
SUBSTITUTE SENATE BILL 6568

State of Washington 64th Legislature 2016 Regular Session

By Senate Ways & Means (originally sponsored by Senator Warnick)

READ FIRST TIME 02/09/16.

1 AN ACT Relating to establishing a state dairy groundwater
2 discharge permit that is issued under the sole authority of state
3 law; amending RCW 90.48.260, 90.64.030, and 90.64.120; adding new
4 sections to chapter 90.48 RCW; creating a new section; and providing
5 an expiration date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48
8 RCW to read as follows:

9 (1)(a) The department, in consultation with the department of
10 agriculture, must establish a general permit, known as the state
11 dairy groundwater discharge permit, issued under the sole authority
12 of this chapter that is available to concentrated animal feeding
13 operations that discharge exclusively to groundwater.

14 (b) A concentrated animal feeding operation that discharges to
15 groundwater but that does not discharge to surface waters must be
16 eligible to obtain coverage under either:

17 (i) The permit established under this section; or

18 (ii) Any combined permit issued under both the authority of this
19 chapter and the authority of the federal clean water act, 33 U.S.C.
20 Sec. 1251 et seq.

1 (c) A concentrated animal feeding operation that discharges
2 exclusively to groundwater electing to obtain coverage under the
3 permit established under this section is not required to obtain
4 coverage under any combined permit issued under both the authority of
5 this chapter and the authority of the federal clean water act, 33
6 U.S.C. Sec. 1251 et seq.

7 (2) A concentrated animal feeding operation that stores manure,
8 stores manure effluent, or that applies manure nutrients to land must
9 be eligible to apply for coverage under the permit established under
10 this section.

11 (3)(a) The department shall issue the permit established under
12 this section in consultation with the department of agriculture. The
13 department shall administer the permit jointly with the department of
14 agriculture.

15 (b) The department and the department of agriculture must rely on
16 the processes and procedures adopted pursuant to section 2 of this
17 act in administering the permit established under this section.

18 (4) All requirements in this section are subject to the
19 availability of amounts appropriated for the specific purposes
20 described.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48
22 RCW to read as follows:

23 (1) The department and the department of agriculture shall
24 operate the permit program for the state dairy groundwater discharge
25 permit established in section 1 of this act via a memorandum of
26 agreement regarding the administration of permits and enforcement of
27 permit conditions for the state dairy groundwater discharge permit.

28 (2) The permit administration procedures adopted pursuant to this
29 section must:

30 (a) Establish protocols that identify manure lagoons and effluent
31 storage systems that are a significant risk to groundwater resources;
32 and

33 (b) Identify and facilitate the use of federal and state cost-
34 share programs to support the improvements to manure lagoons and
35 effluent storage systems identified in (a) of this subsection.

36 (3) The department of agriculture has primary responsibility for
37 inspections of concentrated animal feeding operations covered by the
38 state dairy groundwater discharge permit.

1 (4) For purposes of this section and section 1 of this act,
2 concentrated animal feeding operations has the same meaning as the
3 term is defined in 40 C.F.R. Sec. 122.23, as of the effective date of
4 this section, but is limited to operations that meet the definition
5 of concentrated animal feeding operations based on the number of
6 dairy cows.

7 (5) All requirements in this section are subject to the
8 availability of amounts appropriated for the specific purposes
9 described.

10 **Sec. 3.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each
11 amended to read as follows:

12 (1) The department of ecology is hereby designated as the state
13 water pollution control agency for all purposes of the federal clean
14 water act as it exists on February 4, 1987, and is hereby authorized
15 to participate fully in the programs of the act as well as to take
16 all action necessary to secure to the state the benefits and to meet
17 the requirements of that act. With regard to the national estuary
18 program established by section 320 of that act, the department shall
19 exercise its responsibility jointly with the Puget Sound partnership,
20 created in RCW 90.71.210. The department of ecology may delegate its
21 authority under this chapter, including its national pollutant
22 discharge elimination permit system authority and duties regarding
23 animal feeding operations and concentrated animal feeding operations,
24 to the department of agriculture through a memorandum of
25 understanding. Until any such delegation receives federal approval,
26 the department of agriculture's adoption or issuance of animal
27 feeding operation and concentrated animal feeding operation rules,
28 permits, programs, and directives pertaining to water quality shall
29 be accomplished after reaching agreement with the director of the
30 department of ecology or shall be consistent with the requirements of
31 sections 1 and 2 of this act with respect to the administration of
32 the state dairy groundwater discharge permit. Adoption or issuance
33 and implementation shall be accomplished so that compliance with such
34 animal feeding operation and concentrated animal feeding operation
35 rules, permits, programs, and directives will achieve compliance with
36 all federal and state water pollution control laws. The powers
37 granted herein include, among others, and notwithstanding any other
38 provisions of this chapter or otherwise, the following:

