



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**Washington**

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## Nutrient Management Plans

### STATE OF WASHINGTON

- 1) **Rev. Code Wash. §§ 90.64 et seq.; WAC §§ 16-611 et seq.**
- 2) **Rev. Code Wash. §§ 90.48.035, .260; WAC § 173-220-060; Fact Sheet**

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Washington Code Reviser.*

#### 1) **Rev. Code Wash. §§ 90.64 et seq.; WAC §§ 16-611 et seq.**

##### **90.64.005. Findings.**

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.

#### **90.64.010. Definitions.**

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) “Certification” means:
  - (a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and
  - (b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy 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) “Conservation districts” or “district” means a subdivision of state government organized under chapter 89.08 RCW.
- (8) “Concentrated dairy animal feeding operation” means a dairy animal feeding operation subject to regulation under this chapter which the director designates 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 man-made ditch, flushing system, or other similar man-made 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) “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 producer” means a person who owns or operates a dairy farm.

(14) “Department” means the department of ecology under chapter 43.21A RCW.

(15) “Director” means the director of the department of ecology, or his or her designee.

(16) “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.

(17) “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;

(c)

(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

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

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

**90.64.015. Environmental excellence program agreements — Effect on chapter. [Repealed.]**

**90.64.017. Registration of dairy producers — Information required — Information to producers regarding chapter.**

(1) Every dairy producer licensed under chapter 15.36 RCW shall register with the department by September 1, 1998, and shall reregister with the department by September 1st of every even-numbered year. Every dairy producer licensed after September 1, 1998, shall register with the department within sixty days of licensing. The purpose of registration is to provide and update baseline information for the dairy nutrient management program.

(2) To facilitate registration, the department shall obtain from the food safety and animal health division of the department of agriculture a current list of all licensed dairy producers in the state and mail a registration form to each licensed dairy producer no later than July 15, 1998.

(3) At a minimum, the form shall require the following information as of the date the form is completed:

- (a) The name and address of the operator of the dairy farm;
- (b) The name and address of the dairy farm;
- (c) The telephone number of the dairy farm;
- (d) The number of cows in the dairy farm;
- (e) The number of young stock in the dairy farm;
- (f) The number of acres owned and rented in the dairy farm;
- (g) Whether the dairy producer, to the best of his or her knowledge, has a plan for managing dairy nutrient discharges that is commensurate with the size of his or her herd, and whether the plan is being fully implemented; and
- (h) If the fields where dairy nutrients are being applied belong to someone other than the dairy producer whose farm operation generated the nutrients, the name, address, and telephone number of the owners of the property accepting the dairy nutrients.

(4) In the mailing to dairy producers containing the registration form, the department shall also provide clear and comprehensive information regarding the requirements of this chapter.

(5) The department shall require the registrant to provide only information that is not already available from other sources accessible to the department, such as dairy licensing information.

**90.64.020. Concentrated dairy animal feeding operation — Designation — Permit.**

(1) The director of the department of ecology may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

- (a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

- (b) The location of the animal feeding operation relative to waters of the state;
- (c) The means of conveyance of animal wastes and process waters 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 waste waters into the waters of the state; and
- (e) 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.

**90.64.023. Inspection program.**

(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) Survey for evidence of violations;
- (b) Identify corrective actions for actual or imminent discharges that violate or could violate the state's water quality standards;
- (c) Monitor the development and implementation of dairy nutrient management plans; and
- (d) Identify dairy producers who would benefit from technical assistance 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 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 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.

**90.64.026. Dairy nutrient management plans — Elements — Approval — Timelines — Certification.**

(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 nutrient management plan. If at any time a dairy nutrient management plan fails to prevent the discharge of pollutants to waters of the state, it shall be required to be updated.

(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 database 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.

**90.64.028. Appeals from denial of plan approval or certification — Dairy producer-requested hearings — Extension of timelines.**

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

**90.64.030. Investigation of dairy farms — Report of findings — Corrective action — Violations of water quality laws — Waivers — Penalties.**

(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) 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 producer subject to the complaint, and to the complainant if the person gave his or her name and address to the department at the time the complaint was filed.

