

LEGISLATIVE BILL 975

Approved by the Governor March 16, 2006

Introduced by Natural Resources Committee: Schrock, 38, Chairperson; Hudkins, 21; Kopplin, 3; Kremer, 34; Louden, 49; McDonald, 41; Smith, 48; Stuhr, 24

AN ACT relating to pollution regulation; to amend sections 54-2416, 54-2417, 54-2418, 54-2419, 54-2422, 54-2423, 54-2424, 54-2425, 54-2426, 54-2428, 54-2431, 54-2432, 54-2433, 54-2435, and 81-1513, Reissue Revised Statutes of Nebraska, and section 54-2429, Revised Statutes Supplement, 2005; to change provisions of the Livestock Waste Management Act; to change procedures for the granting of variances from the Department of Environmental Quality rules or regulations; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 54-2416, Reissue Revised Statutes of Nebraska, is amended to read:

54-2416 Sections 54-2416 to 54-2435 and sections 16, 17, and 18 of this act shall be known and may be cited as the Livestock Waste Management Act.

Sec. 2. Section 54-2417, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) Animal feeding operation means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste. ~~Animal feeding operation includes concentrated animal feeding operations as defined in section 54-2424.~~ Animal feeding operation does not include aquaculture as defined in section 2-3804.01;

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

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

~~(4) Construction approval means an approval issued by the department allowing construction of a livestock waste control facility;~~

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

(5) Construction approval means an approval issued prior to the operative date of this section by the department allowing construction of a livestock waste control facility;

~~(5) (6) Council means the Environmental Quality Council;~~

~~(6) (7) Department means the Department of Environmental Quality;~~

~~(7) (8) Discharge means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the state or in a place which will likely reach waters of the state;~~

~~(8) (9) Existing livestock waste control facility means a livestock waste control facility in existence prior to April 15, 1998, that does not hold a permit and which has requested an inspection prior to January 1, 2000;~~

~~(9) (10) Livestock waste control facility means any structure or combination of structures utilized to control livestock waste at an animal feeding operation until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include, but are not limited to, diversion terraces, holding ponds, debris basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock~~

waste;

~~(10)~~ (11) Major modification means an expansion or increase to the lot area or feeding area; change in the location of the animal feeding operation; change in the methods of waste treatment, waste storage, or land application of waste; increase in the number of animals; change in animal species; or change in the size or location of the livestock waste control facility;

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

~~(11)~~ (13) New animal feeding operation means an animal feeding operation constructed after July 16, 2004;

~~(12)~~ (14) New livestock waste control facility means any livestock waste control facility for which a construction permit, an operating permit, a National Pollutant Discharge Elimination System permit, a construction approval, or a construction and operating permit, or ~~construction approval~~ an application therefor, is submitted on or after April 15, 1998;

~~(13)~~ Permit means a National Pollutant Discharge Elimination System permit, either a general permit or an individual permit, issued by the department pursuant to subsection ~~(11)~~ of section 81-1505 or a permit issued prior to January 1, 2006, by the department for a livestock waste control facility until the animal feeding operation is exempted or permitted under the National Pollutant Discharge Elimination System. A general permit authorizes categories of disposal practices or livestock waste control facilities and covers a geographic area corresponding to existing geographic or political boundaries, though it may exclude specified areas from coverage. General permits are limited to the same or similar types of animal feeding operations or livestock waste control facilities which require the same or similar monitoring and, in the opinion of the Director of Environmental Quality, are more appropriately controlled under a general permit than under an individual permit;

(15) Operating permit means a permit issued prior to the operative date of this section by the department after the completion of the livestock waste control facility in accordance with the construction approval and the submittal of a completed certification form to the department;

~~(14)~~ (16) Person has the same meaning as in section 81-1502; and

~~(15)~~ (17) Waters of the state has the same meaning as in section 81-1502.

Sec. 3. Section 54-2418, Reissue Revised Statutes of Nebraska, is amended to read:

54-2418 The department shall (1) administer the animal feeding operation permitting program in accordance with the National Pollutant Discharge Elimination System of the federal Clean Water Act, 33 U.S.C. 1251 et seq., through the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts and (2) administer the state program for ~~construction approval~~ construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.

