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Governor

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Senator Heath Mello
District 5
Nebraska Legislature
State Capitol Building
Lincoln, NE 68509

Dear Senator Mello,

Each year the Nebraska Department of Environmental Quality is required to submit a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the Livestock Waste Management Act. The Department implements the Livestock Waste Management Act through our Livestock Waste Control Program. The Department is pleased to provide the Appropriations Committee a report on the activities of the agency's Livestock Waste Control Program during fiscal year 2015.

Large concentrated animal feeding operations (CAFOs) holding state permits and CAFOs with coverage under a National Pollutant Discharge Elimination System permit pay an annual permit fee based on the number animals permitted. By law, fees are required to meet 20% of the Department's program costs for the previous fiscal year. The rate of the annual permit fee can be adjusted annually. The Department does not propose any permit fee changes for fiscal year 2016. The Department also collects inspection fees and permit application fees, the rates of which are established in regulation.

The Department is happy to answer any questions or provide additional information concerning activities under the Livestock Waste Management Act if that would be helpful to the Appropriations Committee. Please contact me at 402-471-3585.

Sincerely

A handwritten signature in blue ink, appearing to read "Jim Macy".

Jim Macy
Director

Enclosure



**FY2015 ANNUAL REPORT TO THE LEGISLATURE
LIVESTOCK WASTE CONTROL PROGRAM
Nebraska Department of Environmental Quality
December 2015**

Introduction

Each year the Nebraska Department of Environmental Quality is required to submit a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the Livestock Waste Management Act (Neb. Rev. Stat. §54-2416 to 54-2438). The Department implements the Livestock Waste Management Act through our Livestock Waste Control Program. The Department is pleased to provide the Appropriations Committee a report on the activities of the agency's Livestock Waste Control Program during fiscal year 2015.

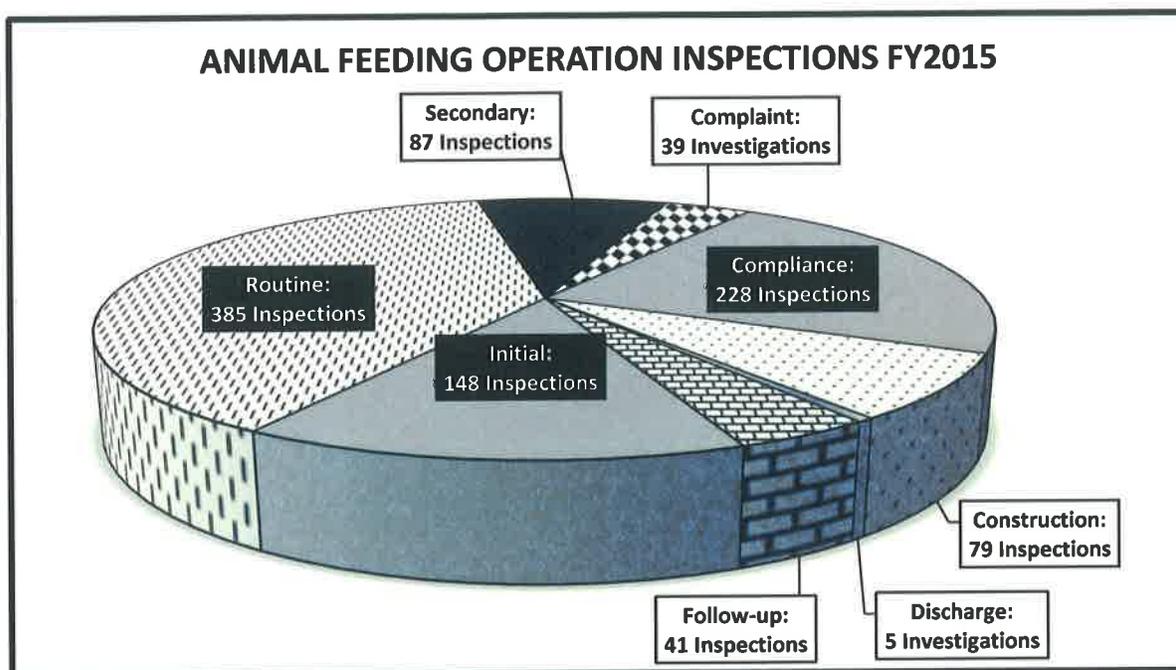
Overview

The Livestock Waste Control Program is charged with the overall responsibility to protect Nebraska's surface water and groundwater from discharge of livestock waste from any of the thousands of Animal Feeding Operations (AFOs) in Nebraska.

