

1999

## NF99-403 Livestock Waste Management Act (Revised March 2001)

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# Livestock Waste Management Act

By J. David Aiken, Water and Agricultural Law Specialist

The Livestock Waste Management Act requires all livestock operations with 300 animal units or more to be inspected by the Nebraska Department of Environmental Quality (DEQ) to determine whether livestock wastes contaminate surface or ground water. Inspections must be requested by January 1, 2000. The late inspection fee is \$50-\$500 per month. Waste from any livestock operation of any size contaminating surface or ground water is subject to DEQ regulation. If you have questions, contact DEQ at (402) 471-2186. For additional information regarding livestock waste regulations in Nebraska, go to <http://manure.unl.edu/index.html>

NRS §54-2401. *Act, how cited.* Sections 54-2401 to 54-2414 shall be known and may be cited as the Livestock Waste Management Act.

NRS §54-2402. *Terms, defined.* For purposes of the Livestock Waste Management Act: (1) Animal unit means a unit of measurement for any livestock operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing 55 pounds or more multiplied by 0.4, plus the number of weaned pigs weighing less than 55 pounds multiplied by 0.04, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0, plus the number of chickens multiplied by 0.01, plus the number of turkeys multiplied by 0.02, plus the number of ducks multiplied by 0.2. Such calculation may be modified for immature animals under §54-2413; (2) Best management practices means schedules of activities, prohibitions, maintenance procedures, and other management practices found to be the most effective and practicable methods for specific sites to prevent or reduce the discharge of pollutants to waters of the state or 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 specific to the livestock waste control facility. Such activities do not include the use of the site for a borrow site for other construction purposes or the construction of other components of the livestock operation; (4) Council means the Environmental Quality Council; (5) Department means the Department of Environmental Quality; (6) 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; (7) Exempt livestock operation means any livestock operation with fewer than 300 animal units which has not had a confirmed discharge into waters of the state; (8) 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) Livestock operation means the feeding or holding of beef cattle, dairy cattle, horses, swine, sheep, poultry, and other livestock in buildings, lots, or pens which normally are not used for the growing of crops or vegetation but does not include the holding of cattle in calving operations for less than 90 days per year. Two or more livestock operations under common ownership are deemed to be a single livestock operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock wastes; (10) Livestock waste control facility means any structure or combination of structures utilized to control livestock waste 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; (11) New livestock waste control facility means any livestock waste control facility that applies for a permit from the department on or after April 15, 1998; (12) Person has the same meaning as in §81-1502; (13) Prior pending application means an application for a livestock waste control facility received by the department prior to April 15, 1998; and (14) Waters of the state has the same meaning as in §81-1502.

NRS §54-2403. *Livestock operation; exemption; livestock waste control facility; permit; restriction.* (1) Any livestock operation of less than 300 animal units is exempt from the permitting process, including the requirement to request an inspection under §54-2406, unless there has been a confirmed discharge into waters of the state or the department has determined that because of conditions at the livestock operation there is a high potential for a discharge into waters of the state in which case the department shall notify the owner of the livestock operation by certified mail that the owner is subject to the requirements of the Livestock Waste Management Act. (2) The department shall not issue a permit for an existing livestock waste control facility which is located within one hundred feet

of a water well if the water well is under separate ownership and water from the well is used primarily for human consumption.

