S-2003.2

SUBSTITUTE SENATE BILL 5602

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Rasmussen and Schoesler; by request of Department of Agriculture)

READ FIRST TIME 03/01/05.

1 AN ACT Relating to managing livestock nutrients; amending RCW
2 90.64.005, 90.64.010, 90.64.020, 90.64.023, 90.64.026, 90.64.028,
3 90.64.030, 90.64.040, 90.64.050, 90.64.110, 90.64.150, 43.21B.001,
4 43.21B.110, 43.21B.300, and 43.21B.310; adding a new section to chapter
5 42.17 RCW; adding a new chapter to Title 16 RCW; creating a new
6 section; recodifying RCW 90.64.005, 90.64.010, 90.64.050, 90.64.110,
7 90.64.020, 90.64.120, 90.64.026, 90.64.028, 90.64.023, 90.64.030,
8 90.64.040, 90.64.100, 90.64.813, and 90.64.150; decodifying RCW
9 90.64.900 and 90.64.901; repealing RCW 90.64.015, 90.64.017, 90.64.070,
10 90.64.080, 90.64.130, 90.64.140, 90.64.160, and 90.64.800; prescribing
11 penalties; and providing an effective date.

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

13 NEW SECTION. **Sec. 1.** (1) This chapter applies to all operations
14 that meet the definition of an animal feeding operation.
15 (2)(a) This chapter creates specific permit requirements consistent
16 with the federal CAFO rule for all defined or designated concentrated
17 animal feeding operations.
18 (b) All dairies are required to implement nutrient management plans
19 and perform certain reporting.

(c) AFOs that are not CAFOs or dairies are not required to obtain permit coverage or have a plan under this chapter. However, no AFO is allowed to pollute waters of the state, and all AFOs may be inspected by the department under this chapter.

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

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

~~The legislature finds that federal regulations require a permit program for dairies with over seven hundred head of mature cows and, other specified dairy farms that directly discharge into waters or are otherwise significant contributors of pollution. The legislature finds that significant work has been ongoing over a period of time and that the intent of this chapter is to take the consensus that has been developed and place it into statutory form.~~

~~It is also the intent of this chapter to establish an inspection and technical assistance program for dairy farms to address the discharge of pollution to surface and ground waters of the state that will lead to water quality compliance by the industry. A further purpose is to create a balanced program involving technical assistance, regulation, and enforcement with coordination and oversight of the program by a committee composed of industry, agency, and other representatives. Furthermore, it is the objective of this chapter to maintain the administration of the water quality program as it relates to dairy operations at the state level.~~

~~It is also the intent of this chapter to recognize the existing working relationships between conservation districts, the conservation commission, and the department of ecology in protecting water quality of the state. A further purpose of this chapter is to provide statutory recognition of the coordination of the functions of conservation districts, the conservation commission, and the department of ecology pertaining to development of dairy waste management plans~~

~~for the protection of water quality~~)) for an effective livestock nutrient management program for all segments of the livestock industry that meets and is consistent with federal water quality rules. The goals of the program are to provide clear guidance to animal feeding operations about their responsibilities under state and federal water quality laws and to implement the necessary program requirements in a consistent manner that will maintain a healthy and productive livestock industry in Washington state. It is the intent of the legislature that the department of agriculture continues the existing program for all licensed dairies, implements the revised program for CAFOs and AFOs, and carries out effective, fair, and equitable enforcement.

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

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

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

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

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

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

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

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

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

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

(4) "Certification" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(18) "Violation" means the following acts or omissions: (a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an~~

~~upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:~~

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

~~(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;~~

~~(b) Failure to register as required under RCW 90.64.017; or~~

~~(c) The lack of an approved dairy nutrient management plan by July 1, 2002; or~~

~~(d) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.~~))

(9) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves;

(c) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;

(d) 2,500 swine each weighing 55 pounds or more;

(e) 10,000 swine each weighing less than 55 pounds;

(f) 500 horses;

(g) 10,000 sheep or lambs;

(h) 55,000 turkeys;

(i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 125,000 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(k) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

(m) 5,000 ducks, if the AFO uses a liquid manure handling system.

