

---

SECOND SUBSTITUTE HOUSE BILL 2191

---

State of Washington

55th Legislature

1997 Regular Session

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

Read first time 03/10/97.

1 AN ACT Relating to dairy waste; amending RCW 90.64.005, 90.64.010,  
2 90.64.030, 90.64.050, 90.64.060, 90.64.070, and 90.64.080; adding new  
3 sections to chapter 90.64 RCW; creating a new section; and repealing  
4 RCW 90.64.090.

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

6 **Sec. 1.** RCW 90.64.005 and 1993 c 221 s 1 are each amended to read  
7 as follows:

8 The legislature finds that there is a need to establish a clear and  
9 understandable process that provides for the proper and effective  
10 management of dairy waste that affects the quality of surface or ground  
11 waters in the state of Washington. The legislature finds that there is  
12 a need for a program that will provide a stable and predictable  
13 business climate upon which dairy farms may base future investment  
14 decisions.

15 The legislature finds that federal regulations require a permit  
16 program for dairies (~~(with over seven hundred head of mature cows~~  
17 ~~and, other specified dairy farms)) that directly discharge into waters  
18 or are otherwise significant contributors of pollution. The  
19 legislature finds that significant work has been ongoing over a period~~

1 of time and that the intent of this chapter is to take the consensus  
2 that has been developed and place it into statutory form.

3 It is also the intent of this chapter to recognize the existing  
4 working relationships between conservation districts, the conservation  
5 commission, and the department of ecology in protecting water quality  
6 of the state. A further purpose of this chapter is to provide  
7 statutory recognition of the coordination of the functions of  
8 conservation districts, the conservation commission, and the department  
9 of ecology pertaining to development of dairy waste management plans  
10 for the protection of water quality.

11 It is also the intent of this chapter to establish a credible  
12 inspection and technical assistance program for dairy farms to address  
13 the discharge of pollutants to surface and ground waters of the state  
14 that will lead to water quality compliance by the industry. A further  
15 purpose is to create a balanced program involving technical assistance,  
16 regulation, and enforcement with coordination and oversight of the  
17 program by a committee composed of industry, agency, and other  
18 representatives. Additionally, the legislature intends to simplify  
19 current complex coordination procedures between the department, the  
20 conservation commission, and conservation districts.

21 **Sec. 2.** RCW 90.64.010 and 1993 c 221 s 2 are each amended to read  
22 as follows:

23 Unless the context clearly requires otherwise, the definitions in  
24 this section apply throughout this chapter.

25 (1) "Conservation commission" or "commission" means the  
26 conservation commission under chapter 89.08 RCW.

27 (2) "Conservation districts" or "district" means a subdivision of  
28 state government organized under chapter 89.08 RCW.

29 (3) "Concentrated dairy animal feeding operation" means a dairy  
30 animal feeding operation subject to regulation under this chapter which  
31 the director designates under RCW 90.64.030 or meets the following  
32 criteria:

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

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

1 (i) From which pollutants are discharged into navigable waters  
2 through a manmade ditch, flushing system, or other similar manmade  
3 device; or

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

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

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

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

19 (5) "Dairy farm" means any farm that has a grade A license under  
20 chapter 15.36 RCW.

21 (6) "Dairy waste inspection team" means one or more representatives  
22 of the department and a local conservation district. The department  
23 has all enforcement responsibilities and the conservation district  
24 shall provide technical assistance to the department and the dairy  
25 farmer.

26 (7) "Department" means the department of ecology under chapter  
27 43.21A RCW.

28 ((+6+)) (8) "Director" means the director of the department of  
29 ecology, or his or her designee.

30 (9) "Major violation" means a discharge, into waters of the state,  
31 except those caused by a twenty-four hour, twenty-five year or greater,  
32 flood event.

33 NEW SECTION. Sec. 3. (1) By July 1, 1998, the dairy waste  
34 inspection teams shall conduct an initial inspection program of all  
35 dairy farms in the state. The purpose of the inspections is to correct  
36 sources of actual discharges, to survey for evidence of discharges, and  
37 to determine dairy farms subject to on-going inspections.

1 (2) The on-going dairy farm inspection program conducted by the  
2 dairy waste inspection team shall be required of any dairy farm that:

3 (a) Is required to plan under section 5 of this act;

4 (b) Is the source of a complaint filed under this chapter; or

5 (c) Is the source of an actual discharge.

6 (3) A dairy farm shall be inspected a minimum of once every two  
7 years. A dairy farm that is determined to be an actual source of water  
8 quality degradation shall receive more frequent inspections as provided  
9 under section 11(3)(h) of this act.

