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1998 Law Changes Affecting Minnesota Animal Feedlots

This information brief provides a summary of the 1998 law changes affecting animal feedlots. As defined in Pollution Control Agency (PCA) rules:

"Animal feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts. (Minn. Rules part 7020.0300, subp. 3)

The brief is organized by entities, whether a state agency, the University of Minnesota, a county, or an individual farmer, that are given responsibilities for animal feedlots. Under each entity, broad categories of responsibilities are listed as well as the chapter and section numbers of the laws where they can be found. Paragraphs detailing the entity's responsibility have key words highlighted in boldface.

The 1998 laws included here are:

- ▶ Chapter 366, the State Government Finance Supplemental Budget bill;
- ▶ Chapter 401, the Omnibus Environment, Natural Resources, and Agriculture Supplemental Budget bill; and
- ▶ Chapter 404, the Capital Improvement Appropriations bill.

Finally, a short summary of the upcoming program evaluation by the Legislative Auditor's Office on feedlot regulatory programs is included for the reader's edification.

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Pollution Control Agency

Grants

Chapter 401 (Section 2)

The agency has been given an additional \$350,000 in fiscal year 1999 to be added to the **feedlot program grants to counties**. Grants are either: \$40 multiplied by the number of livestock or poultry farms with sales greater than \$10,000, as reported in the 1992 Census of Agriculture; or \$50 multiplied by the number of feedlots with more than ten animal units as determined by a level 2 or level 3 feedlot inventory in accordance with the PCA's Feedlot Inventory Guidebook.

Permits

Chapter 401 (Section 39)

The agency may refuse to issue or to authorize the transfer of: (a) a hazardous waste facility permit or a solid waste permit to construct or operate a commercial waste facility; or (b) an **animal feedlot facility permit**. The agency may consider:

- (1) the experience of the permit applicant in constructing and operating commercial waste facilities or animal feedlot facilities;
- (2) the expertise of the permit applicant;
- (3) the past record of the applicant;
- (4) any criminal convictions of the applicant in the state or federal court within the past five years that may inhibit the applicant from conforming with the requirements; or
- (5) in the case of a corporation or business, past records of any of the permit applicant's officers, partners, or facility managers.

Chapter 401 (Section 41)

The agency will adopt **rules** over the issuance and denial of feedlot permits. A county may adopt ordinance standards for animal feedlots that are more stringent. The agency will supervise the processing of animal feedlot permit applications by a county and has 15 days, after written notification provided by the county, to review, suspend, modify, or reverse a feedlot permit.

Any new rules or amendments must be submitted to the members of the legislative policy committees with the proper jurisdiction. The rules may not become effective until 90 days after they have been submitted.

Chapter 401 (Section 43)

The agency must issue **National Pollutant Discharge Elimination System permits** for feedlots with 1,000 or more animal units, using the following schedule: (1) permit applications received after the effective date (April 22, 1998) for newly constructed or expanded animal feedlots with 2,000 or more animal units will be issued as individual permits; (2) applications received after January 1, 1999, for newly constructed or expanded feedlots with between 1,000 and 2,000 animal units that are identified by the commissioner as a priority will be issued as individual permits; (3) after January 1, 2001, all existing feedlots with 1,000 or more animal units must be issued an individual or general National Pollutant Discharge Elimination System permit.

The following schedule also applies:

- (1) by October 1, 1999, the agency must issue a general National Pollutant Discharge Elimination permit for animal feedlots with 1,000 to 2,000 animal units;
- (2) by January 1, 1999, the commissioner, in consultation with the feedlot, manure management advisory committee, and other interested parties, must develop criteria for whether an individual National Pollutant Discharge Elimination permit is required for animal feedlots with 1,000 to 2,000 animal units. The criteria must be based upon the proximity to water, facility design, and other site-specific environmental factors;
- (3) by January 1, 2000, criteria must also be developed for determining whether an individual National Pollutant Discharge Elimination permit is required for an existing animal feedlot. The criteria must be based upon violations and other compliance problems at the facility.

Chapter 401 (Section 52)

Until June 30, 2000, the agency cannot issue a permit for the construction of an open-air clay, earthen, or flexible membrane lined **swine waste lagoon** (does not apply to the repair or modification of an existing lagoon).

Public Notice

Chapter 401 (Section 18)

The agency feedlot program will distribute the management practices for **dead animal disposal** developed by the Board of Animal Health to livestock producers in the state.

Chapter 401 (Section 42)

Any state agency conducting a **survey of livestock feedlots** under its jurisdiction must publicize it in a newspaper circulated within the area and through other media. The notice must state the dates of the inventory, the information that will be requested, how the information will be provided to the public, and the date for a public informational meeting. At least four public meetings outside the seven-county Twin Cities metropolitan area prior to the inventory must also be held.

Chapter 401 (Section 43)

Prior to issuing a general **National Pollutant Discharge Elimination permit**, the agency must hold at least one public hearing. The agency must include a public notice and comment period for an individual National Pollutant Discharge Elimination permit for: (1) the purpose of environmental review of the same facility, or; (2) the purpose of obtaining a conditional use permit from a local government where the local government is responsible.

