be codified after RCW 70.95.305.

15 NEW SECTION. **Sec. 50.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected."

SSB 5602 - H AMD 536
By Representatives Pettigrew, Holmquist, Kretz, Linville

ADOPTED 04/14/2005

19 On page 1, line 1 of the title, after "nutrients;" strike the
20 remainder of the title and insert "amending RCW 90.64.005, 90.64.010,
21 90.64.020, 90.64.023, 90.64.028, 90.64.030, 90.64.040, 90.64.050,
22 90.64.110, 90.64.150, 43.21B.001, 43.21B.110, 43.21B.300, 43.21B.310,
23 90.64.813, and 70.95.315; adding a new section to chapter 70.95 RCW;
24 adding a new chapter to Title 16 RCW; creating a new section;
25 recodifying RCW 90.64.005, 90.64.010, 90.64.050, 90.64.110, 90.64.120,
26 90.64.020, 90.64.028, 90.64.023, 90.64.030, 90.64.040, 90.64.100,
27 90.64.813, and 90.64.150; decodifying RCW 90.64.900 and 90.64.901;
28 repealing RCW 90.64.015, 90.64.017, 90.64.026, 90.64.070, 90.64.080,

1 90.64.130, 90.64.140, 90.64.160, and 90.64.800; prescribing penalties;
2 and providing a contingent expiration date."

EFFECT: H-3006.7 makes the following changes to SSB 5602:

Creates permit requirements consistent with state and federal water quality laws and rules. Narrows who must be permitted. Replaces combined state/federal permit with a state waste discharge permit, a national pollutant discharge elimination system permit, or both. Requires WSDA director to designate any AFO as a CAFO subject to permitting after determining that it is significantly polluting the waters of the state. Allows the WSDA director discretion in designating any AFO as a CAFO after determining that it is discharging to ground or surface water. Clarifies regulatory requirements for three categories of animal feeding operations. Allows practices and standards that meet or exceed NRCS standards to be used in developing nutrient management plans if there is substantial likelihood that the practices and standards would meet state and federal water quality standards. Requires nutrient management plan verification by a conservation district prior to approval and certification by WSDA, unless the producer requests verification by a technical team including a conservation district representative. Clarifies that WSDA decisions on elements of a plan that are conditions of a permit are part of the permit application and issuance process and are appealable by any person to the Pollution Control Hearings Board. Clarifies conditions for violation exceptions. Confirms WSDA's current practice of investigating written and oral complaints. Clarifies which WSDA responsibilities are duties and which are authorities. Does not limit public disclosure only to the extent required by federal rule. Eliminates statutory creation of program advisory committee. Clarifies that any AFO determined by the department to be discharging into waters of the state must obtain a state waste discharge permit from the department. Specifies public notice and public hearing requirements for department decisions on applications and permits. Requires that the nutrient management plan be submitted with the permit application. Authorizes WSDA to modify or revoke and reissue permits. Eliminates the current violation exception for pollutant discharges by a livestock producer who has no NPDES permit but has an approved and certified farm plan. Specifies burden of proof on a permittee claiming "upset." Requires DOE to develop, maintain, and submit to the Legislature a standard protocol for water quality monitoring. Changes membership, appointments, expiration of the Development Oversight Committee, and adds three tasks. Exempts composters of bovine and equine carcasses from metals testing and permit requirements under solid waste handling rules for compost distributed off-site if certain conditions are met.

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