10 (4) A dairy farm inspected by the dairy waste inspection team that  
11 is fully implementing a dairy animal waste management plan meeting the  
12 standards and specifications under section 6 of this act, and is not  
13 directly discharging pollutants to waters of the state, shall not be  
14 scheduled for another inspection for twenty-four months unless a water  
15 pollution complaint is received by the department.

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

18 ~~((Upon receiving a complaint or upon its own determination that a~~  
19 ~~dairy animal feeding operation is a likely source of water quality~~  
20 ~~degradation,)) The ((department)) dairy waste inspection team may  
21 investigate a dairy ~~((animal feeding operation))~~ farm to determine  
22 whether the operation is discharging directly pollutants or  
23 ~~((recently))~~ has ((discharged)) a record of directly discharging  
24 pollutants into surface or ground waters of the state as provided under  
25 the inspection program in section 3 of this act. The ~~((department))~~  
26 dairy waste inspection team shall investigate a written complaint filed  
27 with the department within ~~((ten days))~~ forty-eight hours and shall  
28 make a written report of its findings including the results of any  
29 water quality measurements, photographs, or other pertinent  
30 information. A copy of the findings shall be provided ~~((upon request))~~  
31 to the dairy ~~((animal feeding operation))~~ farm.~~

32 ~~((Those))~~ A dairy ((animal feeding operations that are)) farm that  
33 is determined to be a significant contributor of pollution based on  
34 actual water quality tests, photographs, or other pertinent information  
35 if immediate corrective actions are not possible, shall be ~~((designated~~  
36 ~~as a concentrated dairy animal feeding operation and shall be))~~ subject  
37 to the provisions of this chapter.

1        NEW SECTION.    **Sec. 5.**    (1) A dairy farm shall prepare a dairy  
2 animal waste management plan if the farm:

3        (a) Has been documented as having a major violation under this  
4 chapter; or

5        (b) Is a concentrated dairy animal feeding operation.

6        (2) A dairy farm required to plan under this section shall be  
7 provided six months to develop a dairy animal waste management plan and  
8 an additional eighteen months to fully implement the plan.

9        **Sec. 6.**    RCW 90.64.050 and 1993 c 221 s 6 are each amended to read  
10 as follows:

11        (1) The department has the following duties:

12        (a) Identify existing ~~((or potential))~~ water quality problems  
13 resulting from dairy farms through implementation of the inspection  
14 program in section 3 of this act;

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

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

22        (d) Administer and enforce national pollutants discharge  
23 elimination system permits for operators of concentrated dairy animal  
24 feeding operations, where required by federal regulations, and  
25 ~~((administer))~~ state laws;

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

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

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

- 1        (i) The natural resource conservation service;  
2        (ii) The geographically based standards under section 12 of this  
3 act; or  
4        (iii) A professional engineer;  
5        (h) Provide to the commission and dairy waste program coordination  
6 and oversight committee an annual report of dairy waste ((pollution))  
7 inspection, permitting, and enforcement activities.  
8        (2) The department may not delegate its responsibilities in  
9 enforcement.

10        **Sec. 7.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to read  
11 as follows:

12        (1) If the ((department)) dairy waste inspection team determines  
13 that the operator of a dairy animal feeding operation has the means to  
14 correct a water quality problem in a manner that will prevent future  
15 contamination and does so promptly and such correction is maintained,  
16 the department shall cease pursuit of the complaint.

17        (2) If the ((department)) dairy waste inspection team determines  
18 that an unresolved water quality problem from a dairy animal feeding  
19 operation requires immediate corrective action, the department shall  
20 notify the operator and the district in which the problem is located.

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

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

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

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

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

1       **Sec. 8.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read  
2 as follows:

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

4       (a) ~~((Adopt and annually update the water quality section in the~~  
5 ~~conservation district dairy waste management plan))~~ Provide technical  
6 assistance to the department in identifying existing water quality  
7 problems resulting from dairy farms through implementation of the  
8 inspection program in section 3 of this act;

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

14       (c) Encourage communication and cooperation between the  
15 conservation district personnel and local department personnel; and

16       (d) ~~((Adopt and carry out a compliance option from level 1, level~~  
17 ~~2, level 3, or level 4))~~ Provide technical assistance in developing and  
18 implementing a dairy animal waste management farm plan.