Sec. 4. Section 54-2419, Reissue Revised Statutes of Nebraska, is amended to read:

54-2419 (1) No new animal feeding operation shall be issued a National Pollutant Discharge Elimination System permit or a construction and operating permit in any part of a watershed that feeds directly or indirectly into a cold water class A stream, as ~~designated under delineated~~ pursuant to section 54-2421.

(2) An existing animal feeding operation may not expand if its livestock waste control facility is located within one mile of a designated cold water class A stream segment delineated pursuant to section 54-2421 and the same cold water class A stream watershed as the animal feeding operation, except that an existing animal feeding operation used for research sponsored by the University of Nebraska at a facility owned by the University of Nebraska may expand if the department determines based on scientific

information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

~~(2)~~ (3) Existing animal feeding operations may receive a new or modified permit National Pollutant Discharge Elimination System permit, a new or modified construction and operating permit, a modified operating permit, or a modified construction approval if:

(a) The existing animal feeding operation does not currently have a National Pollutant Discharge Elimination System permit or a construction and operating permit and upon inspection by the department a determination is made that one is necessary;

(b) The existing animal feeding operation modifies its operation but does not expand its approved livestock waste control facility; ~~or~~

(c) The existing animal feeding operation's livestock waste control facility is located more than two miles from a designated cold water class A stream segment delineated pursuant to section 54-2421 and in the same cold water class A stream watershed as the animal feeding operation; ~~or -~~

(d) The existing animal feeding operation or livestock waste control facility is located less than two miles but more than one mile from a cold water class A stream delineated pursuant to section 54-2421, and the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

~~(3)~~ (4) The department may deny or restrict an application for a permit regarding a transfer or major modification of an existing National Pollutant Discharge Elimination System permit or a construction and operating permit based upon the potential degradation of a cold water class A stream.

Sec. 5. Section 54-2422, Reissue Revised Statutes of Nebraska, is amended to read:

54-2422 Animal feeding operations with animal capacity that is less than three hundred cattle, two hundred mature dairy cattle, seven hundred fifty swine weighing fifty-five pounds or more per head, three thousand swine weighing less than fifty-five pounds per head, one thousand five hundred ducks with liquid manure handling system, ten thousand ducks without liquid manure handling system, nine thousand chickens with liquid manure handling system, thirty-seven thousand five hundred chickens without liquid manure handling system, twenty-five thousand laying hens without liquid manure handling system, sixteen thousand five hundred turkeys, three thousand sheep, or one hundred fifty horses are exempt from the inspection and ~~construction approval~~ construction and operating permit requirements of the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated by the council pursuant to such acts, unless the animal feeding operation has discharged pollutants to waters of the state or the department has determined that such a discharge is more likely than not to occur.

Sec. 6. Section 54-2423, Reissue Revised Statutes of Nebraska, is amended to read:

54-2423 (1) ~~Any~~ If any person owning or operating an animal feeding operation that (a) does not hold a National Pollutant Discharge Elimination System permit, an operating permit, or a construction and operating permit or have construction approval, (b) has not been notified by the department that no National Pollutant Discharge Elimination System permit or construction and operating permit is required, or (c) is not exempt under section 54-2422, such person shall, on forms prescribed by the department, request the department to inspect such person's animal feeding operation to determine if a livestock waste control facility is required. If an inspection is requested prior to January 1, 1999, an inspection fee for such inspection shall not be assessed. For inspections requested on or after July 16, 2004, there shall be an inspection fee established by the council with a minimum fee of one hundred dollars and a maximum fee of five hundred dollars. Such fee may be set according to animal capacity.

(2) The department shall, in conjunction with natural resources districts and the Cooperative Extension Service of the University of Nebraska, publicize information to make owners and operators of affected animal feeding operations aware of the need to request an inspection.

(3) Any person required to request an inspection under this section who operates an animal feeding operation after January 1, 2000, except an animal feeding operation exempted by the department from National Pollutant Discharge Elimination System permit requirements prior to July 16, 2004, without first submitting the request for inspection required under this section shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each

month a violation continues shall constitute a separate offense.