(10) "Livestock nutrient" means manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal or process wastewater, which means water directly or indirectly used in the operation of the AFO for any or all of the following: Spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

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

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

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

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

(ii) 300 to 999 veal calves;

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

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

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

(vi) 150 to 499 horses;

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

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

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

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

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

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

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

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

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

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

(13) "Permit" means a combined state waste discharge and national pollutant discharge elimination system (NPDES) permit.

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

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

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

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

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

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

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

(2) In making this designation, the director shall consider the following factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Survey for evidence of violations;

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

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

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

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

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

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

(3) CAFOs and dairies shall be prioritized for inspection based on ((~~the development of~~)) criteria that include, but are not limited to, the following factors:

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

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

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

(d) Proximity to shellfish beds;

(e) Permit status;

(f) Compliance history; and

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

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

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

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

Sec. 6. RCW 90.64.026 and 1998 c 262 s 6 are each amended to read as follows:

(1) ((~~Except for those producers who already have a certified dairy nutrient management plan as required under the terms and conditions of an individual or general national pollutant discharge elimination system permit, all dairy producers licensed under chapter 15.36 RCW, regardless of size, shall prepare a dairy~~)) All CAFOs and dairies are required to develop a livestock nutrient management plan. These plans must be approved by the department and certified as fully implemented

by the department and the livestock producer. If at any time ((~~a dairy~~)) compliance with a livestock nutrient management plan fails to prevent the discharge of pollutants or if complying with the plan would still pose a significant potential to discharge pollutants to waters of the state, ((~~it shall be required to be updated~~)) the livestock producer must revise the plan as directed by the department.

(2) ((~~By November 1, 1998, the conservation commission, in conjunction with the advisory and oversight committee established under section 8 of this act shall develop a document clearly describing the elements that a dairy nutrient management plan must contain to gain local conservation district approval.~~

~~(3) In developing the elements that an approved dairy nutrient management plan must contain, the commission may authorize the use of other methods and technologies than those developed by the natural resources conservation service when such alternatives have been evaluated by the advisory and oversight committee. Alternative methods and technologies shall meet the standards and specifications of:~~

~~(a) The natural resources conservation service as modified by the geographically based standards developed under RCW 90.64.140; or~~

~~(b) A professional engineer with expertise in the area of dairy nutrient management.~~

~~(4) In evaluating alternative technologies and methods, the principal objectives of the committee's evaluation shall be determining:~~

~~(a) Whether there is a substantial likelihood that, once implemented, the alternative technologies and methods would not violate water quality requirements;~~

~~(b) Whether more cost-effective methods can be successfully implemented in some or all categories of dairy operations; and~~

~~(c) Whether the technologies and methods approved or provided by the natural resources conservation service for use by confined animal feeding operations are necessarily required for other categories of dairy operations.~~

~~In addition, the committee shall encourage the conservation commission and the conservation districts to apply in dairy nutrient management plans technologies and methods that are appropriate to the needs of the specific type of operation and the specific farm site and~~

~~to avoid imposing requirements that are not necessary for the specific dairy producer to achieve compliance with water quality requirements.~~

~~(5) Such plans shall be submitted for approval to the local conservation district where the dairy farm is located, and shall be approved by conservation districts no later than by July 1, 2002. The conservation commission, in conjunction with conservation districts, shall develop a statewide schedule of plan development and approval to ensure adequate resources are available to have all plans approved by July 1, 2002.~~

~~(6) If a dairy producer leases land for dairy production from an owner who has prohibited the development of capital improvements, such as storage lagoons, on the leased property, the dairy producer shall indicate in his or her dairy nutrient management plan that such improvements are prohibited by the landowner and shall describe other methods, such as land application, that will be employed by the dairy producer to manage dairy nutrients.~~