NRS §54-2404. *Construction permit or operating permit; when required; livestock waste control facilities; classifications; restrictions.* (1) Except as provided in §54-2403, when there is a potential for discharge into waters of the state, as determined by the department: (a) No person shall construct a livestock waste control facility without first obtaining a construction permit from the department; and (b) No person shall operate a livestock waste control facility without an operating permit or interim use authorization from the department. (2) Livestock waste control facilities shall be classified according to the maximum number of animal units for which the livestock waste control facility is designed. The council, in adopting rules and regulations under §54-2413, shall set out the requirements for any livestock waste control facility which is reclassified after permit issuance. Classifications shall be as follows: (a) A class I livestock waste control facility is designed for 1000 or less animal units; (b) A class II livestock waste control facility is designed for more than 1000 and 5000 or less animal units; (c) A class III livestock waste control facility is designed for more than 5000 animal units and 20,000 or less animal units; and (d) A class IV livestock waste control facility is designed for more than 20,000 animal units. (3)(a) No new class II, class III, or class IV livestock waste control facility shall be permitted in any part of a watershed that feeds directly or indirectly into a cold water class A stream, as designated under §54-2404.02, except for: (i) Existing livestock waste control facilities. If an existing livestock operation does not currently have a waste control facility and upon inspection by the department a determination is made that one is necessary, the owner or operator will be required to construct such a facility in accordance with the Livestock Waste Management Act; (ii) New and expansions to existing livestock waste control facilities for which an application has been received and deemed complete by the department prior to January 1, 1999; and (iii) Livestock operations that are exempt from permit requirements as set forth in rules and regulations adopted under the act. (b) The owner or operator of any existing facility shall request the department to inspect the existing facilities and make a determination as to whether the existing facilities meet the requirements for any expansion or whether additional facilities would be needed to accommodate the proposed expansion according to rules and regulations adopted and promulgated by the council. (c) The department may deny or restrict an application for a permit regarding a transfer or modification of an existing permit based upon the potential degradation of a cold water class A stream.

NRS §54-2404.01. *Section; how construed.* Nothing in §54-2404 shall be construed to change the zoning authority of a county that existed prior to May 25, 1999.

NRS §54-2404.02. *Cold water class A streams; designation.* A map delineating segments and watershed boundaries for cold water class A streams, as designated prior to May 25, 1999, and prepared by the Department of Environmental Quality and the Department of Natural Resources, shall be maintained by the Department of Environmental Quality and used by the department for determinations made concerning cold water class A streams under the Livestock Waste Management Act unless changed by the Environmental Quality Council. Beginning on May 25, 1999, the council may designate and may redesignate previously designated waters of this state as cold

water class A streams for purposes of the act based on the determination by the council that the waters provide or could provide habitat of sufficient water volume or flow, water quality, substrate composition, and water temperature capable of maintaining year-round populations of cold water biota, including reproduction of a salmonoid (trout) population. The council shall not designate or redesignate a stream as a cold water class A stream unless the stream has supported the reproduction of a salmonoid (trout) population within the previous five years. The department shall revise and maintain the cold water class A stream map to incorporate all designations and redesignations of the council.

NRS §54-2405. *Permit; acknowledgment required.* Any person required to obtain a permit under §54-2404 may begin construction of the proposed livestock operation after the person acknowledges on a form provided by the department that a permit may not be approved.

NRS §54-2406. *Livestock operation; request inspection; when; fees; department; duties.* (1) Any person owning or operating a livestock operation that does not hold a permit, has not been notified by the department that no permit is required, or is not exempt under §54-2403 shall, on forms prescribed by the department, request the department to inspect such person's livestock 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 January 1, 1999, there shall be an inspection fee of \$50 for a class I or class II livestock waste control facility and an inspection fee of \$500 for a class III or class IV livestock waste control facility. A person who requests an inspection prior to January 1, 2000, shall not be determined by the department to be in violation of the permitting provisions of the Livestock Waste Management Act prior to issuance or denial of a permit for such livestock waste control facility. However, the person shall not violate any provisions of the Environmental Protection Act. Any exempt livestock operation that has requested an inspection shall have such inspection canceled by the department. (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 livestock operations aware of the need to request an inspection. (3) Any person required to request an inspection under this section who operates a livestock operation after January 1, 2000, except an exempt livestock operation, 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 \$50 nor more than \$500 for each offense. Each month a violation continues shall constitute a separate offense.

NRS §54-2407. *Permits; duration; modification.* (1) A permit issued under §54-2404 shall be valid as long as the livestock operation continues to operate. Any livestock waste control facility meeting the requirements of subsection (1) of §54-2403 may continue to operate as long as such requirements are met. The department may modify any permit during its term in the event rules and regulations adopted under the Livestock Waste Management Act change in such a manner as to affect provisions in the permit. The department may require the permit holder to furnish such information as is necessary to determine compliance with current rules and regulations. (2) The department, in modifying permits under this section, shall

include conditions in the permit which will allow a reasonable period of time of up to one year to achieve compliance with the rules and regulations and the act. Modifications shall be done in accordance with §81-1507 and pursuant to rules and regulations as adopted under §54-2413. (3) Any person holding a permit for a livestock waste control facility issued under §54-2404 shall notify the department of a change of ownership and other information as prescribed by the department for purposes of review under §54-2409.

