

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 56

Introduced by Fischer, 43.

Read first time January 8, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Livestock Waste Management Act; to amend
2 sections 54-2417, 54-2422, 54-2431, and 54-2435, Revised
3 Statutes Cumulative Supplement, 2008; to redefine a term;
4 to change provisions relating to permit requirements,
5 applications, and rules and regulations; and to repeal
6 the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 54-2417, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 54-2417 For purposes of the Livestock Waste Management
4 Act:

5 (1) Animal feeding operation means a location where beef
6 cattle, dairy cattle, horses, swine, sheep, poultry, or other
7 livestock have been, are, or will be stabled or confined and
8 fed or maintained for a total of forty-five days or more in
9 any twelve-month period and crops, vegetation, forage growth, or
10 post-harvest residues are not sustained in the normal growing
11 season over any portion of the location. Two or more animal feeding
12 operations under common ownership are deemed to be a single animal
13 feeding operation if they are adjacent to each other or if they
14 utilize a common area or system for the disposal of livestock
15 waste. Animal feeding operation does not include aquaculture as
16 defined in section 2-3804.01;

17 (2) Best management practices means schedules of
18 activities, prohibitions, maintenance procedures, and other
19 management practices found to be the most effective methods based
20 on the best available technology achievable for specific sites to
21 prevent or reduce the discharge of pollutants to waters of the
22 state and control odor where appropriate. Best management practices
23 also includes operating procedures and practices to control site
24 runoff, spillage, leaks, sludge or waste disposal, or drainage from
25 raw material storage;

1 (3) Construct means the initiation of physical onsite
2 activities;

3 (4) Construction and operating permit means the state
4 permit to construct and operate a livestock waste control facility,
5 including conditions imposed on the livestock waste control
6 facility and the associated animal feeding operation;

7 (5) Construction approval means an approval issued prior
8 to December 1, 2006, by the department allowing construction of a
9 livestock waste control facility;

10 (6) Council means the Environmental Quality Council;

11 (7) Department means the Department of Environmental
12 Quality;

13 (8) Discharge means the accidental or intentional
14 spilling, leaking, pumping, pouring, emitting, emptying, or dumping
15 of pollutants into any waters of the state or in a place which will
16 likely reach waters of the state;

17 (9) Existing livestock waste control facility means a
18 livestock waste control facility in existence prior to April 15,
19 1998, that does not hold a permit and which has requested an
20 inspection prior to January 1, 2000;

21 (10) Livestock waste control facility means any structure
22 or combination of structures utilized to control livestock waste
23 at an animal feeding operation until it can be used, recycled,
24 or disposed of in an environmentally acceptable manner. Such
25 structures include, but are not limited to, diversion terraces,

1 holding ponds, debris basins, liquid manure storage pits, lagoons,
2 and other such devices utilized to control livestock waste;

3 (11) Major modification means an expansion or increase
4 to the lot area or feeding area; change in the location of the
5 animal feeding operation; change in the methods of waste treatment,
6 waste storage, or land application of waste; increase in the number
7 of animals; change in animal species; or change in the size or
8 location of the livestock waste control facility;

9 (12) National Pollutant Discharge Elimination System
10 permit means either a general permit or an individual permit issued
11 by the department pursuant to subsection (11) of section 81-1505.
12 A general permit authorizes categories of disposal practices or
13 livestock waste control facilities and covers a geographic area
14 corresponding to existing geographic or political boundaries,
15 though it may exclude specified areas from coverage. General
16 permits are limited to the same or similar types of animal feeding
17 operations or livestock waste control facilities which require the
18 same or similar monitoring and, in the opinion of the Director of
19 Environmental Quality, are more appropriately controlled under a
20 general permit than under an individual permit;

21 (13) New animal feeding operation means an animal feeding
22 operation constructed after July 16, 2004;

23 (14) New livestock waste control facility means any
24 livestock waste control facility for which a construction permit,
25 an operating permit, a National Pollutant Discharge Elimination

1 System permit, a construction approval, or a construction and
2 operating permit, or an application therefor, is submitted on or
3 after April 15, 1998;

4 (15) Operating permit means a permit issued prior
5 to December 1, 2006, by the department after the completion
6 of the livestock waste control facility in accordance with
7 the construction approval and the submittal of a completed
8 certification form to the department;

9 (16) Person has the same meaning as in section 81-1502;
10 and

11 (17) Waters of the state has the same meaning as in
12 section 81-1502.

