

LEGISLATIVE BILL 916

Approved by the Governor April 15, 2004

Introduced by Schrock, 38; Hudkins, 21; Jones, 43; Kremer, 34; Louden, 49;
Stuhr, 24; Burling, 33

AN ACT relating to environmental protection; to amend sections 54-2414, 81-1502, and 81-1506, Reissue Revised Statutes of Nebraska, sections 54-744.01, 54-2402, 54-2404 to 54-2404.02, 54-2406, 54-2408, 54-2411, and 54-2413, Revised Statutes Supplement, 2002, and sections 13-2042, 46-241, 46-257, 54-2401, 54-2412, 54-2415, and 81-15,149, Revised Statutes Supplement, 2003; to change and eliminate provisions of the Livestock Waste Management Act; to harmonize provisions; to repeal the original sections; and to outright repeal sections 54-2405 and 54-2410, Reissue Revised Statutes of Nebraska, and sections 54-2403, 54-2407, and 54-2409, Revised Statutes Supplement, 2002.

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

Section 1. Section 13-2042, Revised Statutes Supplement, 2003, is amended to read:

13-2042. (1) A disposal fee of one dollar and twenty-five cents is imposed for each six cubic yards of uncompacted solid waste, one dollar and twenty-five cents for each three cubic yards of compacted solid waste, or one dollar and twenty-five cents per ton of solid waste disposed of at landfills regulated by the department. Each operator of a landfill disposal facility shall make the fee payment quarterly. The fee shall be paid quarterly to the department on or before the forty-fifth day following the end of each quarter. For purposes of this section, landfill has the same definition as municipal solid waste landfill unit in 40 C.F.R. part 258, subpart A, section 258.2.

(2) Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the permitholder. The form shall state the total volume of solid waste disposed of at that facility during the payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the permitholder.

(3) If a permitholder fails to make a timely payment of the fee, he or she shall pay interest on the unpaid amount at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

(4) This section shall not apply to a site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

(5) Fifty percent of the total of such fees collected in each quarter shall be remitted to the State Treasurer for credit to the Integrated Solid Waste Management Cash Fund and shall be used by the department to cover the direct and indirect costs of responding to spills or other environmental emergencies, of regulating, investigating, remediating, and monitoring facilities during and after operation of facilities, or of performance of regulated activities under the Integrated Solid Waste Management Act, the Livestock Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act. The department may seek recovery of expenses paid from the fund for responding to spills or other environmental emergencies or for investigation, remediation, and monitoring of a facility from any person who owned, operated, or used the facility in violation of the Integrated Solid Waste Management Act, the Livestock Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act in a civil action filed in the district court of Lancaster County. Of the amount credited to the Integrated Solid Waste Management Cash Fund, the department may disburse amounts to political subdivisions for costs incurred in response to and remediation of any solid waste disposed of or abandoned at dump sites or discrete locations along public roadways or ditches and on any contiguous area affected by such disposal or abandonment. Such reimbursement shall be by application to the department on forms prescribed by the department. The department shall prepare and make available a schedule of eligible costs and application procedures which may include a requirement of a demonstration of preventive measures to be taken to discourage future dumping. The department may not disburse to political subdivisions an amount which in the aggregate exceeds five percent of total revenue from the disposal fees collected pursuant to this section in the preceding fiscal year. These disbursements shall be made on a fiscal-year basis, and applications received after funds for this purpose

have been exhausted may be eligible during the next fiscal year but are not an obligation of the state. Any eligible costs incurred by a political subdivision which are not funded due to a lack of funds shall not be considered an obligation of the state. In disbursing funds under this section, the director shall make efforts to ensure equal geographic distribution throughout the state and may deny reimbursements in order to accomplish this goal.

(6) The remaining fifty percent of the total of such fees collected per quarter shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. For purposes of determining the total fees collected, any amount of fees rebated pursuant to section 13-2042.01 shall be included as if the fees had not been rebated, and the amount of the fees rebated pursuant to such section shall be deducted from the amount to be credited to the Waste Reduction and Recycling Incentive Fund.