(3) The department may consider past complaints against the same 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) The same or a similar complaint or complaints have been filed against the same dairy farm within the immediately preceding six-month period; and

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

(4) 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 producer subject to the complaint, and the department shall place the decision in the department's administrative records.

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

(6) A dairy farm that is determined to be a significant contributor of pollution based on actual water quality tests, photographs, or other pertinent information 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.

(7) If the department determines that an unresolved water quality problem from a dairy farm requires immediate corrective action, the department shall notify the 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 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. The department shall record all legitimate violations and subsequent enforcement actions.

(9) A discharge, including a stormwater discharge, to surface waters of the state 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 of ecology or a third party, if at the time of the discharge, a violation is not occurring under RCW 90.64.010 (17). In addition, a dairy 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 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 producer or the dairy producer's agent.

(10) As provided under RCW 7.48.305, agricultural activities associated with the management of dairy 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) 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 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.

**90.64.040. Appeal from actions and orders of the department.**

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.

**90.64.050. Duties of department — Annual report to commission.**

(1) The department has the following duties:

- (a) Identify existing or potential water quality problems resulting from dairy farms through implementation of the inspection program in RCW 90.64.023;
- (b) Inspect a dairy farm upon the request of a dairy producer;
- (c) Receive, process, and verify complaints concerning discharge of pollutants from all dairy farms;
- (d) 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;
- (e) Administer and enforce national pollutant discharge elimination system permits for operators of concentrated dairy animal feeding operations, where required by federal regulations and state laws or upon request of a dairy 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) Require the use of dairy 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.

**90.64.060. Resolution of complaints. [Repealed.]**

**90.64.070. Duties of conservation district.**

(1) The conservation district has the following duties:

- (a) Provide technical assistance to the department in identifying and correcting existing water quality problems resulting from dairy farms through implementation of the inspection program in RCW 90.64.023;
- (b) Immediately refer complaints received from the public regarding discharge of pollutants to the department;
- (c) Encourage communication and cooperation between the conservation district personnel and local department personnel;
- (d) Provide technical assistance to dairy producers in developing and implementing a dairy nutrient management plan; and
- (e) Review, approve, and certify dairy nutrient management plans that meet the minimum standards developed under this chapter.

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

**90.64.080. Duties of conservation commission.**

(1) The conservation commission has the following duties:

- (a) Provide assistance as may be appropriate to the conservation districts in the discharge of their responsibilities as management agencies in dairy nutrient management program implementation;
- (b) Provide coordination for conservation district programs at the state level through special arrangements with appropriate federal and state agencies, including oversight of the review, approval, and certification of dairy nutrient management plans;
- (c) Inform conservation districts of activities and experiences of other conservation districts relative to agricultural water quality protection, and facilitate an interchange of advice, experience, and cooperation between the districts;
- (d) Provide an informal hearing for disputes between dairy producers and local conservation districts pertaining to: (i) Denial of approval or denial of certification of dairy nutrient management plans; (ii) modification or amendment of plans; (iii) conditions contained in plans; (iv) application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and (v) the failure to adhere to the plan review and approval timelines identified in RCW 90.64.026. An informal hearing may also provide an opportunity for dairy producers who are constrained from timely compliance with

the planning requirements of this chapter because of financial hardship or local permitting delays to petition for additional time to comply;

(e) Encourage communication between the conservation district personnel and local department personnel;

(f) Accept nominations and appoint members to serve on the \*advisory and oversight committee with advice of the Washington association of conservation districts and the department;

(g) Provide a cochair to the \*advisory and oversight committee;

(h) Report to the legislature by December 1st of each year until 2003 on the status of dairy nutrient management planning and on the technical assistance provided to dairy producers in carrying out the requirements of this chapter; and

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

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

**90.64.090. Compliance levels — Duties of conservation district — Duties of department. [Repealed.]**

**90.64.100. Parties' liability.**

A party acting under this chapter is not liable for another party's actions under this chapter.