NRS §54-2408. *Permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report; legislative intent.* (1) Any person required to obtain a permit for a livestock waste control facility under §54-2404 shall file an application with the department in the manner established by the department. The application fees shall be \$300 for a class I livestock waste control facility, \$800 for a class II livestock waste control facility, \$1500 for a class III livestock waste control facility, and \$5000 for a class IV livestock waste control facility. For permit modifications the fee shall equal the amount of the application fee for the class of the proposed modification minus the application fee for the size and corresponding class of the facility permitted at the time the modification is requested. If the permit modification will result in a lower class designation, there shall be no fee. (2) All fees collected under this section and §54-2406 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. (3) 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 for each class of livestock waste control facility, the number of permitted livestock waste control facilities, the number of livestock 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. (4) It is the intent of the Legislature to appropriate \$150,000 annually to the department to enhance water quality monitoring programs.

NRS §54-2409. *Applicant; rejection; grounds; application; information required; certification required.* (1) In addition to other permit review determinations under the Livestock Waste Management Act and the Environmental Protection Act, the department may reject an application for a construction or operating permit, including a prior pending application for a permit, for a livestock waste control facility upon a finding that the applicant is unsuited or unqualified to perform the obligations of a permitholder. An applicant shall disclose such information as may be required by the department to evaluate suitability, including, but not limited to: (a) A list of all corporate officers and directors, stockholders owning at least 50% of the company's stock or assets, and persons responsible for the operation of the proposed facility; (b) The location of livestock operations in other states wholly or partially owned or operated

by the applicant; (c) A list of any unauthorized discharges of livestock waste at any facility wholly or partially owned or operated by an applicant regardless of location, including other states, which caused environmental damage in violation of the laws of the state where the facility is or was located; (d) A list of all violations of any local, state, or federal environmental law, regulation, permit, license, consent decree, or order occurring in this state or any other state, within 5 years immediately preceding the date of the submission of the permit application, modification, or transfer; and (e) A list of the parties, the penalty assessed or paid, any remedial action required in any judicial or administrative actions filed against the applicant within the last 5 years in any jurisdiction in the United States regardless of whether or not liability was acknowledged, and if such remedial action was completed. (2) An applicant is unsuited or unqualified to perform the obligations of a permitholder if the applicant or any officer, director, partner, or general manager of the livestock operation for which application has been made: (a) Has intentionally misrepresented or withheld a material fact in applying for a permit; (b) Has habitually or intentionally violated environmental laws of any state or the United States or any other nation, which violation has resulted in significant and material environmental damage; (c) Has had any permit revoked due to a violation of the environmental laws of any state or the United States or any other nation; or (d) Has otherwise demonstrated through clear and convincing evidence of previous actions that the applicant lacks the necessary competency to reliably carry out the obligations imposed by law upon the permitholder. (3) An application for a new permit or for the transfer or modification of an existing permit for a livestock waste control facility shall include a certification, sworn under oath and signed by the applicant, that he or she is suited or qualified under this section to obtain such a permit and that all information contained in the application is complete and accurate to the best of the applicant's knowledge or belief. Any material misrepresentation of fact in regard to this certification may result in rejection of the application or revocation of an existing permit as provided for in this section.

NRS §54-2410. *Postconstruction inspection requirements.* The department, or an individual or organization the department deems qualified, shall perform a postconstruction inspection on all livestock waste control facilities requiring a permit prior to use of the livestock waste control facility and within 30 days after the department receives notification of the completion of the facility. Such period may be reasonably extended by the department due to adverse weather conditions or an act of God that would not allow an inspection within 30 days. If the inspection is not done within the time specified in this section, the livestock waste control facility may proceed with operations.