(7) The council shall adopt and promulgate rules and regulations for the distribution of grants under subsection (6) of this section from the proceeds of the fees imposed by this section to counties, municipalities, and agencies for the purposes of planning and implementing facilities and systems to further the goals of the Integrated Solid Waste Management Act. The fees collected pursuant to this section shall not be used as grant proceeds to fund landfill closure site assessments, closure, monitoring, or investigative or corrective action costs for existing landfills or landfills already closed prior to July 15, 1992. The rules and regulations shall base the awarding of grants on a project's reflection of the integrated solid waste management policy and hierarchy established in section 13-2018, the proposed amount of local matching funds, and community need.

Sec. 2. Section 46-241, Revised Statutes Supplement, 2003, is amended to read:

46-241. (1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with section 46-257. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application under this section and any approval required by section 46-257, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all water not otherwise appropriated and any appropriated water not needed for immediate use, to construct and operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir and (b) no release of water from the reservoir for the purpose of downstream diversion or withdrawal. This subsection does not exempt any person from the requirements of section 46-257 or ~~54-2412~~ section 14 of this act.

(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of section 46-2337 or 46-257, or ~~54-2412~~ section 14 of this act.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock

in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with section 46-257, and the outlet works shall be installed so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, if no prior appropriator for beneficial use is prejudiced by such diversion.

(6) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

Sec. 3. Section 46-257, Revised Statutes Supplement, 2003, is amended to read:

46-257. (1) Except as provided in subsection (3) of this section, any person intending to construct, modify, or rehabilitate a dam for any purpose, including, but not limited to, providing a reservoir for temporary or permanent storage of surface water, well water, human or animal waste effluent, or mine tailings and sediments, shall submit an application for approval along with plans, drawings, and specifications of the project to the Department of Natural Resources before beginning such construction, modification, or rehabilitation. When applicable, the applicant shall at the same time submit an application to comply with section 46-241. Except as provided in subsection (3) of this section, any person intending to abandon an existing dam through breaching or removal or as otherwise defined by the department shall submit to the department such plans and drawings as are requested by the department before beginning such abandonment. No dam shall be constructed, modified, rehabilitated, or abandoned until the required plans, drawings, and specifications have been approved by the department.

(2) An applicant for a permit for a livestock waste control facility which includes a dam, holding pond, or lagoon for which approval by the Department of Natural Resources is not otherwise required by this section, but is required by the Department of Environmental Quality under section ~~54-2412~~ 18 of this act, shall submit an application for approval along with plans, drawings, and specifications to the Department of Natural Resources and obtain approval before beginning construction. The Department of Natural Resources shall approve or deny the dam, holding pond, or lagoon within sixty days after the request is made.

(3) Subsection (1) of this section does not apply to the construction, modification, rehabilitation, or abandonment of a dam which (a) is a low-hazard dam, as defined in the rules and regulations of the department, (b) is less than twenty-five feet high, measured from the lowest elevation of the natural ground at the downstream toe of the dam to the top of the dam, (c) has a total storage capacity of less than fifty acre-feet between the lowest elevation of the downstream toe of the dam and the top of the dam, and (d) is not subject to subsection (1) or (4) of section 46-241.

(4) Within sixty days after completion of any dam, holding pond, or lagoon subject to subsection (1) or (2) of this section, a certification in the form required by the Department of Natural Resources that the dam, holding pond, or lagoon has been constructed in accordance with the plans, drawings, and specifications approved by the department shall be filed with the department for review and approval. The department may, in coordination with the Department of Environmental Quality, provide for the filing with both departments of a single certification of completion that will satisfy the applicable requirements of both departments when the dam, holding pond, or lagoon is part of a livestock waste control facility. The Department of Natural Resources shall approve or disapprove the certification and notify the owner or other responsible party within thirty days after the date of such filing, except that if the department determines that the certification is incomplete it shall so notify the owner or other responsible party and shall approve or disapprove the certification within thirty days after the date the owner or other responsible party files a complete certification. Neither the applicant nor any other person shall store water in any reservoir created by a dam, holding pond, or lagoon subject to subsection (1) or (2) of this section or otherwise operate such dam, holding pond, or lagoon if the department disapproves the certification as provided in this subsection.

(5) Subsection (3) of this section does not waive any requirements of the Department of Environmental Quality.

(6) Whenever the Director of Natural Resources determines that a dam, holding pond, or lagoon has been constructed or operated in violation of subsection (1), (2), or (4) of this section, he or she may order the immediate removal of such dam, holding pond, or lagoon and if necessary may institute legal proceedings to obtain compliance with such order.