~~(7) Notwithstanding the timelines in this section, any dairy farm licensed after September 1, 1998, shall have six months from the date of licensing to develop a dairy nutrient management plan and another eighteen months to fully implement that plan.~~

~~(8) If a plan contains the elements identified in subsection (2) of this section, a conservation district shall approve the plan no later than ninety days after receiving the plan. If the plan does not contain the elements identified in subsection (2) of this section, the local conservation district shall notify the dairy producer in writing of modifications needed in the plan no later than ninety days after receiving the plan. The dairy producer shall provide a revised plan that includes the needed modifications within ninety days of the date of the local conservation district notification. If the dairy producer does not agree with, or otherwise takes exception to, the modifications requested by the local conservation district, the dairy producer may initiate the appeals process described in RCW 90.64.028 within thirty days of receiving the letter of notification.~~

~~(9) An approved plan shall be certified by a conservation district and a dairy producer when the elements necessary to implement the plan have been constructed or otherwise put in place, and are being used as designed and intended. A certification form shall be developed by the conservation commission for use statewide and shall provide for a~~

~~signature by both a conservation district representative and a dairy producer. Certification forms shall be signed by December 31, 2003, and a copy provided to the department for recording in the data base established in RCW 90.64.130.~~

~~(10) The ability of dairy producers to comply with the planning requirements of this chapter depends, in many cases, on the availability of federal and state funding to support technical assistance provided by local conservation districts. Dairy producers shall not be held responsible for noncompliance with the planning requirements of this chapter if conservation districts are unable to perform their duties under this chapter because of insufficient funding.~~)) Livestock producers must develop plans using natural resource conservation service (NRCS) practice standards. Equivalent practices and standards may be used if the department determines they meet or exceed NRCS standards. The department shall establish by rule a technical review process to make determinations on proposed equivalent practices and standards.

(3) All CAFOs must meet livestock nutrient management plan deadlines for development and implementation required by this chapter, permit, or rule.

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

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

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

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

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

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

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

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

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

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

(5) A dairy that is not a CAFO by definition or designation has six months from the date of obtaining a license under chapter 15.36 RCW to obtain department approval of its livestock nutrient management plan and eighteen months from the date of plan approval to submit the plan to the department for certification.

(6) The plan for a dairy that is not a CAFO by definition or designation shall include the minimum elements as defined by the department by rule.

(7) If a plan contains the elements identified in subsection (6) of this section, or subsection (4) of this section and meets the permit requirements, the department shall approve the plan no later than ninety days after receiving the plan. If the plan does not contain the identified elements and permit requirements or the department determines that the plan does not meet alternate criteria, the department shall notify the livestock producer in writing of the denial and of modifications needed for plan compliance no later than ninety days after receiving the plan. The livestock producer must provide a revised plan that includes the needed modifications within ninety days of the date of the department's notification.

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

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

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

(9) AFOs that are not dairies may voluntarily develop and implement livestock nutrient management plans. The plans must meet the minimum elements required in subsection (6) of this section. Plan approval and certification shall follow the same process as identified in subsections (5) and (7) of this section.

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

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

(1) ((~~Conservation district~~)) Department decisions pertaining to denial of approval or denial of certification of a ((~~dairy~~)) livestock nutrient management plan, including a denial of the use of alternative standards and practices; modification or amendment of a plan; conditions contained in a plan; application of any ((~~dairy~~)) livestock nutrient management practices, standards, methods, and technologies to a particular AFO, CAFO, or dairy ((~~farm~~)); and the failure to adhere to plan review and approval timelines identified in RCW 90.64.026 (as

recodified by this act) are appealable under this chapter. ((~~Department actions pertaining to water quality violations are appealable under chapter 90.48 RCW.~~

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

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

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

~~(4)~~)) (3) When an appeals process is initiated under this section, the length of time extending from the start of the appeals process to its conclusion shall be added onto the timelines provided in this chapter for plan development, approval, and certification ((~~only if an appeal is heard by the pollution control hearings board~~)).