1 (a) Complete authority to establish and administer a
2 comprehensive state point source waste discharge or pollution
3 discharge elimination permit program which will enable the department
4 to qualify for full participation in any national waste discharge or
5 pollution discharge elimination permit system and will allow the
6 department to be the sole agency issuing permits required by such
7 national system operating in the state of Washington subject to the
8 provisions of RCW 90.48.262(2). Program elements authorized herein
9 may include, but are not limited to: (i) Effluent treatment and
10 limitation requirements together with timing requirements related
11 thereto; (ii) applicable receiving water quality standards
12 requirements; (iii) requirements of standards of performance for new
13 sources; (iv) pretreatment requirements; (v) termination and
14 modification of permits for cause; (vi) requirements for public
15 notices and opportunities for public hearings; (vii) appropriate
16 relationships with the secretary of the army in the administration of
17 his or her responsibilities which relate to anchorage and navigation,
18 with the administrator of the environmental protection agency in the
19 performance of his or her duties, and with other governmental
20 officials under the federal clean water act; (viii) requirements for
21 inspection, monitoring, entry, and reporting; (ix) enforcement of the
22 program through penalties, emergency powers, and criminal sanctions;
23 (x) a continuing planning process; and (xi) user charges.

24 (b) The power to establish and administer state programs in a
25 manner which will ensure the procurement of moneys, whether in the
26 form of grants, loans, or otherwise; to assist in the construction,
27 operation, and maintenance of various water pollution control
28 facilities and works; and the administering of various state water
29 pollution control management, regulatory, and enforcement programs.

30 (c) The power to develop and implement appropriate programs
31 pertaining to continuing planning processes, area-wide waste
32 treatment management plans, and basin planning.

33 (2) The governor shall have authority to perform those actions
34 required of him or her by the federal clean water act.

35 (3) By July 31, 2012, the department shall:

36 (a) Reissue without modification and for a term of one year any
37 national pollutant discharge elimination system municipal storm water
38 general permit applicable to western Washington municipalities first
39 issued on January 17, 2007; and

1 (b) Issue an updated national pollutant discharge elimination
2 system municipal storm water general permit applicable to western
3 Washington municipalities for any permit first issued on January 17,
4 2007. An updated permit issued under this subsection shall become
5 effective beginning August 1, 2013.

6 (i) Provisions of the updated permit issued under (b) of this
7 subsection relating to new requirements for low-impact development
8 and review and revision of local development codes, rules, standards,
9 or other enforceable documents to incorporate low-impact development
10 principles must be implemented simultaneously. These requirements may
11 go into effect no earlier than December 31, 2016, or the time of the
12 scheduled update under RCW 36.70A.130(5), as existing on July 10,
13 2012, whichever is later.

14 (ii) Provisions of the updated permit issued under (b) of this
15 subsection related to increased catch basin inspection and illicit
16 discharge detection frequencies and application of new storm water
17 controls to projects smaller than one acre may go into effect no
18 earlier than December 31, 2016, or the time of the scheduled update
19 under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is
20 later.

21 (4) By July 31, 2012, the department shall:

22 (a) Reissue without modification and for a term of two years any
23 national pollutant discharge elimination system municipal storm water
24 general permit applicable to eastern Washington municipalities first
25 issued on January 17, 2007; and

26 (b) Issue an updated national pollutant discharge elimination
27 system municipal storm water general permit for any permit first
28 issued on January 17, 2007, applicable to eastern Washington
29 municipalities. An updated permit issued under this subsection
30 becomes effective August 1, 2014.

31 **Sec. 4.** RCW 90.64.030 and 2011 c 103 s 3 are each amended to
32 read as follows:

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

1 provide a copy of the report to the dairy producer within twenty days
2 of the investigation.

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

11 (3) The department may consider past complaints against the same
12 dairy farm from the same person and the results of its previous
13 inspections, and has the discretion to decide whether to conduct an
14 inspection if:

15 (a) The same or a similar complaint or complaints have been filed
16 against the same dairy farm within the immediately preceding six-
17 month period; and

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

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

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

31 (6) A dairy farm that is determined to be in violation of the
32 terms or conditions of the state dairy groundwater discharge permit,
33 or of an individual or general national pollution discharge
34 elimination system permit, or a significant contributor of pollution
35 based on actual water quality tests, photographs, or other pertinent
36 information is subject to the provisions of this chapter and to the
37 enforcement provisions of chapters 43.05 and 90.48 RCW, including
38 civil penalties levied under RCW 90.48.144.