13 Sec. 2. Section 54-2422, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 54-2422 Animal feeding operations with animal capacity
16 that is less than three hundred cattle, two hundred mature dairy
17 cattle, seven hundred fifty swine weighing fifty-five pounds or
18 more per head, three thousand swine weighing less than fifty-five
19 pounds per head, one thousand five hundred ducks with liquid manure
20 handling system, ten thousand ducks without liquid manure handling
21 system, nine thousand chickens with liquid manure handling system,
22 thirty-seven thousand five hundred chickens without liquid manure
23 handling system, twenty-five thousand laying hens without liquid
24 manure handling system, sixteen thousand five hundred turkeys,
25 three thousand sheep, or one hundred fifty horses are exempt from

1 the inspection and construction and operating permit requirements
2 of the Environmental Protection Act, the Livestock Waste Management
3 Act, and the rules and regulations adopted and promulgated by the
4 council pursuant to such acts, unless the animal feeding operation
5 has intentionally or with willful negligence discharged pollutants
6 to waters of the state or the department has determined that ~~such~~ a
7 discharge is more likely than not to occur.

8 Sec. 3. Section 54-2431, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 54-2431 (1) For purposes of this section:

11 (a) Applicant means the person who has applied for
12 a National Pollutant Discharge Elimination System permit, a
13 construction and operating permit, or a major modification of
14 a National Pollutant Discharge Elimination System permit or
15 construction and operating permit, but does not include any other
16 person who is a relative, partner, member, shareholder, resident,
17 parent company, subsidiary, or other affiliate of the applicant;

18 (b) Discharge violation means a discharge, found by the
19 department after investigation, notice, and hearing, to have been
20 caused intentionally or by willful negligence on the part of the
21 applicant or permitholder; and

22 (c) Permitholder means the person who has received
23 a National Pollutant Discharge Elimination System permit, a
24 construction and operating permit, or a major modification of
25 a National Pollutant Discharge Elimination System permit or

1 construction and operating permit, but does not include any other
 2 person who is a relative, partner, member, shareholder, resident,
 3 parent company, subsidiary, or other affiliate of the permitholder.

4 (2) Notwithstanding the rules and regulations adopted and
 5 promulgated under subdivision (1)(e) of section 54-2435, the ~~(1)~~
 6 The department shall may reject an application for a new National
 7 Pollutant Discharge Elimination System permit, an application for
 8 a new construction and operating permit, or major modification or
 9 an application for a major modification of a National Pollutant
 10 Discharge Elimination System permit or a construction and operating
 11 permit, and the department may revoke or suspend a National
 12 Pollutant Discharge Elimination System permit or construction and
 13 operating permit, upon a finding pursuant to subsection (3) of this
 14 section that the applicant or permittee permitholder is unsuited to
 15 perform the obligations of a permitholder.

16 ~~(2)~~ (3) The applicant or permittee permitholder shall be
 17 determined unsuited to perform the obligations of a permitholder
 18 if the department finds, upon an investigation and hearing,
 19 that within the past five years the applicant or permittee-
 20 permitholder:

21 (a) Has allowed three discharges to waters of the state
 22 at any facility committed three separate and distinct discharge
 23 violations at the same animal feeding operation in Nebraska
 24 owned or operated by the applicant unless the discharge is in
 25 compliance with National Pollutant Discharge Elimination System

1 ~~permit conditions, if applicable, and rules and regulations adopted~~
2 ~~and promulgated under the Livestock Waste Management Act and~~
3 ~~the department was notified in accordance with the rules and~~
4 ~~regulations, or permitholder; or~~

5 (b) Has a criminal conviction for a violation of section
6 81-1506 or a felony criminal conviction for violation of the
7 environmental law in any jurisdiction.