**90.64.102. Recordkeeping violations — Civil penalty.**

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

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

(a) The gravity and magnitude of the violation;

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

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

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

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

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

#### **90.64.110. Rules.**

The department may adopt rules as necessary to implement this chapter.

#### **90.64.120. Department's authority under federal law or chapter 90.48 RCW not affected.**

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

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

#### **90.64.130. Database.**

(1) By October 1, 1998, the department, in consultation with the \*advisory and oversight committee, shall develop and maintain a database to account for the implementation of this chapter.

(2) The database shall track registrations; inspection dates and results, including findings of violations; regulatory and enforcement actions; and the status of dairy nutrient management plans. In addition, the number of dairy farm inspections by inspector shall be tallied by month. A summary of database information shall be provided quarterly to the \*advisory and oversight committee.

(3) Any information entered into the database by the department about any aspect of a particular dairy operation may be reviewed by the affected dairy producer upon request. The department shall correct any information in the database upon a showing that the



information is faulty or inaccurate. Complaints that have been filed with the department and determined to be unfounded, invalid, or without merit shall not be recorded in the database. Appeals of decisions related to dairy nutrient management plans to the pollution control hearings board or to any court shall be recorded, as well as the decisions of those bodies.

**90.64.140. Technical assistance teams — Standards and specifications for dairy nutrient management plans. [Repealed.]**

**90.64.150. Livestock nutrient management account.**

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 account. 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.

**90.64.160. Grants for dairy producers — Statement of environmental benefits — Development of outcome-focused performance measures. [Repealed.]**

**90.64.170. Livestock nutrient management program — Review of statutory authority — Recommendations for statutory changes — Prerequisite to administering federal program.**

(1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The departments of agriculture and ecology shall examine their current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department of agriculture for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260, \*90.64.813, and 90.64.901. In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in \*RCW 90.64.813. The recommendations must be submitted to the legislature by the departments of agriculture and ecology prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO.

**90.64.180. Protocol for monitoring waters near dairies and CAFOs.**

(1) The department of ecology shall develop and maintain a standard protocol for water quality monitoring of the waters of the state within the vicinity of dairies and CAFOs. The protocol shall include sampling methods and procedures and identify the water quality constituents to be monitored.

(2) The department of ecology shall submit the initial protocol developed according to this section to the appropriate committees of the legislature by December 1, 2005.

**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.

**90.64.200. Inspecting and investigating conditions relating to the pollution of waters of the state — Access denied — Application for search warrant.**

The director of agriculture may enter at all reasonable times in or upon dairy farms for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state.

If the director of agriculture or the director's duly appointed agent is denied access to a dairy farm, he or she may apply to a court of competent jurisdiction for a search warrant authorizing access to the property and facilities at a reasonable time for purposes of conducting tests and inspections, taking samples, and examining records. To show that access is denied, the director of agriculture shall file with the court an affidavit or declarations containing a description of his or her attempts to notify and locate the owner or the owner's agent and to secure consent. Upon application, the court may issue a search warrant for the purposes requested.

**90.64.800. Reports to the legislature.**

The department, in conjunction with the conservation commission and \*advisory and oversight committee, shall report to the legislature by December 1st of each year until 2003, on progress made in implementing chapter 262, Laws of 1998. At a minimum, the reports shall include data on inspections, the status of dairy nutrient planning, compliance with water quality standards, and enforcement actions. The report shall also provide recommendations on how implementation of chapter 262, Laws of 1998 could be facilitated for dairy producers and generally improved.

The conservation commission shall include in the report to the legislature filed December 1, 1999, an evaluation of whether the fiscal resources available to the commission, to conservation districts, and to Washington State University dairy nutrient management experts are adequate to fund the technical assistance teams established under \*\*RCW 90.64.140 and to develop and certify plans as required by the schedule established in RCW 90.64.026. If the funding is insufficient, the report shall include an estimate of the amount of funding necessary to accomplish the schedule contained in RCW 90.64.026.