To accomplish this responsibility, the program administers *Title 130 - Livestock Waste Control Regulations*. The LWC program primarily focuses on the 795 active large Concentrated Animal Feeding Operations (CAFOs) required to have permits, but also works with approximately 2,000 Medium AFOs. The LWC Program uses inspections, permitting, and periodic monitoring to fulfill this responsibility. The permitting includes administering the National Pollutant Discharge Elimination System (NPDES) program for CAFOs.

Amendments to Title 130 became effective October 4, 2011 to reflect changes in the U.S. Environmental Protection Agency (EPA) CAFO Rule for NPDES permitting, which primarily involved who needs to apply for NPDES permit coverage. The changes were necessary to ensure the Department would continue to administer the NPDES permit program for EPA. As a result, only CAFOs that discharge are required to apply for NPDES permit coverage.

Inspections



Livestock Waste Control Program staff conducted a total of 1012 livestock waste control inspections and investigations in FY2015 (including complaint and discharge investigations). The chart above illustrates the breakdown by type of inspection or investigation. A concerted effort was made during the fiscal year to revisit many medium sized operations to ensure that they were in compliance with Title 130 and the EPA CAFO Rule.

A short description of each type of inspection and investigation follows:

Initial Inspection. Before constructing a new operation or expanding an existing operation, all medium and large AFOs – whether or not the operation currently is permitted -- must request an initial inspection by LWC Program staff. The reason for this inspection is to determine if livestock waste control facilities (LWCF) must be constructed, expanded, or modified to prevent a discharge and to properly manage the livestock waste generated by the operation.

Post Construction Inspection. Upon completion of any required construction of a LWCF, program staff conduct a post-construction inspection to verify the waste control facility was constructed as approved by the Department.

Routine Inspections. Once a CAFO or an AFO has received a permit, and the Department has approved operation of the LWCF, program staff will conduct periodic, routine inspections to monitor operation of the livestock waste control facilities, management of the operation's livestock waste, and the records these CAFOs and AFOs are required to maintain. Routine inspections are regularly scheduled inspections of an AFO, involving a detailed, extensive inspection of the LWCF, recordkeeping, and waste management at the operation.

Follow-up Inspections. These are conducted in response to some specific activity, situation, or request by the operation. Follow-up inspections could be prompted by an operation's request for a "second opinion" on a requirement; or to monitor the AFO's progress on completing a construction or repair project; or to follow up after a complaint inspection or enforcement action, for example.

Compliance Status Inspections. Generally conducted to verify the AFO's operating status or level of compliance with a specific requirement; these inspections are usually less urgent, non-emergency situations.

Discharge Investigations. Discharge investigations are conducted when discharges of livestock waste from livestock waste control facilities are reported. Sometimes these discharges are not recorded as complaints because the AFO does self-reporting, as required by the regulations.

Complaint Investigations. When a complaint is received, LWC Program staff will investigate the complaint and may conduct an on-site complaint investigation.