Sec. 7. Section 54-2424, Reissue Revised Statutes of Nebraska, is amended to read:

54-2424 (1) All large concentrated animal feeding operations, as defined in 40 C.F.R. 122.23, as such regulation existed on January 1, 2004, shall seek coverage under a permit unless the owner or operator of the operation has received notification from the department of a determination that the operation has no potential to discharge manure, litter, or process wastewater.

(2) All medium concentrated animal feeding operations, meaning any animal feeding operation with the type and number of animals that fall within any of the ranges listed in 40 C.F.R. 122.23(b)(6)(i), as such regulation existed on January 1, 2004, shall seek coverage under a permit if:

(a) Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(b) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the animal feeding operation or otherwise come into direct contact with the animals confined in the animal feeding operation.

(3) An animal feeding operation that (a) does not require a permit and (b) has the type and number of animals that fall within any of the ranges listed in 40 C.F.R. 122.23(b)(6)(i) shall, in addition to any other requirements of the Environmental Protection Act, Livestock Waste Management Act, and rules and regulations adopted and promulgated pursuant to such acts, be subject to the same or substantially similar operating requirements that existed on January 1, 2004. Any animal feeding operation which was in existence on January 1, 2004, and does not have any permit on the operative date of this section shall be subject, in addition to any other requirements of the Environmental Protection Act, Livestock Waste Management Act, and rules and regulations adopted and promulgated pursuant to such acts, to the same or substantially similar operating requirements as the requirements that existed on January 1, 2004.

Sec. 8. Section 54-2425, Reissue Revised Statutes of Nebraska, is amended to read:

54-2425 (1) After an initial inspection has been conducted pursuant to section 54-2423 for each new application for construction approval a construction and operating permit or major modification submitted to the department, the department shall, within ten days, make a determination as to whether a National Pollutant Discharge Elimination System permit is required for the proposed animal feeding operation. If an application has been submitted prior to an initial inspection being conducted pursuant to section 54-2423, such application shall be returned to the applicant without the department conducting any review of the application.

(2) If it is determined that a National Pollutant Discharge Elimination System permit is required, the department shall contact the applicant to determine whether the applicant requests the department to delay review of the construction approval construction and operating permit or major modification application until an individual National Pollutant Discharge Elimination System permit application is submitted.

(3) If the applicant requests the department to delay review of the construction approval construction and operating permit or major modification application, upon receipt of the individual National Pollutant Discharge Elimination System permit application and the construction approval construction and operating permit or major modification application, the applications shall be reviewed simultaneously utilizing the processes and timelines for review of an individual National Pollutant Discharge Elimination System permit application.

(4) If (a) the department determines a National Pollutant Discharge Elimination System permit is not required or (b) if the applicant requests the department to proceed with review of the construction approval construction and operating permit or major modification application independent of a National Pollutant Discharge Elimination System permit application, the department shall, for both subdivisions (4)(a) and (4)(b) of this section:

(i) Within five days send ~~notification~~ a copy of the application to the natural resources district or districts and the county board or boards of the counties in which the livestock waste control facility is located or proposed to be located. The natural resources district or districts and the county board or boards shall have ~~twenty~~ thirty days to comment to the department regarding any conditions that may exist at the proposed site which the department should consider regarding the content of the application for construction approval a construction and operating permit or major modification;

(ii) Within sixty days, (A) issue a proposed decision on the application for ~~construction approval~~ a construction and operating permit or major modification and (B) issue a notice providing an opportunity for any interested person to submit written comments on such proposed decision within thirty days after the first day of publication of such notice. The notice shall be published in a daily or weekly newspaper or other publication with general circulation in the area of the existing or proposed animal feeding operation, and a copy of the notice shall be provided to the applicant; and

(iii) Within one hundred ten days approve or deny the application and transmit its findings and conclusions to the applicant.