NRS §54-2411. *Department; contracts authorized; permit application; notice required.* (1) 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 permits or initiate enforcement proceedings. The contract may provide for payment of natural resources districts' costs by the department. (2) Within 5 days after receipt of a livestock waste control facility permit application, the department shall notify the natural resources district or districts in which the livestock waste control facility is to be located of

the permit application. The natural resources district or districts shall have 20 days to comment to the department regarding any conditions that may exist at the proposed site which the department should know when determining the appropriateness of issuing such permit. Such natural resources district or districts may request the department for a 20-day extension of the comment period. (3) Within 5 days after receipt of a livestock waste control facility permit application, the department shall notify the county board or boards of the counties in which the livestock waste control facility is to be located of the permit application. (4) Upon initial receipt of the permit application, the department has 30 days to conduct a preliminary review of the application and to formally request in writing additional information or to acknowledge that the application is complete. For a class II, class III, or class IV livestock waste control facility once the department has determined an application for a permit to be complete, the department shall issue a notice providing an opportunity for any interested person, within 30 days after publication of notice, to submit written comments on the application which are within the authority of the department under the act. The notice shall be published in a daily or weekly newspaper or other publication with general circulation in the area of the proposed livestock waste control facility and a copy provided to the applicant. Within 60 days after receipt of a completed permit application, the department shall transmit its written findings, conclusions, and reasons for approval or disapproval to the applicant for any class I or class II livestock waste control facility. Within 90 days after the receipt of a completed permit application, the department shall transmit its findings, conclusions, and reasons for approval or disapproval to the applicant for any class III or class IV livestock waste control facility. The provisions of this section relating to a period for public comment shall not apply to any new permit applications that have been deemed complete by May 27, 1999.

NRS §54-2412. *Permit application; approval from Department of Natural Resources; Department of Environmental Quality; powers.* (1) An applicant for a permit for a livestock waste control facility under the Livestock Waste Management Act shall, before issuance of a permit by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under §46-257 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 or lagoon structure, the failure of which could result in a significant discharge into waters of the state and have a significant impact on the environment. When such approval is required, the Department of Natural Resources shall approve or deny the dam or lagoon structure within 60 days after the request is made. The Department of Environmental Quality may provide for the payment of such costs of the Department of Natural Resources with revenue generated under §54-2408. (2) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for an existing 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 existing 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. Notwithstanding the Engineers and Architects Regulation Act, new class I livestock waste control facilities are exempt from the Engineers and Architects Regulation Act.

NRS §54-2413. *Council; rules and regulations.* (1) The council shall adopt and promulgate rules and regulations to carry out the Livestock Waste Management Act. The rules and regulations shall include a permit program for livestock waste control facilities which provides for: (a) A permitting process which includes: (i) A construction permit which prohibits construction of a livestock waste control facility prior to its issuance; (ii) An operating permit for new and existing livestock waste control facilities to be issued after terms of the construction permit have been fulfilled and which may be terminated, modified, or revoked by the department for cause; (iii) An application process which requires a permitting determination by the department within 60 days after receipt of a complete application, an acknowledgment by the applicant that a construction permit may not be approved, and an operating plan to be incorporated into the permit; (iv) Monitoring of surface or ground water by the permittee which may be necessary as determined by the department where a significant risk to waters of the state exists; (v) Modification of operating permits in accordance with §54-2407; (vi) Notification of the applicant by the department within 30 days if the application is complete or, if the application is not complete, notification as to what information or requirements are needed; and (vii) Modification of the application and permitting process for existing livestock waste control facilities constructed prior to April 15, 1998; (b) Requirements for existing livestock waste control facilities whose permits are being modified under §54-2407; (c) Best management practices where appropriate to specific sites to control runoff of waste, including adequate area for land application and proper methods and rates of disposal of waste and nutrients such as nitrogen and phosphorus, and best management practices for control of odor; (d) Modifications to the calculation of animal units for immature animals; and (e) A training program for land application of waste which may include contracting with the Cooperative Extension Service of the University of Nebraska for curriculum development and instruction. (2) Rules and regulations adopted and promulgated under this section may be based upon size classification of livestock waste control facilities and the form of waste management and may include more stringent requirements for facilities of larger size classes 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 Livestock Waste Management Act.

NRS §54-2414. *Enforcement of act; legislative intent.* It is the intent of the Legislature that in enforcing the provisions of the Livestock Waste Management Act the department shall give priority to livestock waste control facilities within classes in the following order: Class IV, class III, class II, and class I.

**File under: FARM MANAGEMENT  
G-4, Farm Law  
Revised March 2001**

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