(7) Any person constructing a dam, holding pond, or lagoon without having complied with subsection (1), (2), or (4) of this section shall be guilty of a Class V misdemeanor, and every day such dam, holding pond, or lagoon is maintained shall be considered a separate offense.

Sec. 4. Section 54-744.01, Revised Statutes Supplement, 2002, is amended to read:

54-744.01. (1) Livestock carcasses may be disposed of in a research or demonstration facility for innovative livestock disposal methods registered with the Department of Agriculture, except that a research or demonstration facility of liquefaction shall not be registered under this section and liquefaction shall not be permitted as a method of livestock disposal. The registration of a facility under this section shall contain a description of the facility, the location and proposed duration of the research or demonstration, and a description of the method of disposal to be utilized. The department may register up to five such research or demonstration facilities conducted in conjunction with private livestock operations which meet all of the following conditions:

(a) The project is designed and conducted by one or more research faculty of the University of Nebraska;

(b) The project does not duplicate other research or demonstration projects;

(c) The project sponsors submit annual reports on the project and a final report at the conclusion of the project;

(d) The project employs adequate safeguards against disease transmission or environmental contamination; and

(e) The project meets any other conditions deemed prudent by the director.

(2) It is the intent of the Legislature that the department register at least one research or demonstration facility for innovative livestock disposal methods which shall be located upon the premises of an animal feeding operation as each class of livestock waste control facility defined in section ~~54-2404~~ 6 of this act. Before registering such facility, the department shall first consult with the Department of Environmental Quality and the Department of Health and Human Services Regulation and Licensure. The Department of Agriculture may revoke the registration of the facility at any time if the director has reason to believe that the facility no longer meets the conditions for registration.

(3) Only the carcasses of livestock that have died upon the livestock animal feeding operation premises where a research or demonstration facility for innovative livestock disposal methods is located may be disposed of at such facility. Carcasses from other locations livestock operations shall not be transported to such facility for disposal.

(4) A facility registered under this section is exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

Sec. 5. Section 54-2401, Revised Statutes Supplement, 2003, is amended to read:

~~54-2401.~~ Sections ~~54-2401 to 54-2415~~ 5 to 24 of this act shall be known and may be cited as the Livestock Waste Management Act.

Sec. 6. Section 54-2402, Revised Statutes Supplement, 2002, is amended to read:

~~54-2402.~~ 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 13 of this act. Animal feeding operation does not include aquaculture as defined in section 2-3804.01; 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 fifty-five pounds or more

multiplied by 0.4, plus the number of weaned pigs weighing less than fifty-five 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 section 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 based on the best available technology achievable for specific sites to prevent or reduce the discharge of pollutants to waters of the state ~~or~~ 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; ~~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) Construction approval means an approval issued by the department allowing construction of a livestock waste control facility;

~~(4)~~ (5) Council means the Environmental Quality Council;

~~(5)~~ (6) Department means the Department of Environmental Quality;

~~(6)~~ (7) 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 three hundred 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 ninety 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)~~ (9) 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) 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;

(11) New animal feeding operation means an animal feeding operation constructed after the effective date of this act;

(12) New livestock waste control facility means any livestock waste control facility for which a permit or construction approval application is submitted that applies for a permit from the department 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;

~~(12)~~ (14) Person has the same meaning as in section 81-1502; and
~~(13)~~ Prior pending application means an application for a livestock waste control facility received by the department prior to April 15, 1998; and
~~(14)~~ (15) Waters of the state has the same meaning as in section 81-1502.

Sec. 7. 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 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. 8. Section 54-2404, Revised Statutes Supplement, 2002, is amended to read:

~~54-2404. (1) Except as provided in section 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 section 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 one thousand or less animal units;~~

~~(b) A class II livestock waste control facility is designed for more than one thousand and five thousand or less animal units;~~

~~(c) A class III livestock waste control facility is designed for more than five thousand animal units and twenty thousand or less animal units; and~~

~~(d) A class IV livestock waste control facility is designed for more than twenty thousand animal units.~~

~~(3)(a) (1) No new class II, class III, or class IV livestock waste control facility animal feeding operation shall be permitted issued a permit in any part of a watershed that feeds directly or indirectly into a cold water class A stream, as designated under section 54-2404.02 10 of this act.~~

~~(2) Existing animal feeding operations may receive a new or modified permit if:~~

~~(a) The existing animal feeding operation does not currently have a 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 10 of this act and in the same cold water class A watershed as the animal feeding operation. ~~7~~ 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) (3) The department may deny or restrict an application for a permit regarding a transfer or major modification of an existing permit based~~

upon the potential degradation of a cold water class A stream.