Sec. 8. RCW 90.64.030 and 2003 c 325 s 3 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

((~~(9)~~)) (6) A discharge of pollutants, including a storm water discharge, ((~~to surface~~)) into waters of the state by an AFO, CAFO, or dairy shall not be considered a violation of this chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall therefore not be enforceable by the department, the department of ecology, or a third party, if at the time of the discharge, a violation is not occurring under ((~~RCW 90.64.010(18)~~)) section 32 of this act. In addition, a ((~~dairy~~)) livestock producer shall not be held liable for violations of this chapter, chapter 90.48 RCW, chapter 173-201A WAC, or the federal clean water act due to the discharge of ((~~dairy~~)) livestock nutrients to waters of the state resulting from spreading these materials on lands other than where the nutrients were generated, when the nutrients are spread by persons other than the ((~~dairy~~)) livestock producer or the ((~~dairy~~)) producer's agent.

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

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

((~~(12) A dairy producer who fails to have an approved dairy nutrient management plan by July 1, 2002, or a certified dairy nutrient management plan by December 31, 2003, and for which no appeals have been filed with the pollution control hearings board, is in violation of this chapter. Each month beyond these deadlines that a dairy producer is out of compliance with the requirement for either plan approval or plan certification shall be considered separate violations of chapter 90.64 RCW that may be subject to penalties. Such penalties may not exceed one hundred dollars per month for each violation up to a combined total of five thousand dollars. The department has discretion in imposing penalties for failure to meet deadlines for plan approval or plan certification if the failure to comply is due to lack of state funding for implementation of the program. Failure to register as required in RCW 90.64.017 shall subject a dairy producer to a maximum penalty of one hundred dollars. Penalties shall be levied by the department.~~))

Sec. 9. RCW 90.64.040 and 1993 c 221 s 5 are each amended to read as follows:

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

Sec. 10. RCW 90.64.050 and 1998 c 262 s 12 are each amended to read as follows:

((~~(1)~~)) The department has the ((~~following duties~~)) authority to implement and administer a livestock nutrient management program including, but not limited to, the authority to:

((~~(a)~~)) (1) Enforce this chapter including carrying out inspections and enforcement actions, and assessing penalties;

(2) Identify existing or potential water quality problems resulting from ((~~dairy farms through implementation of the inspection program in RCW 90.64.023~~)) AFO, CAFO, or dairy activities and act to bring about compliance by livestock producers;

((~~(b)~~)) (3) Inspect a ((~~dairy farm~~)) facility upon the request of ((~~a dairy~~)) the livestock producer;

((~~(c)~~)) (4) Receive, process, and verify complaints concerning discharge of pollutants from ((~~all dairy farms~~)) any AFO, CAFO, or dairy;

((~~(d)~~)) (5) Determine if ((~~a dairy-related water quality problem requires immediate corrective action under the Washington state water pollution control laws, chapter 90.48 RCW, or the Washington state water quality standards adopted under chapter 90.48 RCW. The department shall maintain the lead enforcement responsibility~~)) an AFO, CAFO, or dairy is discharging pollutants;

((~~(e)~~)) (6) Administer and enforce combined national pollutant discharge elimination system permits and state waste discharge permits for ((~~operators of~~)) concentrated ((~~dairy~~)) animal feeding operations, where required by federal regulations and state laws or upon request of a ((~~dairy~~)) livestock producer;

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

~~(g) Encourage communication and cooperation between local department personnel and the appropriate conservation district personnel;~~

~~(h)~~)) (7) Require the use of ((~~dairy~~)) livestock nutrient management plans as required under this chapter ((~~for entities required to plan under this chapter; and~~

~~(i) Provide to the commission and the advisory and oversight committee an annual report of dairy farm inspection and enforcement activities.~~

~~(2) The department may not delegate its responsibilities in enforcement~~));

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

(9) Approve and certify livestock nutrient management plans that meet the minimum standards developed under this chapter;

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

(11) Provide communication and outreach to representatives of agricultural and environmental organizations; and

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

Sec. 11. RCW 90.64.110 and 1993 c 221 s 12 are each amended to read as follows:

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

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

Sec. 12. RCW 90.64.150 and 2003 c 325 s 5 are each amended to read as follows:

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

NEW SECTION. **Sec. 13.** Any residual balance of funds remaining in

the livestock nutrient management account on the effective date of this section shall be transferred to the livestock nutrient management grant account within the agricultural local fund.