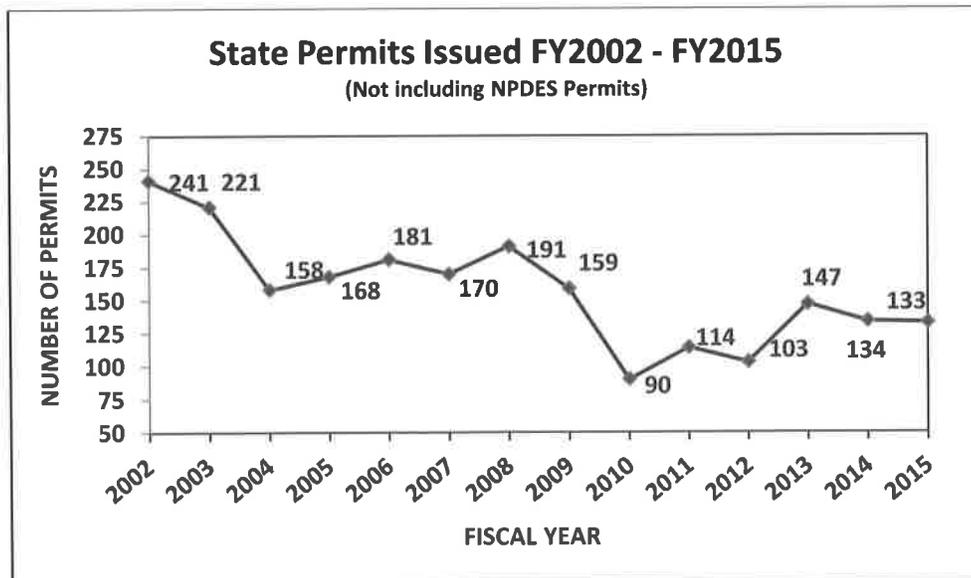
Secondary Inspections. Secondary Inspections are primarily conducted for training purposes and to assist the primary inspector in evaluating unusual or atypical AFOs.

State Permitting

After conducting an initial inspection, the Department may require the AFO to submit an application for a Construction and Operating Permit – the state permitting process for livestock waste control facilities – prior to construction of livestock waste control facilities.

Construction and Operating Permits – FY2015		
Type of Application or Permit	Applications Received	Permits Issued
New permits	40	54
Modified permits	54	52
Transfer permits	39	27
TOTAL	133	133

The Department received a total of 133 permit applications and issued 133 permits during FY2015, as shown in the table to the right. The totals do not include applications received or permits issued for any NPDES permits. The chart below shows the total number of state permits issued annually for livestock waste control facilities since FY2002. There were more Construction and Operating Permits issued than applications received because the Department updated some existing Construction Permits, Construction Approvals, and/or Operating Permits to Construction and Operating Permits if the AFOs updated their nutrient management plans to current Title 130 standards. The updates were mainly in conjunction with NPDES Permit renewals or transferred permits.



Once a permitted AFO has completed its construction project, the Department conducts a post-construction inspection. If the post-construction inspection shows the construction was completed as approved, the Department notifies the AFO that operation of the new livestock waste control facility is approved. In FY2015, the Department gave approval to 134 AFOs for operation of their new or expanded livestock waste control facilities.

National Pollutant Discharge Elimination System (NPDES) Permit

The program also oversees the NPDES permitting process for livestock, issuing coverage under individual NPDES permits to CAFOs, as well as coverage under a NPDES General Permit for Concentrated Animal Feeding Operations Confining Cattle. These permits expire every five years, and permittees are required to submit a reissuance application to continue NPDES permit coverage.

for livestock waste control facilities in FY2015.

NPDES PERMITS – FY2015		
Type of NPDES Application/Permit	Applications Received	Permits Issued
GENERAL PERMIT FOR CAFOs CONFINING CATTLE		
New or Reissuance	96	50
Modified or Transferred	28	16
SUBTOTAL GENERAL PERMIT:	124	69
INDIVIDUAL PERMITS		
New Coverage	4	1
Modified or Transferred	2	4
Reissued	6	2
SUBTOTAL INDIVIDUAL PERMIT:	12	7
NPDES TOTALS:	136	73

Fees

The annual fee is assessed on all permitted Large CAFOs and all CAFOs covered under an NPDES permit. The fee is determined based upon the number of head of livestock for which the operation has a permit. The fees provide 20% of the Department’s costs to administer the livestock waste control program, as required by statute. The Department received \$246,454 in annual permit fees from 795 permitted large AFOs. In addition, the Department received \$52,650 in initial inspection fees (156 inspections), \$43,700 in permit application fees (212 applications), and \$24,750 in late payment fees (nine operations), for a total of \$367,554 in fees.

The chart below lists the size categories for AFOs, as well as the rate, by species, of the annual permit fee for FY2015. The fee amount is based on the operation’s permitted capacity. The program seldom works with operations in the Small AFO category (those with less than the minimum number of head listed for a Medium AFO) because these operations usually are exempt from the inspection and permitting requirements by statute.