Sec. 9. Section 54-2404.01, Revised Statutes Supplement, 2002, is amended to read:

~~54-2404.01.~~ Nothing in section ~~54-2404 8~~ of this act shall be construed to change the zoning authority of a county that existed prior to May 25, 1999.

Sec. 10. Section 54-2404.02, Revised Statutes Supplement, 2002, is amended to read:

~~54-2404.02.~~ 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 and stream watersheds under the Livestock Waste Management Act unless changed by the ~~Environmental Quality Council~~ 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 and stream watershed map to incorporate all designations and redesignations of the council.

Sec. 11. 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 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. 12. Section 54-2406, Revised Statutes Supplement, 2002, is amended to read:

~~54-2406.~~ (1) Any person owning or operating a ~~livestock~~ an animal feeding operation that does not hold a permit, has not been notified by the department that no permit is required, or is not exempt under section ~~54-2403 11~~ of this act shall, on forms prescribed by the department, request the department to inspect such person's ~~livestock~~ 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 ~~January 1, 1999~~ the effective date of this act, there shall be an inspection fee established by the council with a minimum fee of one hundred dollars and a maximum fee of fifty five hundred dollars. Such fee may be set according to animal capacity. for a class I or class II livestock waste control facility and an inspection fee of five hundred dollars 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~~ animal feeding operations aware of the need to request an inspection.

(3) Any person required to request an inspection under this section who operates a ~~livestock~~ an animal feeding operation after January 1, 2000, except an ~~exempt livestock~~ animal feeding operation exempted by the department from permit requirements prior to the effective date of this act, 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. 13. (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.

Sec. 14. (1) After an initial inspection has been conducted pursuant to section 12 of this act for each new application for construction approval 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 12 of this act, 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 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 or major modification application, upon receipt of the individual National Pollutant Discharge Elimination System permit application and the construction approval 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 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 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 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 or major modification;

(ii) Within sixty days, (A) issue a proposed decision on the application for construction approval 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. 15. Each application for a permit, construction approval, or major modification shall include, in addition to other requirements, (1) a completed nutrient management plan and supporting documentation and (2) 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. The nutrient management plan shall be considered a part of the application. For 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, at a minimum, the information which the department required to be included in all nutrient management plans on January 1, 2004.

Sec. 16. Once the department has made a determination to approve or deny an application for a National Pollutant Discharge Elimination System permit, the department shall provide opportunities for public participation, including, but not limited to, public comment, opportunity for public hearing, and agency response to comments, which are at least as stringent as the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq.

Sec. 17. Section 54-2408, Revised Statutes Supplement, 2002, is amended to read:

~~54-2408.~~ (1) Any person required to obtain a permit for an animal feeding operation or construction approval for a livestock waste control facility under section 54-2404 shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fees shall be three established by the council with a maximum fee of two hundred dollars. for a class I livestock waste control facility, eight hundred dollars for a class II livestock waste control facility, one thousand five hundred dollars for a class III livestock waste control facility, and five thousand dollars for a class IV livestock waste control facility. For permit major modifications to an application, 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) On or before March 1, 2006, and each year thereafter, each person who has a permit 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 with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens 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 12 of this act 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 ~~section 54-2406~~ sections 12 and 24 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.

~~(3)~~ (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,

~~for each class of livestock waste control facility,~~ the number of animal feeding operations with permitted livestock waste control facilities, the number of ~~livestock~~ 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.

~~(4) It is the intent of the Legislature to appropriate one hundred fifty thousand dollars annually to the department to enhance water quality monitoring programs.~~

Sec. 18. Section 54-2412, Revised Statutes Supplement, 2003, is amended to read:

~~54-2412.~~ (1) An applicant for a ~~permit for a livestock waste control facility construction approval~~ under the Livestock Waste Management Act shall, before issuance of a ~~permit construction approval~~ by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under section 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, holding pond, or lagoon structure which would not otherwise require approval under subsection (1) of section 46-257 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 ~~54-2408~~ 17 of this act.