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

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

(3) Information obtained from concentrated animal feeding operations and dairies under chapter 16.-- (created by section 44 of this act) or 90.48 RCW is subject to public disclosure only to the extent required in 40 C.F.R. Sec. 122.7(b) and (c).

NEW SECTION. **Sec. 15.** The department may coordinate with Washington State University, the conservation commission, conservation districts, the department of ecology, other federal, state, and local agencies, and private organizations and individuals in implementing an education program for improvement of nutrient management by dairies, AFOs, and CAFOs and to prevent livestock nutrients from degrading the quality of waters of the state. The department may refer livestock producers to conservation districts, Washington State University, and other entities for educational programs, technical assistance, or financial assistance.

NEW SECTION. **Sec. 16.** (1) Conservation districts may, at the request of a livestock producer, provide technical or financial assistance in developing or revising and implementing the producer's livestock nutrient management plan.

(2) Conservation districts may, at the request of a livestock producer or the department, verify that elements of a plan meet required standards.

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

NEW SECTION. **Sec. 17.** The director shall establish a livestock nutrient management program advisory committee including members representing the livestock industry; the environmental community; local, state, and federal agencies; and other entities as deemed appropriate. The committee shall advise the director on administration of this chapter. The committee shall be appointed by the director and meet as determined by the director.

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

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

and opportunities for public hearings; (d) requirements for inspection, monitoring, entry, and reporting; (e) enforcement of the program through penalties, emergency powers, and criminal sanctions; (f) a continuing planning process; and (g) user charges.

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

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

NEW SECTION. **Sec. 19.** Until the department receives federal delegation for the NPDES CAFO program, the department of ecology shall remain responsible for NPDES permit administration as described under a memorandum of understanding between the department and the department of ecology. Sections 20 through 24 of this act are not effective until federal delegation occurs.

NEW SECTION. **Sec. 20.** (1) Any person who owns or operates an AFO or dairy that is defined as or is designated as a CAFO shall obtain a permit from the department.

(2) The permit issued by the department will be a combined state waste disposal permit and national pollutant discharge elimination system (NPDES) permit which meets the requirements of both the NPDES and state waste discharge permit systems.

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

NEW SECTION. **Sec. 21.** (1) Applications for permits must be made

on forms prescribed by the department, which shall be consistent with the federal CAFO permit application form. An application for a permit shall be made:

(a) At least one hundred eighty days prior to commencement of operation of any new source CAFO;

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

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

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

(2) The department shall establish by rule public notice and public hearing requirements pertaining to department decisions on permits in conformance with the requirements of 40 C.F.R. Secs. 124.10, 124.11, and 124.12 (April 14, 2003) and any other applicable federal rule.

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

NEW SECTION. **Sec. 22**. The department shall issue a permit under section 20 of this act unless it finds that the disposal of livestock nutrients as proposed in the application will pollute or present a substantial potential to pollute the waters of the state in violation of state or federal law. The department shall have authority to specify conditions necessary to avoid such pollution in each permit under which livestock nutrients may be disposed of by the permittee. Permits, whether individual or general, shall not be valid for more than five years from the date of issuance.

NEW SECTION. **Sec. 23**. A permit under section 20 of this act shall be subject to termination upon thirty days' notice in writing if the department finds:

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

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

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

NEW SECTION. **Sec. 24.** In the event that a material change in the condition of the waters occurs, the department may, by appropriate order, modify permit conditions or specify additional conditions in permits previously issued.