**Animal Feeding Operations (AFO)
Categories and Annual Permit Fee Rates**

SPECIES	LARGE	MEDIUM	ANNUAL PERMIT FEE RATE
Cattle/Calves/ Heifers	≥ 1,000	300 - 999	\$0.05 per head
Dairy Cows	≥ 700	200 - 699	\$0.075 per head
Swine – 55 lbs. or more	≥ 2,500	750 - 2,499	\$2.00 per 100 *
Swine – Weaned or Nursery Pigs	≥ 10,000	3,000 - 9,999	\$0.50 per 100 *
Chickens – Laying Hens, Broilers: Liquid Manure System	≥ 30,000	9,000 - 29,999	\$1.50 per 1,000 *
Chickens – Laying Hens: Dry Manure System	≥ 82,000	25,000 - 81,999	\$0.50 per 1,000 *
Chickens – except Laying Hens: Dry Manure System	≥ 125,000	37,500 - 124,999	\$0.50 per 1,000 *
Turkeys	≥ 55,000	16,500 - 54,999	\$1.00 per 1,000 *
Horses	≥ 500	150 - 499	\$0.10 per head
Sheep/Lambs	≥ 10,000	3,000 - 9,999	\$0.50 per 100 *

***NOTE:** Or any fraction of the Unit of calculation

General information about the Livestock Waste Control Program, including applications, fact sheets, forms, guidance documents, copies of each of the NPDES General Permits, Title 130 regulations, and public notices of permit issuance or denial, can all be found on the Department's website at: <http://deq.ne.gov>.

Water Quality Monitoring – Surface Water

The Surface Water Unit of the Water Quality Assessment Section receives reports of fish kills, complaints and questions concerning the quality and possible pollution of Nebraska's rivers, streams, lakes, and ponds. Occasionally the reported fish kills and complaints that the Surface Water Unit receives are related to animal feeding operations and livestock waste control facilities.

During FY2015, the Surface Water Unit received reports on nine fish kills, up slightly from the previous year's seven fish kill reports. Of these nine reported fish kills, none were believed to be attributed to livestock waste. There were also no livestock waste-related fish kills in FY2014.

The Surface Water Unit received a total of 46 complaints about Nebraska's surface waters during FY2015, up slightly from last year's 43 complaints received. Only one of the 46 complaints received this year involved livestock waste, which was down from the number of livestock related complaints received during FY2014. While many of these cases were referred to other Department programs that more closely relate to the problem, sometimes the Surface Water Unit provides assistance through investigations and/or collecting samples to help document conditions.

Upon receiving a complaint or a report of a fish kill, Surface Water Unit staff, Livestock Waste Control Program staff or other Department inspectors investigate the report or complaint. The

investigators verify the complaint or report, attempt to identify the source of the problem, and gather samples for analysis, if appropriate.

If the source of the problem is determined to be livestock waste-related, Livestock Waste Control Program staff work to identify a responsible party and correct any problems caused by improper livestock waste management, including cooperation with other Department programs if appropriate. If a responsible party is identified, the Department may seek additional compliance or enforcement actions, as necessary.

Water samples taken by the Surface Water Unit – whether at the site of a problem or as part of the extensive routine sampling done by the unit's staff – are analyzed to detect the presence of pollutant sources, including livestock waste. The analysis looks for ammonia, chlorides, bacteria, nutrients, and organic matter present in the sample. Even though livestock waste is not the only source of these pollutants, elevated concentrations of these parameters can indicate its presence. These pollutants are of special concern because they can significantly lower water quality if they reach rivers, streams, and lakes. These pollutants may impair the biological communities in the water, kill the fish, result in water unfit for swimming because of bacterial pollution, increase algae blooms in the water body, and raise the potential for the growth of toxic algae.

For additional information on surface water quality data or monitoring programs, please refer to the 2014 Nebraska Water Monitoring Programs Report and the 2014 Surface Water Quality Integrated Report, which are available on the NDEQ's web site, <http://deg.ne.gov>.