(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 animal feeding operation with 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~~ 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. 19. Section 54-2415, Revised Statutes Supplement, 2003, is amended to read:

~~54-2415.~~ (1) Except as provided in this section, no new livestock waste control facility shall be constructed ~~on or after April 17, 2003,~~ and no physical onsite activities specific to a new livestock waste control facility, except the use of a borrow site for construction of other components of the animal feeding operation, shall be initiated unless surface water runoff from the upstream area, except incidental runoff, is adequately diverted around the structure and is not permitted to enter the reservoir area. For purposes of this section, incidental runoff means the runoff that drains from the slope of the embankments, the top of the dam, the reservoir area, the feedlots, the associated roadways, and up to twenty-five acres of additional area that cannot be diverted. Incidental runoff capacity from a twenty-five-year frequency, twenty-four-hour storm shall be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials.

(2) The Department of Natural Resources shall permit a requested increase in the twenty-five-acre limitation for a new livestock waste control facility for a ~~livestock~~ animal feeding operation for which an inspection was requested prior to January 1, 2000, ~~in accordance with section 54-2406~~ unless the department determines that the detriment to existing water users that would result from permitting the acreage increase would outweigh the detriment to the operator of the ~~livestock~~ animal feeding operation if the increase were not permitted.

(3) For other new livestock waste control facilities, the Department of Natural Resources may permit an increase in the twenty-five-acre limitation if it determines that (a) the applicant has no reasonable way to limit the amount of the additional runoff acreage to twenty-five acres or less at the proposed location of the livestock waste control facility, (b) the applicant

has no reasonable alternative for relocating the livestock waste control facility so that the additional runoff acreage would not exceed twenty-five acres, and (c) either (i) an increase in the permitted runoff acreage would not reduce water supplies to the detriment of existing water users or (ii) (A) the requested facility is for a proposed expansion of a ~~livestock~~ an animal feeding operation in existence and in compliance with the Livestock Waste Management Act as of January 1, 2003, (B) the amount of the runoff acreage permitted in excess of the twenty-five-acre limitation is not more than fifteen percent of total permitted feedlot area, and (C) any detriment to existing water users that would result from permitting the acreage increase would be outweighed by the detriment to the operator of the ~~livestock~~ animal feeding operation if the increase were not permitted.

Sec. 20. (1) The department shall reject an application for a permit, construction approval, or major modification or revoke or suspend a permit or construction approval 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 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. 21. Except as provided in section 11 of this act, 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 from the department, unless exempted from the requirement for construction approval 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 permit, construction approval, or 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 permit or construction approval or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.

Sec. 22. Section 54-2411, Revised Statutes Supplement, 2002, is amended to read:

~~54-2411.~~ (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 five 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 twenty 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 twenty-day extension of the comment period.

(3) Within five 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 thirty 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 thirty 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 sixty 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 ninety 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.

Sec. 23. Section 54-2414, Reissue Revised Statutes of Nebraska, is amended to read:

54-2414. 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 the larger animal feeding operations in the state.

Sec. 24. Section 54-2413, Revised Statutes Supplement, 2002, is amended to read:

54-2413. (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 sixty 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 section 54-2407;

(vi) Notification of the applicant by the department within thirty 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 section 54-2407;

(c) Best management practices where appropriate 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. (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 permit or construction approval, and a description of the types of changes made to the nutrient management plan required to be updated pursuant to section 15 of this act;
 - (ix) Closure and corrective action;
 - (x) Best management practices; and
 - (xi) Other such requirements deemed necessary to protect waters of the state;
- (b) A permit process for animal feeding operations;
- (c) 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;
- (f) Public notice and hearing requirements;
- (g) Requirements for existing livestock waste control facilities;
- (h) Requirements for adequate area and proper methods and rates for land application of waste and nutrients such as nitrogen and phosphorus;
- (i) Requirements for record keeping and reporting;
- (j) A fee schedule pursuant to sections 12 and 17 of this act;
- (k) Procedures for collection of fees pursuant to this section and sections 12 and 17 of this act; and

(1) 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. 25. Section 81-1502, Reissue Revised Statutes of Nebraska, is amended to read:

81-1502. For purposes of the Environmental Protection Act, unless the context otherwise requires:

(1) Air contaminant or air contamination shall mean the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, other gaseous fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere;

(2) Air pollution shall mean the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant, or animal life, property, or the conduct of business;

(3) Chairperson shall mean the chairperson of the Environmental

Quality Council and council shall mean the Environmental Quality Council;