Sec. 9. Section 54-2426, Reissue Revised Statutes of Nebraska, is amended to read:

54-2426 Each application for a National Pollutant Discharge Elimination System permit, ~~construction approval, or major modification or construction and operating permit~~ shall include, in addition to other requirements, ~~(1) a completed nutrient management plan and supporting documentation and (2) (1)~~ (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application and (2) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged. The nutrient management plan shall be considered a part of the application. For National Pollutant Discharge Elimination System permits, the plan shall, at a minimum, meet and conform to the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq. A copy of the nutrient management plan and supporting documentation shall continuously be kept on file at the department. The operator shall at least annually update changes made to the nutrient management plan as required pursuant to rules and regulations adopted and promulgated by the council. ~~The department shall require an operator submitting an application for construction approval or major modification to submit a plan that contains,~~ For a construction and operating permit, the plan shall contain, at a minimum, the information which the department required to be included in all nutrient management plans on January 1, 2004.

Sec. 10. Section 54-2428, Reissue Revised Statutes of Nebraska, is amended to read:

54-2428 (1) Any person required to obtain a National Pollutant Discharge Elimination System permit for an animal feeding operation or ~~construction approval~~ a construction and operating permit for a livestock waste control facility shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fee shall be established by the council with a maximum fee of two hundred dollars. For major modifications to an application or a permit, the fee shall equal the amount of the application fee.

(2) On or before March 1, 2006, and each year thereafter, each person who has a National Pollutant Discharge Elimination System permit or who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and a state operating permit, a construction and operating permit, or a construction approval issued pursuant to the Environmental Protection Act or the Livestock Waste Management Act shall pay a per head annual fee based on the permitted capacity identified in the permit for that facility. The department shall invoice each permittee by February 1, 2006, and February 1 of each year thereafter.

(3) The initial annual fee shall be: Beef cattle, ten cents per head; veal calves, ten cents per head; dairy cows, fifteen cents per head; swine larger than fifty-five pounds, four dollars per one hundred head or fraction thereof; swine less than fifty pounds, one dollar per one hundred head or fraction thereof; horses, twenty cents per head; sheep or lambs, one dollar per one hundred head or fraction thereof; turkeys, two dollars per one thousand head or fraction thereof; chickens or ducks with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens or ducks with other than liquid manure facility, one dollar per one thousand head or fraction thereof. This fee structure may be reviewed in fiscal year 2007-08.

(4) Beginning in fiscal year 2007-08, the department shall annually review and adjust the fee structure in this section and section 54-2423 to ensure that fees are adequate to meet twenty percent of the program costs from the previous fiscal year. All fees collected under this section and sections 54-2423 and 54-2435 and section 16 of this act shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the Livestock Waste Management Act. Any money in the fund available for investment shall be invested by the state

investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) On or before January 1 of each year, the department shall 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, including the number of inspections conducted, the number of animal feeding operations with livestock waste control facilities, the number of animal feeding operations inspected, the size of the livestock waste control facilities, the results of water quality monitoring programs, and other elements relating to carrying out the act. The Appropriations Committee of the Legislature shall review the report in its analysis of executive programs in order to verify that the revenue generated from fees was used solely to offset appropriate and reasonable costs associated with carrying out the act.

Sec. 11. Section 54-2429, Revised Statutes Supplement, 2005, is amended to read:

54-2429 (1) An applicant for ~~construction approval~~ a National Pollutant Discharge Elimination System permit or a construction and operating permit under the Environmental Protection Act or the Livestock Waste Management Act shall, before issuance of ~~construction approval~~ by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under the Safety of Dams and Reservoirs Act and certify such approvals to the Department of Environmental Quality. The Department of Environmental Quality, with the concurrence of the Department of Natural Resources, may require the applicant to obtain approval from the Department of Natural Resources for any dam, holding pond, or lagoon structure which would not otherwise require approval under the Safety of Dams and Reservoirs Act but which in the event of a failure could result in a significant discharge into waters of the state and have a significant impact on the environment. The Department of Environmental Quality may provide for the payment of such costs of the Department of Natural Resources with revenue generated under section 54-2428.

(2) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for ~~an existing a~~ livestock waste control facility if after an inspection: (a) The department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or (b) the department has reason to believe that an animal feeding operation with ~~an existing a~~ livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts. Animal feeding operations not required to have a permit under the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts are exempt from the Engineers and Architects Regulation Act.