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

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

NEW SECTION. **Sec. 27.** (1) The director has the authority to enter any AFO, CAFO, or dairy at any reasonable time and inspect property or facilities and records required under this chapter. Upon arrival at an AFO, CAFO, or dairy, the department shall present identification and give verbal notification of the purpose of the inspection, which may include sampling and testing, to the livestock producer or his or her agent.

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

NEW SECTION. **Sec. 28.** The department, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, in the name of the people of the state of Washington as may be necessary to carry out this chapter.

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

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

NEW SECTION. **Sec. 30.** Any person found guilty of willfully violating this chapter, or any final written orders or directive of the department or a court in pursuance thereof, is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of this chapter occurs may be deemed a separate and additional violation.

NEW SECTION. **Sec. 31.** (1) Any person who:

(a)(i) Violates this chapter;

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

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

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

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

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

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

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

NEW SECTION. **Sec. 32.** (1) Except as provided in chapter 43.05 RCW, every person who:

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

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

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

shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under this section and subject to the penalty provided for in this section. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public

health or the environment in addition to other relevant factors. The department is authorized to set forth the procedures and the criteria for setting the penalty in rule.

(2) A discharge of pollutants into the waters of the state is a violation of this chapter, except those discharges that occur when:

(a) A livestock producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process-generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a rainfall event as specified for the type of facility in 40 C.F.R. Part 412 for that specific location, and the livestock producer has complied with all permit conditions, including livestock nutrient management plan conditions for appropriate land application practices; or

(b) A livestock producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a livestock nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the livestock producer's current herd size, and is approved and certified under RCW 90.64.026 (as recodified by this act).

(3) A livestock producer may assert upset as an affirmative defense to allegations of discharge. "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the producer. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

NEW SECTION. **Sec. 33.** (1) Notwithstanding any other provisions of this chapter, whenever it appears to the director that a person regulated by this chapter is causing water quality conditions to exist which require immediate action to protect the public health or welfare, the director may issue a written temporary order to cease and desist to the person responsible without prior notice or hearing, directing the person to either: (a) Immediately discontinue or modify the discharge into the waters of the state; or (b) appear before the department at the time and place specified in the order to provide the department

information pertaining to the violations and conditions alleged in the order. The temporary order to cease and desist is effective upon service on the responsible person and will remain in effect until ten days after the informational meeting. The responsible person shall be given not less than twenty-four hours' notice of the informational meeting.

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

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

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

(3) All fees collected under this section shall be deposited in the livestock nutrient management permit account within the agricultural

local fund and used only for purposes of administering permits under this chapter.

NEW SECTION. **Sec. 35.** (1) Prior to issuing an order related to discharges from agricultural activity on agricultural land, the department shall consider whether an enforcement action would contribute to the conversion of agricultural land to nonagricultural uses. Any enforcement action shall attempt to minimize the possibility of such conversion.

(2) As used in this section:

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

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

Sec. 36. RCW 43.21B.001 and 2004 c 204 s 1 are each amended to read as follows:

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

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

(2) "Date of receipt" means:

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

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

(3) "Department" means the department of ecology, except for references pertaining to chapter 16.-- RCW (created by section 44 of this act), in which case "department" means the department of agriculture.

(4) "Director" means the director of ecology, except for references pertaining to chapter 16.-- RCW (created by section 44 of this act), in

which case "director" means the director of the department of agriculture or a duly authorized representative.

Sec. 37. RCW 43.21B.110 and 2003 c 393 s 19 are each amended to read as follows:

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

(a) Civil penalties imposed pursuant to section 14 of this act, section 32 of this act, RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, ((~~and~~)) 90.56.330, and 90.64.026 (as recodified by this act).

(b) Orders issued pursuant to section 29 of this act, section 33 of this act, RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.48.120, and 90.56.330.

