
SUBSTITUTE SENATE BILL 6634

State of Washington

61st Legislature

2010 Regular Session

By Senate Agriculture & Rural Economic Development (originally sponsored by Senators Ranker, Hatfield, Morton, Haugen, Becker, Shin, and Jacobsen)

READ FIRST TIME 01/29/10.

1 AN ACT Relating to establishing civil penalties for failure to
2 comply with dairy nutrient management recordkeeping requirements;
3 reenacting and amending RCW 43.21B.110, 43.21B.110, and 43.21B.300;
4 adding a new section to chapter 90.64 RCW; prescribing penalties;
5 providing an effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.64 RCW
8 to read as follows:

9 (1) Except as provided in chapter 43.05 RCW, the department of
10 agriculture may impose a civil penalty on a dairy producer in an amount
11 of not more than five thousand dollars for failure to comply with
12 recordkeeping requirements in RCW 90.64.010(17)(c). The aggregate
13 amount of the civil penalties issued under this section shall not
14 exceed five thousand dollars in a calendar year.

15 (2) In determining the amount of the civil penalty to be levied,
16 the department of agriculture shall take into consideration:

17 (a) The gravity and magnitude of the violation;

18 (b) Whether the violation was repeated or is continuous;

1 (c) Whether the cause of the violation was an unavoidable accident,
2 negligence, or an intentional act;

3 (d) The violator's efforts to correct the violation; and

4 (e) The immediacy and extent to which the violation threatens the
5 public health or safety or harms the environment.

6 (3) The department of agriculture may establish by rule a graduated
7 civil penalty schedule that includes the factors listed in this
8 section.

9 **Sec. 2.** RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and
10 2009 c 183 s 17 are each reenacted and amended to read as follows:

11 (1) The hearings board shall only have jurisdiction to hear and
12 decide appeals from the following decisions of the department, the
13 director, local conservation districts, and the air pollution control
14 boards or authorities as established pursuant to chapter 70.94 RCW, or
15 local health departments:

16 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
17 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
18 90.56.310, (~~and~~) 90.56.330, and section 1 of this act.

19 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
20 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
21 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

22 (c) A final decision by the department or director made under
23 chapter 183, Laws of 2009.

24 (d) Except as provided in RCW 90.03.210(2), the issuance,
25 modification, or termination of any permit, certificate, or license by
26 the department or any air authority in the exercise of its
27 jurisdiction, including the issuance or termination of a waste disposal
28 permit, the denial of an application for a waste disposal permit, the
29 modification of the conditions or the terms of a waste disposal permit,
30 or a decision to approve or deny an application for a solid waste
31 permit exemption under RCW 70.95.300.

32 (e) Decisions of local health departments regarding the grant or
33 denial of solid waste permits pursuant to chapter 70.95 RCW.

34 (f) Decisions of local health departments regarding the issuance
35 and enforcement of permits to use or dispose of biosolids under RCW
36 70.95J.080.

1 (g) Decisions of the department regarding waste-derived fertilizer
2 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
3 department regarding waste-derived soil amendments under RCW 70.95.205.

4 (h) Decisions of local conservation districts related to the denial
5 of approval or denial of certification of a dairy nutrient management
6 plan; conditions contained in a plan; application of any dairy nutrient
7 management practices, standards, methods, and technologies to a
8 particular dairy farm; and failure to adhere to the plan review and
9 approval timelines in RCW 90.64.026.

10 (i) Any other decision by the department or an air authority which
11 pursuant to law must be decided as an adjudicative proceeding under
12 chapter 34.05 RCW.

13 (2) The following hearings shall not be conducted by the hearings
14 board:

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

17 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
18 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

19 (c) Appeals of decisions by the department under RCW 90.03.110 and
20 90.44.220.

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

23 (e) Appeals of decisions by the department as provided in chapter
24 43.21L RCW.

25 (3) Review of rules and regulations adopted by the hearings board
26 shall be subject to review in accordance with the provisions of the
27 administrative procedure act, chapter 34.05 RCW.

