

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 56**

FINAL READING

Introduced by Fischer, 43; Utter, 33.

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 negligently discharged pollutants to waters of  
6 the state or the department has determined that such a discharge is  
7 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  
19 the department after investigation, notice, and hearing, to have  
20 been caused intentionally or negligently by the applicant or  
21 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.