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

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

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

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

(g) Decisions of ((~~local conservation districts~~)) the department of agriculture related to the denial of approval or denial of certification of a ((~~dairy~~)) livestock nutrient management plan; conditions contained in a plan; application of any ((~~dairy~~)) livestock nutrient management practices, standards, methods, and technologies to

a particular ((~~dairy farm~~)) facility; and failure to adhere to the plan review and approval timelines in RCW 90.64.026 (as recodified by this act).

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

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

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to RCW 90.64.026 (as recodified by this act), section 14 of this act, and chapter 90.58 RCW.

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

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

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

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

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

Sec. 38. RCW 43.21B.300 and 2004 c 204 s 4 are each amended to read as follows:

(1) Any civil penalty provided in RCW 90.64.026 (as recodified by this act), section 14 of this act, section 32 of this act, RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330 shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department, the department of agriculture, or the local air authority, describing the violation with reasonable particularity. Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department, the department of agriculture, or the authority, as appropriate, for the remission or mitigation of the penalty. Upon receipt of the application, the department, the department of agriculture, or authority may remit or mitigate the

penalty upon whatever terms the department, the department of agriculture, or the authority in its discretion deems proper. The department, the department of agriculture, or the authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

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

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

(a) Thirty days after receipt of the notice imposing the penalty;

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

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

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

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW

70.105.080, which shall be credited to the hazardous waste control and elimination account, created by RCW 70.105.180, ((~~and~~)) RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390 and chapter 16.-- RCW (created by section 44 of this act) which shall be credited to the livestock nutrient management grant account created by RCW 90.64.150 (as recodified by this act).

Sec. 39. RCW 43.21B.310 and 2004 c 204 s 5 are each amended to read as follows:

(1) Except as provided in RCW 90.03.210(2), any order issued by the department, the department of agriculture, or local air authority pursuant to section 29 of this act, section 33 of this act, RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department, the department of agriculture, or authority within thirty days after the date of receipt of the order. Except as provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means of appeal of such an order.

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

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

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

(a) The appellant's name and address;

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

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

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

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

(f) A statement setting forth the relief sought.

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

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

"NEW SECTION. **Sec. 40.** A new section is added to chapter 42.17 RCW to read as follows:

Information obtained from concentrated animal feeding operations and dairies under chapter 16.-- (created by section 44 of this act) or 90.48 RCW is subject to public disclosure only to the extent required in 40 C.F.R. Sec. 122.7(b) and (c).

NEW SECTION. **Sec. 41.** Section 17 of this act takes effect July 1, 2006.

NEW SECTION. **Sec. 42.** The following acts or parts of acts are each repealed:

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

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

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

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

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

(6) RCW 90.64.140 (Technical assistance teams--Standards and

specifications for dairy nutrient management plans) and 1998 c 262 s 10;

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

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

NEW SECTION. **Sec. 43.** RCW 90.64.900 and 90.64.901 are decodified.

NEW SECTION. **Sec. 44.** The following sections are codified or recodified in the following order as a new chapter in Title 16 RCW:

(1) Intent and overview/authority

RCW 90.64.005

RCW 90.64.010

Section 1 of this act

RCW 90.64.050

RCW 90.64.110

RCW 90.64.020

(2) Permits

RCW 90.64.120

Section 18 of this act

Section 19 of this act

Section 20 of this act

Section 21 of this act

Section 22 of this act

Section 24 of this act

Section 23 of this act

Section 34 of this act

(3) Nutrient management plans

RCW 90.64.026

RCW 90.64.028

Section 14 of this act

Section 26 of this act

(4) Field inspection and compliance

Section 25 of this act

RCW 90.64.023

Section 27 of this act

RCW 90.64.030

Section 29 of this act
Section 33 of this act
Section 32 of this act
Section 30 of this act
RCW 90.64.040
Section 28 of this act
Section 31 of this act
Section 35 of this act
RCW 90.64.100
(5) Miscellaneous
Section 15 of this act
Section 16 of this act
RCW 90.64.813
Section 17 of this act
RCW 90.64.150
Section 45 of this act

NEW SECTION. **Sec. 45.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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