

Public Disclosure in Numeric Ranges of Certain Information Held by Agencies for Specified Livestock Operations

Legislation in 2005 amended both the Livestock Nutrient Management Act and the Public Records Act to direct the Department of Agriculture to establish rules for the disclosure of certain types of information related to specified livestock operations. Information affected is generally available currently. However, under the new rules when a public disclosure request is made, specific numbers will be redacted and the appropriate range provided instead.

The rules are to establish numeric ranges for reporting: (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields where the information is available in records and documents held by local and state agencies.

Background

Livestock producers have been concerned about the public disclosure of information about their operations from records held by public agencies. Uncertainty over what an agency would consider confidential business information reinforced interest in establishing some parameters around what is disclosed. In 2005 and 2006 the industry was particularly concerned about information in Nutrient Management Plans and Farm Plans, however information is also found in inspection reports, enforcement documents and others records and reports.

In 2005, it became clear that operations covered by a federal Concentrated Animal Feeding Operation permit would have to make their nutrient management plans available to the public for review through the permit approval process. Other documents related to compliance for permitted facilities also had to be available for public review to be consistent with the federal Clean Water Act.

However, the livestock industry remained interested in gaining some protection for livestock facilities required to have a plan but not required to apply for a permit, or that had other facility related documents held by an agency, ie complaint inspection reports.

During the Legislative session in 2005, discussions regarding broader livestock nutrient management program issues led to the adoption of Substitute Senate Bill No. 5602 which directed WSDA to develop the subject rule on numeric ranges. Representatives of industry, the environmental community and the press negotiated language on what type of information would be covered and agreed that the ranges needed to meet needs of the industry for confidentiality and for the public to access 'meaningful' information. (See Attachment for specific language)

Rule Development

WSDA staff began developing the rule in the spring of 2006. An initial systematic approach was provided to a group of stakeholders for review and discussion. Initial stakeholders included Ecology, Conservation Commission, Conservation Districts, the Farm Bureau and major livestock industry organizations. A wider group of stakeholders, those on an email distribution list for livestock nutrient management issues, were provided early documents to review as well, although few comments were received from this group. Other programs at WSDA that might hold information in the five specified categories were also provided drafts and discussions were held with a number of program staff. Those programs were Weights and Measures, Animal Health and ID, Feed inspection program and Organic program.

While there was general agreement among the initial stakeholders on how we originally approached developing the ranges, that approach presented a number of procedural problems and a second proposal was drafted and submitted to stakeholders in November of 2006. The second approach was developed using information developed from the first approach and was also generally accepted.

However, there continued to be opposing views between some industry representatives who favored larger ranges at all sizes from small to large and representatives of the environmental and press community who wanted ranges for small operations to be broken down into smaller ranges. While animal numbers were the most sensitive, the number of acres and crop yields were also discussed.

Finally, in early January, 2007 representatives of the opposing positions met and negotiated ranges for the small operations that met an acceptable balance of confidentiality and useful information. With those smaller ranges agreed to, drafting of the final proposed ranges was done. That draft was then circulated to local governments including County Health and Development agencies for comment. No substantive comments were received.

Issues

1. The statute states that WSDA will establish the rules for information held by local and state agencies. WSDA can typically adopt rules that affect WSDA only. How other agencies choose to make use of the ranges will be up to them. Ecology has discussed identifying the WSDA rules as their policy for public disclosure and currently doesn't intend to adopt the rules.
2. In 2006 the legislature established an exemption for all farm plans developed by Conservation Districts except for those related to a permit, or required under Chapter 90.48 RCW, the state Water Pollution Control Act. This could be required under an enforcement action by Ecology.

Dairy Nutrient Management Plans are required under Chapter 90.64 RCW. However the dairy program elements are in place to ensure compliance with

Chapter 90.48 RCW. Should WSDA have a copy of a dairy plan, we would determine how we would respond to a public disclosure request on a case by case basis.

The exemption, however, does not include documents and records not related to the plan such as inspection reports that WSDA or another agency might have. Information in these documents and records would still be released in ranges.

Attachment

Attachment
Statutory Language

Substitute Senate Bill No. 5602: An ACT Relating to managing livestock nutrients
Signed by Governor Gregoir on May 17, 2005

Sections 3 and 4 amended Chapter 90.64 RCW and Chapter 42.17 RCW (changed to Chapter 42.56 RCW)

RCW 90.64.190
Information subject to public records disclosure – Rules

This section applies to dairies, AFOs and CAFOs, not required to apply for a permit. Information in plans, records, and reports obtained by state and local agencies from livestock producers under Chapter 510, Laws of 2005 regarding: (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields shall be disclosable in response to a request for public records under chapter 42.56 RCW only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

RCW 42.56.610
Certain information from dairies and feedlots limited – Rules.

The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

[2005 c 510 § 5. Formerly RCW 42.17.31923.]

Records: "information in plans, records, and reports"

Who: "dairies, AFOs, and CAFOs"

Held by: "state and local agencies"

2005 Legislation – SSB 5602:

RCW 90.64.190

This section applies to dairies, AFOs, and CAFOs, not required to apply for a permit. Information in plans, records, and reports obtained by state and local agencies from livestock producers under chapter 510, Laws of 2005 regarding (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields shall be disclosable in response to a request for public records under chapter 42.17 RCW only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

2005 Legislation – SSB 5602:

RCW 42.17.31923

The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

Records: "farm plans"

Who: "farm plans developed by conservation districts"

Held by: not limited – all state and local government

2006 Legislation – SSB 6617:

RCW 42.56.270

(13) (a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit.

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.17.31923 (as recodified by House Bill No. 2520) and 90.64.190.