Sec. 12. Section 54-2431, Reissue Revised Statutes of Nebraska, is amended to read:

54-2431 (1) The department shall reject an application for a National Pollutant Discharge Elimination System permit, ~~construction approval~~ construction and operating permit, or major modification or revoke or suspend a National Pollutant Discharge Elimination System permit or ~~construction approval~~ construction and operating permit upon a finding that the applicant or permittee is unsuited to perform the obligations of a permitholder.

(2) The applicant or permittee shall be determined unsuited to perform the obligations of a permitholder if the department finds that within the past five years the applicant or permittee:

(a) Has allowed three discharges to waters of the state at any facility in Nebraska owned or operated by the applicant unless the discharge is in compliance with National Pollutant Discharge Elimination System permit conditions, if applicable, and rules and regulations adopted and promulgated under the Livestock Waste Management Act and the department was notified in accordance with the rules and regulations; or

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

Sec. 13. Section 54-2432, Reissue Revised Statutes of Nebraska, is amended to read:

54-2432 Except as provided in section 54-2422, it shall be unlawful for any person to:

(1) Construct or operate an animal feeding operation prior to an inspection from the department, unless exempted from inspection by the

Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(2) Construct a livestock waste control facility without first obtaining ~~construction approval~~ a construction and operating permit from the department, unless exempted from the requirement for ~~construction approval~~ a construction and operating permit by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts. The use of a borrow site for construction of other components of the animal feeding operation does not constitute construction of the livestock waste control facility;

(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(4) Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, ~~construction approval~~ a construction and operating permit, or an exemption from the department, if required by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts; or

(5) Violate the terms of a National Pollutant Discharge Elimination System permit or ~~construction approval~~ construction and operating permit or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.

Sec. 14. Section 54-2433, Reissue Revised Statutes of Nebraska, is amended to read:

54-2433 In carrying out its responsibilities under the Livestock Waste Management Act, the department may contract with the various natural resources districts as appropriate. The contract may include all tasks or duties necessary to carry out the act but shall not enable the natural resources districts to issue National Pollutant Discharge Elimination System permits or construction and operating permits or initiate enforcement proceedings. The contract may provide for payment of natural resources districts' costs by the department.

Sec. 15. Section 54-2435, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(ii) Applications and inspection requests;

(iii) Identification of ownership;

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

(v) Type of waste control facility;

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

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

(viii) Nutrient management, a nutrient management plan to be submitted with the application for a National Pollutant Discharge Elimination System permit or ~~construction approval~~ a construction and operating permit, and a description of the types of changes made to the nutrient management plan required to be updated pursuant to section 54-2426;

(ix) Closure and corrective action;

(x) Best management practices; and

(xi) Other such requirements deemed necessary to protect waters of the state;

(b) A National Pollutant Discharge Elimination System permit process for animal feeding operations;

(c) ~~Permit~~ National Pollutant Discharge Elimination System permit issuance, denial, ~~modification~~, renewal, revocation, suspension, termination, or transfer;

(d) Training requirements for permit holders;

~~(e) Application processes for construction approval and major modification;~~

(e) Construction and operating permit issuance, denial, revocation, termination, or transfer;

(f) Construction and operating permit and National Pollutant Discharge Elimination System permit major modification issuance, denial, revocation, suspension, or termination;

~~(f)~~ (g) Public notice and hearing requirements;

~~(g)~~ (h) Requirements for existing livestock waste control facilities;

~~(h)~~ (i) Requirements for adequate area and proper methods and rates for land application of waste and nutrients such as nitrogen and phosphorus;

~~(i)~~ (j) Requirements for record keeping and reporting;

~~(j)~~ (k) A fee schedule pursuant to sections 54-2423 and 54-2428;

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

~~(l)~~ (m) Procedures for exemptions as provided for in the requirements of the Environmental Protection Act and the Livestock Waste Management Act.

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

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

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

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

Sec. 16. (1) Any person who held an operating permit on December 31, 2005, and whose permit expired pursuant to rules and regulations may file a request for reinstatement of the operating permit subject to the following conditions:

(a) The request must be filed on or before December 31, 2007;

(b) The person shall certify that the livestock operation is in compliance with the operating permit as it existed on the date the operating permit expired; and

(c) The request shall be accompanied by a twenty-five-dollar nonrefundable filing fee.