**90.64.810. Dairy nutrient management task force. [Expired.]**

**90.64.811. Dairy nutrient management task force — Recommendations. [Expired.]**

**90.64.813. Livestock nutrient management program development and oversight committee. [Expired.]**

**90.64.900. Effective date — 1998 c 262.**

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 1998].

**90.64.901. Transfer of powers, duties, and functions to the department of agriculture.**

(1) All powers, duties, and functions of the department of ecology pertaining to chapter 90.64 RCW are transferred to the department of agriculture. All references to the director of ecology or the department of ecology in the Revised Code of Washington shall be construed to mean the director of agriculture or the department of agriculture when referring to the functions transferred in this section.

(2)

(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of ecology pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of agriculture. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of ecology in carrying out the powers, functions, and duties transferred shall be made available

to the department of agriculture. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of agriculture.

(b) Any appropriations made to the department of ecology for carrying out the powers, functions, and duties transferred shall, on July 1, 2003, be transferred and credited to the department of agriculture.

(c) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of ecology pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of agriculture. All existing contracts and obligations shall remain in full force and shall be performed by the department of agriculture.

(4) The transfer of the powers, duties, and functions of the department of ecology shall not affect the validity of any act performed before July 1, 2003.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

**WAC 16-611-005. Purpose.**

The purpose of this chapter is to provide for fair and uniform determination of civil penalties issued for violations of chapter 90.64 RCW.

**WAC 16-611-010. Definitions.**

"Agronomic rate" means the application of nutrients to supply crop or plant nutrient needs to achieve realistic yields and minimize the movements of nutrients to surface and ground waters.

"Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

"Dairy producer" means a person who owns or operates a licensed dairy farm.

"Department" means the Washington state department of agriculture.

"Nutrient," for purposes of this rule, means any product or combination of products used to supply crops with plant nutrients including, but not limited to, manure or commercial fertilizer.

"Transfer of manure" means the transfer of manure, litter or process waste water to other persons when the receiving facility is in direct control of:

- (a) Application acreage;
- (b) Application rate;
- (c) Application times; and
- (d) Transfer rate and time.

**WAC 16-611-020. Recordkeeping requirements.**

(1) In accordance with RCW 90.64.010 (17)(c) and 90.64.102, dairy producers must maintain records to demonstrate that applications of nutrients to crop land are within acceptable agronomic rates.

(2) Dairy producers must maintain the following records to demonstrate that applications of nutrients to the land were within acceptable agronomic rates:

- (a) Soil analysis.
  - (i) Annual postharvest soil nitrate nitrogen analysis;
  - (ii) Every three years, a current soil analysis that includes:
    - (A) Organic matter;
    - (B) pH;
    - (C) Ammonium nitrogen;
    - (D) Phosphorus (the Bray-1 method must be used to determine soil phosphorus for soils below pH 7 and the Olsen bicarbonate method must be used for soils at or above pH 7);
    - (E) Potassium; and
    - (F) A measure of electrical conductivity.

(b) Nutrient analysis for all sources of organic and inorganic nutrients including, but not limited to, manure and commercial fertilizer supplied for crop uptake. Manure and other organic sources of nutrients must be analyzed annually for organic nitrogen, ammonia nitrogen, and phosphorus.

(c) Application records must include:

- (i) Field identification and year of application;
- (ii) Crop grown in each field where the application occurred;
- (iii) Crop nutrient needs based on expected crop yield;
- (iv) Nutrient sources available from residual soil nitrogen including contributions from soil organic matter, previous legume crop, and previous organic nutrients applied;
- (v) Date of applications, method of application, nutrient sources, nutrient analysis, amount of nitrogen and phosphorus applied and available for each source;
- (vi) Total amount of nitrogen and phosphorus applied to each field each year; and
- (vii) Weather conditions twenty-four hours prior to and at time of application.