Water Quality Monitoring - Groundwater

The Groundwater Unit of the Water Quality Assessment Section has been reviewing plans for livestock waste control facilities since October 1997 to determine the need for groundwater monitoring. Groundwater Unit staff prepare a review for each animal feeding operation using site-specific information to determine the potential for groundwater pollution by the livestock waste control facility. The review considers numerous factors, including:

1. Distance between groundwater and the bottom of the livestock waste control facility;
2. Direction of groundwater flow;
3. Type of soils and sediments in the unsaturated zone; and
4. Whether the groundwater is used as drinking water near the livestock waste control facility.

If the Department determines that groundwater monitoring is needed, the operation is required to prepare a groundwater monitoring plan, with details on monitoring well placement, construction, and groundwater sampling techniques. The plan must be approved by the Department before being implemented. Groundwater is tested for nitrate as nitrogen, ammonia as nitrogen, and chloride, as well as measurement of the depth to groundwater. Samples are required to be collected twice a year – spring and fall -- with results submitted to the Department within 45 days of sampling.

Since October 1997, Groundwater Unit staff have reviewed permit applications for 1,187 separate animal feeding operations, and re-evaluated livestock waste control facilities at another 457 operations due to expansion or design changes. Slightly more than one-third (35%) of the 1,187 permit applications reviewed, or 413 AFOs, have been recommended for groundwater monitoring.

During FY2015, the Department required 10 operations to submit groundwater monitoring plans, approved 10 groundwater monitoring plans, and reviewed 529 sets of groundwater

monitoring results. To date, the Department has approved a total of 373 groundwater monitoring plans and received at least one set of groundwater monitoring results from 303 operations.

The Department is tracking and evaluating the groundwater sampling results received. Once an animal feeding operation has submitted at least three sampling events, Groundwater Unit staff evaluate the operation's livestock waste control facility to determine if groundwater quality is being impacted. Currently, 289 AFOs have submitted at least three sets of sampling results. Of these 289 AFOs, eight operations now sample and submit results once, rather than twice, each year, based on the quality and consistency of their groundwater results. On the other hand, several operations have been required to do additional work due to the inconsistent results from their groundwater sampling.

LIVESTOCK PROGRAM STATISTICS FOR FY2015

Inspections – FY2015

Total Initial Inspection Requests Received156

Large 65
Medium..... 85
Small 6

Total Number of Inspections/Investigations Performed1012

Total Initial Inspections..... 148

Large 63
Medium..... 79
Small 6

Total Post-Construction Inspections 79

Large 64
Medium..... 15
Small 0

Total Routine (Scheduled) Inspections..... 385

Large299
Medium..... 82
Small 4

Total Number of Compliance Status Inspections..... 228

Large 72
Medium.....119
Small 37

Total Number of Follow-Up Inspections 41

Large 18
Medium..... 17
Small 6

Total Number of Discharge Investigations 5

Large 5
Medium..... 0
Small 0

Total Number of Complaint Investigations 39

Total Number of Secondary Inspections 87

Permits – FY2015

Total Number of New Permit Applications Received (excluding NPDES)	42
Large	27
Medium.....	15
Small	0
Total Number of Applications for Modified/Transferred State Permits	89
New Construction & Operating Permits Issued	54
Large	35
Medium.....	19
Small	0
Modified/Transferred State Permits Issued.	79
Large	69
Medium.....	10
Small	0
 NPDES General Permits	
New Coverage Applications Received.....	15
Reissuance of Coverage Applications Received	81
Modification/Transfer Requests Received	28
Permit Coverage Issued/Reissued/Modified/Transferred	76
 NPDES Individual Permits	
New Applications Received	4
Reissuance Applications Received	6
Modification/Transfer Requests Received	2
Permit Coverage Issued/Reissued to CAFOs.....	7

Livestock Program Costs and Fees Received – FY2015

Total Program Costs	\$ 1,602,415
Inspection Fees Received.....	\$ 77,400
Inspection Fees Received	\$ 52,650
Late Fees Received.....	\$ 24,750
Permit Application Fees Received.....	\$ 43,700
Total Annual Permit Fees Received.....	<u>\$ 246,454</u>
Total Program Fees Received	\$ 367,554