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

23       **Sec. 9.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to read  
24 as follows:

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

26       (a) ~~((Forward to the department the dairy waste management plan~~  
27 ~~progress reports;~~

28 ~~(b))~~ Provide assistance as may be appropriate to the conservation  
29 districts in the discharge of their responsibilities as management  
30 agencies in dairy waste management program implementation;

31 ~~((c))~~ (b) Provide coordination for conservation district programs  
32 at the state level through special arrangements with appropriate  
33 federal and state agencies;

34 ~~((d))~~ (c) Inform conservation districts of activities and  
35 experiences of other conservation districts relative to agricultural  
36 water quality protection, and facilitate an interchange of advice,  
37 experience, and cooperation between the districts;

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

3       (~~(f)~~) (e) Appoint conservation district representatives to serve  
4 on the (~~compliance review~~) dairy waste program coordination and  
5 oversight committee with advice of the Washington association of  
6 conservation districts;

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

10       (h)) (f) Serve as chair to the dairy waste program coordination  
11 and oversight committee;

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

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

18       NEW SECTION. Sec. 10. By December 31, 1997, the department in  
19 consultation with the dairy waste program coordination and oversight  
20 committee shall develop and maintain a data base to account for the  
21 implementation of the inspection program identified in section 3 of  
22 this act. The data base shall track inspection, regulatory and  
23 enforcement actions, and industry implementation of dairy animal waste  
24 management plans. A summary of the data base information shall be  
25 provided quarterly to the dairy waste program coordination and  
26 oversight committee members.

27       NEW SECTION. Sec. 11. (1) A dairy waste program coordination and  
28 oversight committee is established. The committee shall be chaired by  
29 the conservation commission. The purpose of the committee is to  
30 provide accountable direction and oversight of the dairy waste  
31 inspection program. Members shall be appointed by the commission.

32       (2) The committee may include representatives of the department, a  
33 dairy federation, the conservation commission, conservation districts,  
34 the federal natural resources conservation service, the federal  
35 environmental protection agency, an environmental organization, and the  
36 shellfish industry.

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

- 1 (a) Meet at least four times per calendar year;
- 2 (b) Disseminate information as needed;
- 3 (c) Maintain meeting minutes and account for the resolution of  
4 issues jointly identified by the committee chairs as needing to be  
5 addressed;
- 6 (d) Review the annual data base report provided by the department  
7 under section 10 of this act;
- 8 (e) Act as a forum to hear suggestions from any interested parties,  
9 including dairy farmers, regarding implementation of the dairy waste  
10 program;
- 11 (f) Monitor the development and use of the standards and  
12 specifications developed under section 12 of this act;
- 13 (g) Create and recommend standardized dairy farm waste facility  
14 inspection procedures and a reporting format to be used by the  
15 department; and
- 16 (h) Develop performance-based criteria to determine the frequency  
17 of inspections initiated under section 3 of this act.
- 18 (4) The dairy waste program coordination and oversight committee  
19 does not replace or infringe upon the authority, duties, or  
20 responsibilities of the pollution control hearings board.

21 NEW SECTION. **Sec. 12.** (1) The conservation commission shall  
22 establish up to four dairy waste technical assistance teams by January  
23 1, 1998. The teams shall be geographically located throughout the  
24 state. Each team shall consist of one or more professional engineers  
25 and local conservation district employees.

26 (2) Each team shall develop a set of standards and specifications  
27 to assist dairy farmers in developing and implementing dairy animal  
28 waste management plans by September 1, 1998. Standards and  
29 specifications developed by a technical assistance team shall be  
30 appropriate to the soils and other conditions of that geographic area.

31 NEW SECTION. **Sec. 13.** (1) The department shall provide copies of  
32 all final dairy farm inspection reports and documentation of all formal  
33 regulatory and enforcement actions taken by the department to the local  
34 conservation district, and to the appropriate dairy farm, within  
35 fourteen days.

1 (2) The local conservation district shall provide a copy of a  
2 completed dairy animal waste management farm plan to the department  
3 within fourteen days.

4 NEW SECTION. **Sec. 14.** The dairy waste management account is  
5 created in the custody of the state treasurer. All receipts from  
6 monetary penalties under RCW 90.64.050 must be deposited into the  
7 account except those receipts held for two weeks under RCW 90.64.050.  
8 Expenditures from the account may be used only for the commission to  
9 provide grants to local conservation districts for the sole purpose of  
10 assisting dairy farms to develop and fully implement dairy animal waste  
11 management plans. Only the chairman of the commission or the  
12 chairman's designee may authorize expenditures from the account. The  
13 account is subject to allotment procedures under chapter 43.88 RCW, but  
14 an appropriation is not required for expenditures.

15 NEW SECTION. **Sec. 15.** If specific funding for the purposes of  
16 this act, referencing this act by bill or chapter number, is not  
17 provided by June 30, 1997, in the omnibus appropriations act, this act  
18 is null and void.

19 NEW SECTION. **Sec. 16.** RCW 90.64.090 and 1993 c 221 s 10 are each  
20 repealed.

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

--- END ---