(d) Manure transfer records, including imports or exports. Records must include:

- (i) Date of manure transfer;
- (ii) Amount of nutrients transferred;
- (iii) The name of the person supplying and receiving the nutrients; and
- (iv) Nutrient analysis of manure transferred.

(e) Irrigation water management records. Records must include:

- (i) Field identification;
- (ii) Total amount of irrigation water applied to each field each year.

**WAC 16-611-100. Assessing civil penalties.**

The department may assess civil penalties.

- (1) Nothing in this chapter shall prevent the department from:
  - (a) Choosing not to pursue a civil penalty;
  - (b) Issuing a notice of correction in lieu of pursuing a civil penalty;
  - (c) Negotiating a settlement of cases of such terms and for reasons as it deems necessary; or
  - (d) Referring a violation to any federal or state agency with jurisdiction over the activities in question.
- (2) Prior violations may be used by the department for the purpose of determining the appropriate penalty for current violations.
- (3) Responses and mitigating actions taken by the dairy and responsible party may be used by the department for the purpose of determining the appropriate penalty for current violations.
- (4) Civil penalties under this rule are imposed pursuant to the procedures set forth in RCW 43.21B.300 and may be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.

**WAC 16-611-110. Issuing a civil penalty without first issuing a notice of correction.**

- (1) Pursuant to RCW 43.05.100, the department may issue a notice of correction when the department becomes aware of conditions that are not in compliance with the applicable laws and rules enforced by the department.
- (2) The department may assess a civil penalty without first issuing a notice of correction in accordance with RCW 43.05.110 and 34.05.110.

**WAC 16-611-200. Penalty for lack of recordkeeping.**

- (1) In accordance with RCW 90.64.010 (17)(c) and 90.64.102, failure to maintain all records necessary to show that applications of nutrient to the land were within acceptable agronomic rates may be subject to a civil penalty. The aggregate amount of civil penalties issued to a dairy producer under this section shall not exceed five thousand dollars per calendar year. Each violation is a separate and distinct offense.
- (2) The median penalty shall be assessed unless an adjustment is warranted due to the presence of aggravating or mitigating factors.
- (3) Aggravating factors. The department may consider aggravating circumstances and enhance the penalty based on the seriousness of the violation. When the department

determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the median and maximum amount or increase the penalty above the maximum penalty listed for the violation in subsection (5) of this section. Aggravating factors include, but are not limited to, the following:

- (a) The gravity and magnitude of the violation;
- (b) Whether the violation was repeated or is continuous;
- (c) Whether the cause of the violation was due to negligence, or an intentional act; and
- (d) The immediacy and extent to which the violation threatens the public health or safety or harms the environment.

(4) Mitigating factors. The department may consider mitigating circumstances and reduce the penalty. When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the minimum and median amount listed for the violation in WAC 16-611-300(5). Mitigating factors include, but are not limited to, the following:

- (a) Whether the cause of the violation was an unavoidable accident;
- (b) The violator's efforts to correct the violation.

(5) Penalty schedule for recordkeeping violations.

<b>Penalties</b>		<b>Recordkeeping Violations</b>	
	<b>Minimum</b>	<b>Median</b>	<b>Maximum</b>
First	\$100.00	\$250.00	\$2500.00
Second	\$200.00	\$500.00	\$3000.00
Third	\$400.00	\$1000.00	\$5000.00

**WAC 16-611-300. Penalty for discharge of pollutants.**

(1) In accordance with RCW 90.64.010 (17)(a), 90.48.080, and 90.48.144, a discharge of pollutants into the waters of the state may be subject to a civil penalty in the amount of up to ten thousand dollars a day for each violation. Each violation is a separate and distinct offense and, in case of a continuing violation, every day's continuance is a separate and distinct violation.



(2) The median penalty shall be assessed unless an adjustment is warranted due to the presence of aggravating or mitigating factors.