(4) Complaint shall mean any charge, however informal, to or by the council, that any person or agency, private or public, is polluting the air, land, or water or is violating the Environmental Protection Act or any rule or regulation of the department in respect thereof;

(5) Control and controlling shall include prohibition and prohibiting as related to air, land, or water pollution;

(6) Department shall mean the Department of Environmental Quality, which department is hereby created;

(7) Director shall mean the Director of Environmental Quality, which position is hereby established;

(8) Disposal system shall mean a system for disposing of wastes, including hazardous wastes, either by surface or underground methods, and includes sewerage systems and treatment works, disposal wells and fields, and other systems;

(9) Emissions shall mean releases or discharges into the outdoor atmosphere of any air contaminant or combination thereof;

(10) Person shall mean any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity;

(11) Rule or regulation shall mean any rule or regulation of the department;

(12) Sewerage system shall mean pipelines, conduits, pumping stations, force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

(13) Treatment works shall mean any plant or other works used for the purpose of treating, stabilizing, or holding wastes;

(14) Wastes shall mean sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land, or waters of the state;

(15) Refuse shall mean putrescible and nonputrescible solid wastes, except body wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, and solid market and industrial wastes;

(16) Garbage shall mean rejected food wastes, including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetables, and dead animals rejected by rendering plants;

(17) Rubbish shall mean nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety;

(18) Junk shall mean old scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material;

(19) Land pollution shall mean the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state;

(20) Water pollution shall mean the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water;

(21) Waters of the state shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state;

(22) Point source shall mean any discernible confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft from which pollutants are or may be discharged;

(23) Effluent limitation shall mean any restriction, including a

schedule of compliance, established by the council on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the state;

(24) Schedule of compliance shall mean a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard;

(25) Hazardous waste shall mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or (b) pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed;

(26) Solid waste shall mean any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities, but solid waste shall not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923;

(27) Storage, when used in connection with hazardous waste, shall mean the containment of hazardous waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous waste;

(28) Manifest shall mean the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage;

(29) Processing shall mean to treat, detoxify, neutralize, incinerate, biodegrade, or otherwise process a hazardous waste to remove such waste's harmful properties or characteristics for disposal in accordance with regulations established by the council;

(30) Well shall mean a bored, drilled, or driven shaft or a dug hole, the depth of which is greater than the largest surface dimension of such shaft or hole;

(31) Injection well shall mean a well into which fluids are injected;

(32) Fluid shall mean a material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or other form or state;

(33) Mineral production well shall mean a well drilled to promote extraction of mineral resources or energy, including, but not limited to, a well designed for (a) mining of sulfur by the Frasch process, (b) solution mining of sodium chloride, potash, phosphate, copper, uranium, or any other mineral which can be mined by this process, (c) in situ combustion of coal, tar sands, oil shale, or any other fossil fuel, or (d) recovery of geothermal energy for the production of electric power. Mineral production well shall not include any well designed for conventional oil or gas production, for use of fluids to promote enhanced recovery of oil or natural gas, or for injection of hydrocarbons for storage purposes;

(34) Mineral exploration hole shall mean a hole bored, drilled, driven, or dug in the act of exploring for a mineral other than oil and gas;

(35) Solution mining shall mean the use of an injection well and fluids to promote the extraction of mineral resources;

(36) Uranium shall mean tri-uranium oct-oxide;

(37) Solid waste management facility shall mean a facility as defined in section 13-2010; and

(38) Livestock waste control facility shall have the same meaning as in section ~~54-2402~~ 6 of this act.

Sec. 26. Section 81-1506, Reissue Revised Statutes of Nebraska, is amended to read:

81-1506. (1) It shall be unlawful for any person:

(a) To cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state; or

(b) To discharge or emit any wastes into any air, waters, or land of the state which reduce the quality of such air, waters, or land below the air, water, or land quality standards established therefor by the council. Any such action is hereby declared to be a public nuisance. ~~A livestock~~ An animal

feeding operation is not a nuisance if:

(i) Reasonable techniques are employed to keep dust, noise, insects, and odor at a minimum;

(ii) It is in compliance with applicable regulations adopted by the council and zoning regulations of the local governing body having jurisdiction; and

(iii) The action is brought by or on behalf of a person whose date of lawful possession of the land claimed to be affected by a ~~livestock~~ an animal feeding operation is subsequent to the issuance of an appropriate permit by the department for such operation or is subsequent to the operation of the feedlot and an onsite inspection by the department is made, before or after filing of the suit, and the inspection reveals that no permit is required for such operation.