8 Sec. 4. Section 54-2435, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 54-2435 (1) The council shall adopt and promulgate
11 rules and regulations for animal feeding operations under the
12 Environmental Protection Act and the Livestock Waste Management Act
13 which provide for:

14 (a) Requirements for animal feeding operations which
15 shall include:

16 (i) Location restrictions and setbacks to protect waters
17 of the state;

18 (ii) Applications and inspection requests;

19 (iii) Identification of ownership;

20 (iv) Numbers, size, and types of animals;

21 (v) Type of waste control facility;

22 (vi) Design, construction, operation, and maintenance;

23 (vii) Monitoring of surface or ground water which may be
24 necessary as determined by the department where a significant risk
25 to waters of the state exists;

- 1 (viii) Nutrient management, a nutrient management plan
2 to be submitted with the application for a National Pollutant
3 Discharge Elimination System permit or a construction and operating
4 permit, and a description of the types of changes made to the
5 nutrient management plan required to be updated pursuant to section
6 54-2426;
- 7 (ix) Closure and corrective action;
- 8 (x) Best management practices; and
- 9 (xi) Other such requirements deemed necessary to protect
10 waters of the state;
- 11 (b) A National Pollutant Discharge Elimination System
12 permit process for animal feeding operations;
- 13 (c) National Pollutant Discharge Elimination System
14 permit issuance, denial, renewal, revocation, suspension,
15 reinstatement, termination, or transfer;
- 16 (d) Training requirements for permit holders;
- 17 (e) Construction and operating permit issuance, denial,
18 revocation, suspension, reinstatement, termination, or transfer;
- 19 (f) Construction and operating permit and National
20 Pollutant Discharge Elimination System permit major modification
21 issuance, denial, revocation, ~~suspension~~, or termination;
- 22 (g) Public notice and hearing requirements;
- 23 (h) Requirements for existing livestock waste control
24 facilities;
- 25 (i) Requirements for adequate area and proper methods and

1 rates for land application of waste and nutrients such as nitrogen
2 and phosphorus;

3 (j) Requirements for record keeping and reporting;

4 (k) A fee schedule pursuant to sections 54-2423 and
5 54-2428;

6 (l) Procedures for collection of fees pursuant to this
7 section and sections 54-2423 and 54-2428; ~~and~~

8 (m) Procedures for exemptions as provided for in the
9 requirements of the Environmental Protection Act and the Livestock
10 Waste Management Act; ~~and-~~

11 (n) Procedures governing proceedings to determine
12 discharge violations under section 54-2431.

13 (2) Rules and regulations adopted and promulgated under
14 this section may be based upon the size of the animal feeding
15 operation and the form of waste management and may include more
16 stringent requirements for larger animal feeding operations and
17 waste control technologies that are more likely to cause adverse
18 impacts.

19 (3) The council may adopt and promulgate any other
20 rules and regulations necessary to carry out the purposes of the
21 Environmental Protection Act and the Livestock Waste Management
22 Act.

23 (4) Rules and regulations adopted pursuant to this
24 section shall be no less stringent than the federal Clean Water
25 Act, 33 U.S.C. 1251 et seq.

1 (5) If a conflict arises between the authority of the
2 council under the Environmental Protection Act and the authority of
3 the council under the Livestock Waste Management Act, the authority
4 of the council under the Livestock Waste Management Act shall
5 control.

6 Sec. 5. Original sections 54-2417, 54-2422, 54-2431,
7 and 54-2435, Revised Statutes Cumulative Supplement, 2008, are
8 repealed.