28 **Sec. 3.** RCW 43.21B.110 and 2009 c 456 s 16 and 2009 c 332 s 18 are
29 each reenacted and amended to read as follows:

30 (1) The hearings board shall only have jurisdiction to hear and
31 decide appeals from the following decisions of the department, the
32 director, local conservation districts, and the air pollution control
33 boards or authorities as established pursuant to chapter 70.94 RCW, or
34 local health departments:

35 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
36 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
37 90.56.310, (~~and~~) 90.56.330, and section 1 of this act.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
3 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,
5 modification, or termination of any permit, certificate, or license by
6 the department or any air authority in the exercise of its
7 jurisdiction, including the issuance or termination of a waste disposal
8 permit, the denial of an application for a waste disposal permit, the
9 modification of the conditions or the terms of a waste disposal permit,
10 or a decision to approve or deny an application for a solid waste
11 permit exemption under RCW 70.95.300.

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

14 (e) Decisions of local health departments regarding the issuance
15 and enforcement of permits to use or dispose of biosolids under RCW
16 70.95J.080.

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

20 (g) Decisions of local conservation districts related to the denial
21 of approval or denial of certification of a dairy nutrient management
22 plan; conditions contained in a plan; application of any dairy nutrient
23 management practices, standards, methods, and technologies to a
24 particular dairy farm; and failure to adhere to the plan review and
25 approval timelines in RCW 90.64.026.

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

29 (2) The following hearings shall not be conducted by the hearings
30 board:

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

33 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
34 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

35 (c) Appeals of decisions by the department under RCW 90.03.110 and
36 90.44.220.

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

1 (e) Appeals of decisions by the department as provided in chapter
2 43.21L RCW.

3 (3) Review of rules and regulations adopted by the hearings board
4 shall be subject to review in accordance with the provisions of the
5 administrative procedure act, chapter 34.05 RCW.

6 **Sec. 4.** RCW 43.21B.300 and 2009 c 456 s 17 and 2009 c 178 s 2 are
7 each reenacted and amended to read as follows:

8 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
9 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270,
10 90.48.144, 90.56.310, (~~and~~) 90.56.330, and section 1 of this act and
11 chapter 90.76 RCW shall be imposed by a notice in writing, either by
12 certified mail with return receipt requested or by personal service, to
13 the person incurring the penalty from the department or the local air
14 authority, describing the violation with reasonable particularity.
15 Within thirty days after the notice is received, the person incurring
16 the penalty may apply in writing to the department or the authority for
17 the remission or mitigation of the penalty. Upon receipt of the
18 application, the department or authority may remit or mitigate the
19 penalty upon whatever terms the department or the authority in its
20 discretion deems proper. The department or the authority may ascertain
21 the facts regarding all such applications in such reasonable manner and
22 under 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 or
29 authority thirty days after the date of receipt by the person penalized
30 of the notice imposing the penalty or thirty days after the date of
31 receipt of the notice of disposition of the application for relief from
32 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
4 within thirty days after it becomes due and payable, the attorney
5 general, upon request of the department, shall bring an action in the
6 name of the state of Washington in the superior court of Thurston
7 county, or of any county in which the violator does business, to
8 recover the penalty. If the amount of the penalty is not paid to the
9 authority within thirty days after it becomes due and payable, the
10 authority may bring an action to recover the penalty in the superior
11 court of the county of the authority's main office or of any county in
12 which the violator does business. In these actions, the procedures and
13 rules of evidence shall be the same as in an ordinary civil action.

14 (5) All penalties recovered shall be paid into the state treasury
15 and credited to the general fund except those penalties imposed
16 pursuant to RCW 18.104.155, which shall be credited to the reclamation
17 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
18 disposition of which shall be governed by that provision, RCW
19 70.105.080, which shall be credited to the hazardous waste control and
20 elimination account created by RCW 70.105.180, RCW 90.56.330, which
21 shall be credited to the coastal protection fund created by RCW
22 90.48.390, and RCW 90.76.080, which shall be credited to the
23 underground storage tank account created by RCW 90.76.100.

24 NEW SECTION. **Sec. 5.** Section 2 of this act expires June 30, 2019.

25 NEW SECTION. **Sec. 6.** Section 3 of this act takes effect June 30,
26 2019.

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