(2) The department shall, upon receipt of a complete and timely request for reinstatement, reinstate the permit with the same conditions as existed when the permit expired.

Sec. 17. (1) A county planning commission or county board shall grant a conditional use permit or special exception to an existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and the construction or modification of the livestock waste control facility will not increase the animal capacity of such operation. The number of conditional use permits or special exceptions granted to such an operation under this subsection is unlimited.

(2) A county planning commission or county board shall grant a conditional use permit or special exception to an existing beef cattle or dairy cattle animal feeding operation that has an animal capacity of five thousand or fewer beef cattle or three thousand five hundred or fewer dairy cattle that is seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and construction or modification of the livestock waste control facility would allow the animal capacity of the operation to increase not more than:

(a) Five hundred beef cattle if the operation has an existing animal capacity of three thousand beef cattle or fewer;

(b) Three hundred beef cattle if the operation has an existing animal capacity of more than three thousand beef cattle but no more than five thousand beef cattle;

(c) Three hundred fifty dairy cattle if the operation has an existing animal capacity of two thousand dairy cattle or fewer; or

(d) Two hundred ten dairy cattle if the operation has an existing

animal capacity of more than two thousand dairy cattle but no more than three thousand five hundred dairy cattle.

Only one conditional use permit or special exception per operation is allowed under this subsection.

Sec. 18. Each application for a major modification of an operating permit, a construction approval, a construction and operating permit, or a National Pollutant Discharge Elimination System permit or an application for a construction and operating permit or a National Pollutant Discharge Elimination System permit shall contain (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application, (2) a detailed description of the major modification requested, (3) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged, and (4) such information as required by rules and regulations adopted and promulgated by the council.

Sec. 19. Section 81-1513, Reissue Revised Statutes of Nebraska, is amended to read:

81-1513 (1) Any person who owns or is in control of any plant, building structure, process, or equipment may apply to the director for a variance from rules or regulations. The director may grant such variance if he or she finds that the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. In making such findings the director shall give due consideration to all the facts and circumstances bearing upon the reasonableness of the emissions or discharges involved including, but not limited to:

(a) The character and degree of injury to or interference with the health and physical property of the people;

(b) The social and economic value of the source of the air, water, or land pollution;

(c) The question of priority of location in the area involved; and

(d) The technical practicability and economic reasonableness of reducing or eliminating the emissions or discharges resulting from such source.

(2) No variance shall be granted until the director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. Before any variance is granted, the director shall give public notice of an application for such variance immediately upon receipt of such application and in accordance with the rules and regulations of the department. The notice shall be published in a newspaper of general circulation in the county in which the plant, building structure, process, or equipment on which the proposed variance is located.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section, for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air, water, or land pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available and subject to the taking of any substitute or alternate measures that the director may prescribe;

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the director, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable; and

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivision (a) or (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the director on account of the variance, no renewal thereof shall be granted unless the director finds that renewal is justified. No renewal shall be granted except on application

therefor. Any such application shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal and before approving the renewal application, the director shall give public notice of such application in accordance with rules and regulations of the department. The public notice shall be published in the county in a newspaper of general circulation in which the plant, building structure, process, or equipment on which the variance is located.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the director. The granting or denial of a variance or a renewal shall be by final order of the director. Any person adversely affected by such an order may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Nothing in this section and no variance or renewal granted pursuant to this section shall be construed to prevent or limit the application of the emergency provisions and procedures of section 81-1507 to any person or his or her property.

(7) No variance shall be granted which will sanction any violation of state or federal statutes or regulations.

Sec. 20. Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, and 22 of this act become operative on December 1, 2006. The other sections of this act become operative on their effective date.

Sec. 21. Original sections 54-2424 and 81-1513, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 22. Original sections 54-2416, 54-2417, 54-2418, 54-2419, 54-2422, 54-2423, 54-2425, 54-2426, 54-2428, 54-2431, 54-2432, 54-2433, and 54-2435, Reissue Revised Statutes of Nebraska, and section 54-2429, Revised Statutes Supplement, 2005, are repealed.

Sec. 23. Since an emergency exists, this act takes effect when passed and approved according to law.