

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1258

Introduced by Cavanaugh, M., 6.

Read first time January 16, 2024

Committee:

- 1 A BILL FOR AN ACT relating to environmental protection; to amend section
- 2 54-2429, Reissue Revised Statutes of Nebraska; to change a
- 3 requirement relating to an application for a National Pollutant
- 4 Discharge Elimination System Permit or a construction and operating
- 5 permit under the Environmental Protection Act or the Livestock Waste
- 6 Management Act; to provide requirements for livestock waste control
- 7 facilities and animal feeding operations as prescribed; and to
- 8 repeal the original section.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 54-2429, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 54-2429 (1) An applicant for a National Pollutant Discharge
4 Elimination System permit or a construction and operating permit under
5 the Environmental Protection Act or the Livestock Waste Management Act
6 shall, before issuance by the Department of Environment and Energy,
7 obtain any necessary approvals from the Department of Natural Resources
8 under the Safety of Dams and Reservoirs Act and certify such approvals to
9 the Department of Environment and Energy. The Department of Environment
10 and Energy, with the concurrence of the Department of Natural Resources,
11 shall ~~may~~ require the applicant to obtain approval from the Department of
12 Natural Resources for any dam, holding pond, or lagoon structure which
13 would not otherwise require approval under the Safety of Dams and
14 Reservoirs Act but which in the event of a failure could result in a
15 significant discharge into waters of the state and have a significant
16 impact on the environment. The Department of Environment and Energy may
17 provide for the payment of such costs of the Department of Natural
18 Resources with revenue generated under section 54-2428.

19 (2) An applicant required to obtain a National Pollutant Discharge
20 Elimination System permit is subject to the requirements of the Engineers
21 and Architects Regulation Act.

22 (3) An applicant who has a large concentrated animal feeding
23 operation, as defined in 40 C.F.R. 122 and 123, as such regulations
24 existed on January 1, 2004, and who is required to obtain a construction
25 and operating permit is subject to the requirements of the Engineers and
26 Architects Regulation Act.

27 (4) An applicant who has a small or medium animal feeding operation,
28 as defined in 40 C.F.R. 122 and 123, as such regulations existed on
29 January 1, 2004, and who is required to obtain a construction and
30 operating permit, but not required to obtain a National Pollutant
31 Discharge Elimination System permit, is exempt from the Engineers and

1 Architects Regulation Act.

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

16 (6)(a) The Department of Environment and Energy shall not issue any
17 permit under this section to (i) a livestock waste control facility if
18 such facility is located where the department has determined that
19 groundwater may become contaminated by such facility or (ii) an animal
20 feeding operation with an existing livestock waste control facility if
21 such operation is located within one hundred feet of a domestic water
22 well not owned by the operation.

23 (b) The department may issue a permit to an existing livestock waste
24 control facility located within one hundred feet of a well owned by the
25 operation based upon an evaluation of (i) well depth to groundwater, (ii)
26 known flow direction of groundwater, (iii) the groundwater management
27 plan and other information from the local natural resources districts
28 pertinent to the application, and (iv) any other criteria satisfying the
29 department that groundwater quality will not be adversely affected.

30 (7) The Department of Environment and Energy may issue a new or
31 modified National Pollutant Discharge Elimination System permit, issue a

1 new or modified construction and operating permit, issue a modified
2 operating permit, or grant a modified construction approval to an
3 existing animal feeding operation if: (i) The existing animal feeding
4 operation modifies its operation and expands its approved livestock waste
5 control facility; (ii) the existing animal feeding operation's livestock
6 waste control facility is located more than two miles from a designated
7 cold water class A stream segment delineated pursuant to section 54-2421
8 and is in the same cold water class A stream watershed as the animal
9 feeding operation; and (iii) the existing animal feeding operation or
10 livestock waste control facility is located less than two miles, but more
11 than one mile, from a cold water class A stream delineated pursuant to
12 section 54-2421 and the department determines, based on scientific
13 information provided in the application or other available scientific
14 information, that the proposed expansion does not pose a potential threat
15 to the stream.

16 (8) If an existing animal feeding operation or a livestock waste
17 control facility is located within a groundwater management area,
18 monitoring wells shall be installed to monitor possible nitrate
19 contamination of groundwater.

20 (9)(a) Any livestock waste control facility or animal feeding
21 operation having a permit or a construction approval is required to have
22 routine inspections of production areas, irrigation distribution systems,
23 and land application areas as follows: (i) Weekly inspections at the
24 production area of all storm water diversion devices, runoff diversion
25 structures, and devices channeling contaminated storm water to the
26 facilities; (ii) daily inspection at the production area of water lines,
27 including drinking water or cooling water lines; (iii) daily monitoring
28 and recording of any precipitation events; (iv) weekly inspections at the
29 production area of the manure, litter, and process wastewater
30 impoundments, with such inspection record documenting the level in liquid
31 impoundments as indicated by the depth marker; (v) inspection prior to

1 each operation of the irrigation distribution system and the water source
2 protection equipment to ensure that the system and equipment operate as
3 intended, with such system being monitored while in use to ensure the
4 system operates as intended; (vi) inspection at least once a year to
5 determine the sludge and sediment accumulation level in liquid
6 impoundments; and (vii) inspection at least once every six months of
7 appropriately placed monitoring wells.

8 (b) Any facility or operation described in subdivision (8)(a) of
9 this section shall maintain records of the inspections described in such
10 subdivision at the facility or operation for a period of five years.

11 (10) The owner or operator of a large concentrated animal feeding
12 operation, as defined in 40 C.F.R. 122 and 123, as such regulations
13 existed on January 1, 2024, that includes a livestock waste control
14 facility shall maintain production area and land application area records
15 at such operation for a period of five years. A complete copy of the
16 nutrient management plan, including the test methods used to sample and
17 analyze manure, litter, process wastewater, monitor well results,
18 inspection records, and soil shall be submitted no later than December 1
19 each year to the Department of Environment and Energy and the local
20 natural resources district.

21 Sec. 2. Original section 54-2429, Reissue Revised Statutes of
22 Nebraska, is repealed.