39 (7) If the department determines that an unresolved water quality
40 problem from a dairy farm requires immediate corrective action, the

1 department shall notify the producer and the district in which the
2 problem is located. When corrective actions are required to address
3 such unresolved water quality problems, the department shall provide
4 copies of all final dairy farm inspection reports and documentation
5 of all formal regulatory and enforcement actions taken by the
6 department against that particular dairy farm to the local
7 conservation district and to the appropriate dairy farm within twenty
8 days.

9 (8) For a violation of water quality laws that is a first offense
10 for a dairy producer, the penalty may be waived to allow the producer
11 to come into compliance with water quality laws. The department shall
12 record all legitimate violations and subsequent enforcement actions.

13 (9) A discharge, including a storm water discharge, to surface
14 waters of the state shall not be considered a violation of this
15 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
16 therefore not be enforceable by the department of ecology or a third
17 party, if at the time of the discharge, a violation is not occurring
18 under RCW 90.64.010 (17). In addition, a dairy producer shall not be
19 held liable for violations of this chapter, chapter 90.48 RCW,
20 chapter 173-201A WAC, or the federal clean water act due to the
21 discharge of dairy nutrients to waters of the state resulting from
22 spreading these materials on lands other than where the nutrients
23 were generated, when the nutrients are spread by persons other than
24 the dairy producer or the dairy producer's agent.

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

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

38 (12) This section specifically acknowledges that if a party
39 covered under the state dairy groundwater discharge permit complies
40 with the permit and the dairy nutrient management plan conditions for

1 appropriate land application practices, the permit provides
2 compliance with chapter 90.48 RCW.

3 (13) A dairy producer who fails to have an approved dairy
4 nutrient management plan by July 1, 2002, or a certified dairy
5 nutrient management plan by December 31, 2003, and for which no
6 appeals have been filed with the pollution control hearings board, is
7 in violation of this chapter. Each month beyond these deadlines that
8 a dairy producer is out of compliance with the requirement for either
9 plan approval or plan certification shall be considered separate
10 violations of this chapter ((90.64—RCW)) that may be subject to
11 penalties. Such penalties may not exceed one hundred dollars per
12 month for each violation up to a combined total of five thousand
13 dollars. The department has discretion in imposing penalties for
14 failure to meet deadlines for plan approval or plan certification if
15 the failure to comply is due to lack of state funding for
16 implementation of the program. Failure to register as required in RCW
17 90.64.017 shall subject a dairy producer to a maximum penalty of one
18 hundred dollars. Penalties shall be levied by the department.

19 **Sec. 5.** RCW 90.64.120 and 2003 c 325 s 4 are each amended to
20 read as follows:

21 (1) Nothing in this chapter shall affect the department of
22 ecology's authority or responsibility to administer or enforce the
23 national pollutant discharge elimination system permits for operators
24 of concentrated dairy animal feeding operations, where required by
25 federal regulations or to administer the provisions of chapter 90.48
26 RCW.

27 (2) The department of agriculture may take enforcement action as
28 provided in this chapter against a dairy found to be in violation of
29 the terms or conditions of the state dairy groundwater discharge
30 permit issued under chapter 90.48 RCW.

31 (3) Unless the department of ecology delegates its authority
32 under chapter 90.48 RCW to the department of agriculture pursuant to
33 RCW 90.48.260, and until any such delegation of authority receives
34 federal approval, the transfer specified in RCW 90.64.901 shall not
35 preclude the department of ecology from taking action related to
36 animal feeding operations or concentrated animal feeding operations
37 to protect water quality pursuant to its authority in chapter 90.48
38 RCW. Before taking such actions, the department of ecology shall
39 notify the department of agriculture.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.48
2 RCW to read as follows:

3 (1) By November 1, 2018, the department and the department of
4 agriculture shall submit a report to the appropriate policy and
5 fiscal committees of the legislature on the progress of the
6 implementation of the permit established pursuant to sections 1 and 2
7 of this act. This report must include recommendations for the
8 establishment or improvement of programs that allow for shared costs
9 of manure lagoon or effluent storage system improvements that are
10 required of concentrated animal feeding operations under sections 1
11 and 2 of this act.

12 (2) All requirements in this section are subject to the
13 availability of amounts appropriated for the specific purposes
14 described.

15 (3) This section expires June 30, 2020.

16 NEW SECTION. **Sec. 7.** This act may be known and cited as the
17 dairy farm and groundwater resource sustainability act.

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