

WSDA (Kyrre Flege)

The attached document includes comments and inline changes provided to WMS on 5/21/2025 to clarify specific authorities and limitations to those authorities relevant to the Dairy Nutrient Management Act 90.64 RCW. They are provided again here to ensure that appropriate clarifications are in the record for this planning process, and for reference by staff. These changes are necessary to update and to replace an outdated document included in previous non-point plans presented as Appendix C "enforcement authorities factsheet", concerning regulatory gaps. WSDA recommends that this appendix be removed from the plan, and clarifications incorporated into the main document sections. If you have any questions or concerns, please reach out to Kyrre Flege, NMTS Program Manager, Washington State Department of Agriculture.

2.1.3 Dairy Nutrient Management Act

The Dairy Nutrient Management Act¹⁹ (DNMA) is administered by the Washington State Department of Agriculture's (WSDA) Nutrient Management Technical Services (NMTS) program, with key roles for the State Conservation Commission and conservation districts. This act was passed by the legislature who found 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 groundwaters in Washington."

Chapter 90.64 RCW requires all grade "A" licensed cow dairies under Chapter 15.36 RCW to:

- Register with WSDA's program and provide basic farm and contact information.
- Develop a dairy nutrient management plan (DNMP) that describes how manure and process wastewater will be managed, including production, collection, storage, and agronomic use, along with stormwater diversion and management.
- Obtain approval of the DNMP within six months of licensing. The DNMP is to be approved by the dairy producer and local conservation district board, then certified by both parties. Certification means that the conservation district board attests that the elements necessary to implement the DNMP have been constructed or otherwise put into place and the operator attests to managing dairy nutrients as specified in the DNMP.
- Consent to inspections performed by WSDA to survey for evidence of violations, identify corrective actions for actual or imminent discharges, monitor the implementation of practices outlined in the DNMP, and provide technical assistance as needed.
- Maintain records demonstrating agronomic use of all nutrients.

While WSDA administers the program, the DNMA duties to the State Conservation Commission and conservation districts are outside direct oversight from WSDA. The Dairy Nutrient Management Act required the Washington State Conservation Commission (WSCC), by November 1, 1998, to develop a document that describes the minimum elements of a DNMP required to be approved by the local conservation district board (RCW 90.64.026). In addition, WSCC may authorize other methods and technologies than those of the Natural Resources

Conservation Service (NRCS), if they meet specific standards (see RCW 90.64.026(3)). The WSCC maintains its minimum elements checklist for approval of a DNMP, available on its [website](#). The WSCC has not changed the listed minimum required elements of a DNMP since 1998, however, the NRCS conservation practice standards or "BMPs" required and incorporated by reference are regularly updated. All DNMPs are required to meet practice standards in place at the time the plan is approved.

¹⁹ Chapter 90.64 RCW.

The DNMP development process is completed by the dairy producer in consultation with a local conservation district farm planner, NRCS, or a private farm planner.²¹ The DNMP development process includes evaluation of animal and nutrient inventory, surface and groundwater risk(s), manure and process wastewater collection, conveyance and storage needs, crop production history, and land application acreage needs. The DNMP process identifies the producer's goals, resource risk(s), and BMPs to protect water resources. Failure to obtain an approved and certified farm plan is enforceable with penalties up to \$5,000. Dairy producers rely on the technical assistance offered by local conservation districts to comply with the planning requirements of the DNMA, and the legislature provides an exception for compliance with those requirements if the local conservation district does not have the funding to perform their duties.

16-611 WAC specifies requirements for recordkeeping and the penalty matrixes for both recordkeeping and water quality violations.

Chapter 90.64 RCW requires WSDA to implement an inspection program to monitor dairy operations for DNMP implementation, recordkeeping violations, and conditions that create a risk of discharge to waters of the state. Chapter 43.05 RCW (Technical Assistance) requires WSDA to identify dairies that could benefit from additional technical assistance. Under Chapter 43.05 RCW, WSDA may provide technical assistance that includes evaluating applicable BMPs outlined in the DNMP, an evaluation of BMP implementation status and effectiveness, identification of potential additional BMPs or management changes that need to occur to protect water quality, consultation on applicable state laws and rules, and use of informal enforcement to incentivize compliance. Alternatively, WSDA may refer dairy producers for technical assistance to non-regulatory partners like local conservation districts, NRCS, or private consultants and engineers when their programs are a better fit for the resource concern. Often the local conservation districts are the first resource used by dairies, as they provide free-of-charge planning and technical assistance services, and access to local, state, or federal cost-share funding for certain projects.

If a discharge or substantial potential to pollute is identified, WSDA starts with use of a warning letter, Notice of Correction, or Notice of Violation as the situation warrants and using an escalating enforcement process. WSDA seeks to resolve actual or potential violations with informal enforcement but may use formal enforcement processes for repeat or egregious violations. If a discharge to surface water or groundwater is documented, WSDA has the authority to issue civil penalties.²² If a substantial potential to pollute is documented, WSDA has the authority to issue administrative orders or immediate action orders, affirmed in 2022 by the Pollution Control Hearings Board (PCHB No. 22-014 in *Sundstrom Family Farm v. Washington State Department of Agriculture*). The authority to enforce discharges or potential discharge violations of RCW 90.48 extends also to conditions where WSDA finds that the "the farm plan fails to prevent the discharge of pollutants to waters of the state," allowing WSDA to require that the DNMP be updated as part of mitigation measures.

²¹ WSDA does not review and approve plans. Instead, there is an is an appeals process outlined in RCW 90.64.028 that can include an informal appeal to the WSCC or a direct appeal to the Pollution Control Hearings Board.

WSDA may require a DNMP to be updated when there is a documented potential to discharge, but DNMPs are not otherwise required to be updated. DNMPs are guidance documents that evaluate and document the infrastructure used to contain, collect, store and agronomically use nutrients. This information guides producers, helps avoid the discharge or potential discharge of pollutants, and assists with compliance with state and federal laws and regulations governing water quality, solid waste, mortality management, and growth management. Unlike permits, a DNMP does not have enforceable compliance conditions, and the failure to follow guidance in the DNMP is not a violation of the DNMA or other law.

Chapter 90.64 RCW requires WSDA to prepare an “annual report” for water quality and conservation partners, published on the WSDA website and available by request. The most recent report is included in Appendix D.

DNMA and Concentrated Animal Feeding Operations

NMTS’ dairy compliance program is managed in conformance with a Memorandum of Understanding (MOU) established between WSDA and Ecology, last updated in 2011. Ecology is responsible to EPA for Clean Water Act compliance for animal feeding operations and concentrated animal feeding operations and retains the authority under Chapter 90.48 RCW to take compliance actions on any livestock operation where human health or environmental damage has or may occur due to potential or actual discharges. However, in accordance with the MOU, Ecology recognizes WSDA as the lead on water quality investigations, technical assistance, preparing recommendations for enforcement as necessary, and all compliance actions, including enforcement, for violations at non-permitted dairies. WSDA and Ecology coordinate on preparing recommendations for enforcement actions for permitted dairy farms where Ecology maintains responsibility to enforce permit violations.