(3) Aggravating factors. The department may consider aggravating circumstances and enhance the penalty based on the seriousness of the violation. When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the median and maximum amount. Aggravating factors include, but are not limited to, the following:

- (a) The magnitude of harm or potential harm to:
  - (i) Waters of the state;
  - (ii) Humans, animals, plants, property, the environment; or
  - (iii) Species listed as threatened or endangered caused by the violation(s).
- (b) The similarity of the current alleged violation to previous history of the dairy, or the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.
- (c) Economic value derived from noncompliance.

(4) Mitigating factors. The department may consider mitigating circumstances and reduce the penalty. When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the minimum and median amount listed for the violation in subsection (3) of this section. Mitigating factors include, but are not limited to, the following:

- (a) Voluntary disclosure of a violation;
- (b) Speed and effectiveness of actions taken to correct the violation or stop a discharge to waters of the state;
- (c) Remedial actions taken to repair or compensate for impacts or that will result in increased public protection or that will permanently result in a decreased likelihood that the violation will be repeated.

(5) Penalty schedule for discharges to waters of the state.

Violation	Discharge to Waters of the State		
	Minimum	Median	Maximum
First	\$1000.00	\$4000.00	\$10,000.00

Second	\$2000.00	\$6000.00	\$10,000.00
Third	\$4000.00	\$8000.00	\$10,000.00<1>

<1> Statutory authority RCW 90.48.144.

## **2) Rev. Code Wash. §§ 90.48.035, .260; WAC § 173-220-060; Fact Sheet**

### **90.48.035. Rule-making authority.**

The department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW 90.48.010.

### **90.48.260. Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions.**

(1) The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of this chapter or otherwise, the following:

- (a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the

department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to:

- (i) Effluent treatment and limitation requirements together with timing requirements related thereto;
- (ii) applicable receiving water quality standards requirements;
- (iii) requirements of standards of performance for new sources;
- (iv) pretreatment requirements;
- (v) termination and modification of permits for cause;
- (vi) requirements for public notices and opportunities for public hearings;
- (vii) appropriate relationships with the secretary of the army in the administration of his or her responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his or her duties, and with other governmental officials under the federal clean water act;
- (viii) requirements for inspection, monitoring, entry, and reporting;
- (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions;
- (x) a continuing planning process; and
- (xi) user charges.

(b) The power to establish and administer state programs 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; and the administering of various state water pollution control management, regulatory, and enforcement programs.

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

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

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

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

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

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

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

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

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

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

**WAC 173-220-060. Fact sheets.**

(1) The department shall prepare a fact sheet for every draft permit determination. Such fact sheets shall, at a minimum, summarize the following:

(a) The type of facility or activity which is the subject of the application;

- (b) The location of the discharge in the form of a sketch or detailed description;
  - (c) The type and quantity of the discharge, including at least the following:
    - (i) The rate or frequency of the proposed discharge;
    - (ii) For thermal discharges, the average summer and winter temperatures; and
    - (iii) The average discharge in pounds per day, or other appropriate units, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under RCW 90.48.010, 90.52.040, 90.54.020 and sections 301, 302, 306, or 307 of the FWPCA and regulations published thereunder;
  - (d) The conditions in the proposed permit;
  - (e) The legal and technical grounds for the draft permit determination, including an explanation of how conditions meet both the technology-based and water quality-based requirements of the FWPCA and chapters 90.48, 90.52, and 90.54 RCW;
  - (f) The effluent standards and limitations applied to the proposed discharge;
  - (g) The applicable water quality standards, including identification of the uses for which receiving waters have been classified;
  - (h) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and
  - (i) The procedures for the formulation of final determinations (in more detailed form than that given in the public notice) including:
    - (i) The thirty-day comment period required by WAC 173-220-050(2);
    - (ii) Procedures for requesting a public hearing and the nature thereof; and
    - (iii) Any other procedures by which the public may participate in the formulation of the final determinations.
- (2) The department shall send a fact sheet to the applicant and, upon request, to any other person.
- (3) The department shall add the name of any person upon request to a mailing list to receive copies of fact sheets.

# **Manure Pollution Prevention Plan**

[Fact Sheet](#)