(2) It shall be unlawful for any person to:

(a) Discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and by rules and regulations adopted and promulgated pursuant to section 81-1505;

(b) Construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department;

(c) Increase in volume or strength any waste in excess of permitted discharges specified under any existing permit;

(d) Construct, install, or operate any industrial, commercial, or other facility or extend, modify, or add to any such facility if the operation would cause an increase in the discharge or emission of wastes into the air, waters, or land of the state or would otherwise cause an alteration of the physical, chemical, or biological properties of any air, waters, or land of the state in a manner that is not lawfully authorized; or

(e) Construct or use any new outlet for the discharge or emission of any wastes into the air, waters, or land of the state without the necessary permit.

(3) It shall be unlawful for any person to:

(a) Construct or operate a solid waste management facility without first obtaining a permit required under the Environmental Protection Act or under the Integrated Solid Waste Management Act and the rules and regulations adopted and promulgated by the council pursuant to the acts;

(b) Violate any term or condition of a solid waste management facility permit;

(c) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Integrated Solid Waste Management Act; or

(d) After October 1, 1993, dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act.

(4) It shall be unlawful to:

(a) Construct or operate an air pollution source without first obtaining a permit required under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to subsection (12) of section 81-1505;

(b) Violate any term or condition of an air pollution permit or any emission limit set in the permit; or

(c) Violate any emission limit or air quality standard established by the council.

(5) It shall be unlawful for any person to:

(a) Construct or operate a ~~livestock waste control facility~~ an animal feeding operation without first obtaining a permit if required under the Livestock Waste Management Act or under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to such acts;

(b) Violate any provision of the Livestock Waste Management Act;

(c) Violate any term or condition of a ~~livestock waste control facility~~ an animal feeding operation permit; or

(d) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Livestock Waste Management Act.

(6) Nothing in this section shall be construed to authorize the department to specify the type, design, method of installation, or type of construction of any equipment of manufacturing processes.

Sec. 27. Section 81-15,149, Revised Statutes Supplement, 2003, is amended to read:

81-15,149. As used in the Wastewater Treatment Facilities Construction Assistance Act, unless the context otherwise requires:

(1) Clean Water Act means the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of wastewater treatment works or nonpoint source control systems; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment works or nonpoint source control systems; or the inspection or supervision of any of the foregoing items;

(3) Council means the Environmental Quality Council;

(4) County means any county authorized to construct a sewerage disposal system and plant or plants pursuant to the County Industrial Sewer Construction Act;

(5) Department means the Department of Environmental Quality;

(6) Fund means the Wastewater Treatment Facilities Construction Loan Fund;

(7) Municipality means any city, town, village, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

(8) Nonpoint source control systems means projects which establish the use of methods, measures, or practices to control the pollution of surface waters and ground water that occurs as pollutants are transported by water from diffuse or scattered sources. Such projects include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures applied before, during, and after pollution-producing activities. Sources of nonpoint source pollution may include, but are not limited to, agricultural, forestry, and urban lands, transportation corridors, stream channels, mining and construction activities, ~~livestock~~ animal feeding operations, septic tank systems, underground storage tanks, landfills, and atmospheric deposition;

(9) Operate and maintain means all necessary activities including the normal replacement of equipment or appurtenances to assure the dependable and economical function of a wastewater treatment works or nonpoint source control systems in accordance with its intended purpose; and

(10) Wastewater treatment works means the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

Sec. 28. Original sections 54-2414, 81-1502, and 81-1506, Reissue Revised Statutes of Nebraska, sections 54-744.01, 54-2402, 54-2404 to 54-2404.02, 54-2406, 54-2408, 54-2411, and 54-2413, Revised Statutes Supplement, 2002, and sections 13-2042, 46-241, 46-257, 54-2401, 54-2412, 54-2415, and 81-15,149, Revised Statutes Supplement, 2003, are repealed.

Sec. 29. The following sections are outright repealed: Sections 54-2405 and 54-2410, Reissue Revised Statutes of Nebraska, and sections 54-2403, 54-2407, and 54-2409, Revised Statutes Supplement, 2002.