Chapter 401 (Section 41)

The agency will work with the Minnesota Extension Service, the Department of Agriculture, the Board of Water and Soil Resources, producer groups, local units of government, and the appropriate federal agencies, to notify and educate agricultural producers of **rule changes** at the time the rules are being developed and adopted and at least every two years.

Chapter 401 (Section 53)

The Commissioner of the PCA must submit a copy of **updated feedlot permit rules** to the legislature as prescribed in Minnesota Statutes, section 116.07, subdivision 7, paragraph (I). The rules must become effective no later than June 1, 1999.

Chapter 401 (Section 56)

By January 15, 1999, the Commissioner of the PCA, in conjunction with the Commissioner of Agriculture, shall report to the legislative policy and finance committees or divisions with jurisdiction over agriculture and the environment on the need for an **animal waste liability account**, improved animal waste incident reporting, and a contingency action plan for animal waste sites. The report must include: an analysis of the need and level of funding required for an animal waste liability account, funding sources, the need for changes to the current animal waste reporting system, and the need for the development of a statewide animal waste contingency plan for animal waste sites, including containment, closure, and cleanup.

Environmental Quality Board

Committee Establishment

Chapter 366 (Section 86)

The Environmental Quality Board must establish the **Livestock Industry Environmental Steering committee**, which was created in May 1998. The committee consists of 24 representatives from the livestock industry, environmental interests, and other stakeholders. They will advise the board on the content of the generic environmental impact statement discussed

below. The committee expires upon the completion and presentation of the impact statement. Members will be compensated and reimbursed for their expenses according to Minnesota Statutes, section 15.059.

Reports

Chapter 366 (Section 86)

A three-year **generic environmental impact statement** must be done with direction from the Environmental Quality Board. The statement will examine the long-term effects of the livestock industry as it is now and based on future changes to the economy, the environment, and the way of life of Minnesotans. The study may address: the overall dimensions of agriculture in Minnesota, environmental issues related to livestock production, economic issues, and the roles of various government regulations. It will proceed in three phases: (1) the EQB must decide what specific study topics will be included and how they will be addressed; (2) a draft GEIS document will be prepared for review; and (3) the EQB will issue the final document. It should be completed by June 30, 2001. \$1,200,000 is appropriated to start until June 10, 1999, with like amounts to be requested to future legislatures.

Chapter 401 (Section 54)

The Environmental Quality Board, in consultation with the PCA, shall study and adopt rules that apply to **phased and connected actions on animal feedlots** and the need for environmental review. The board must submit a copy of the rules and a summary of public comments received on the rules to the members of the House and Senate policy committees with the proper jurisdiction by March 1, 1999. The rules may not become effective until 60 days after they have been submitted to committee members and must become effective no later than June 1, 1999.

Department of Agriculture

Grants

Chapter 401 (Section 6)

\$200,000 in fiscal year 1999 is to expand the **shared savings loan program** to include a program of revolving loans for demonstration projects of farm manure digester technology. These loans are no-interest loans for principal amounts not to exceed \$200,000 and may be granted to anyone in the state. Loans for one or more projects may be made only after the commissioner seeks applications. The loans may be used to match federal loans or grants. All money repaid must be returned to the revolving fund for future use in the program.

Chapter 404 (Section 9)

\$9,000,000 has been appropriated from the general fund for deposit into the Water Pollution Control fund for the **agricultural best management practices** loan program. None of this may be used for conservation tillage equipment.

Permits and Licenses

Chapter 401 (Section 16)

The Commissioner of Agriculture shall establish a program to certify the accuracy of analyses from soil and **manure testing** laboratories and promote the standardization of soil and manure testing procedures and analytic results. The commissioner will install a system of check samples that requires a laboratory to be certified to analyze at least two multiple soil or manure check samples during the calendar year. The samples must be supplied by the commissioner or a person under contract by the commissioner. The laboratory must report the results within 30 days. The commissioner shall compile the data submitted by the laboratories and provide the laboratories submitting samples with a copy of the data without laboratory names or code numbers.

The commissioner shall adopt rules for the establishment of minimum standards for laboratories, equipment, procedures, and personnel used in soil and manure analysis and rules necessary to enforce this section. The commissioner must consult with representatives from the fertilizer industry, from the laboratories, and from the University of Minnesota College of Agriculture before proposing rules.

Chapter 401 (Section 41)

Until new rules are adopted that provide plans for **manure storage structures**, any plans for a liquid manure storage structure must be prepared or approved by a registered professional engineer, or a U.S. Department of Agriculture, Natural Resources Conservation Service employee.

Chapter 401 (Section 17)

The Commissioner of Agriculture, in cooperation with Minnesota Extension Service and appropriate educational institutions, shall establish and implement a program for training and **licensing commercial animal waste technicians**.

A person must apply to the commissioner for a commercial animal waste technician license on forms and in the manner required by the commissioner and must include the application fee. The commissioner shall prescribe and administer an examination or its equivalent to determine if the applicant is eligible.

A person must apply to the Commissioner of Agriculture to renew his/her license and must include the application fee. The commissioner may renew the license subject to reexamination, attendance at workshops approved by the commissioner, or other requirements developed by the commissioner. The applicant may renew the license within 12 months after expiration without having to meet initial testing requirements. The commissioner may require additional demonstration of qualifications if a person has had a license suspended or revoked or has a history of violations.

A license may not be issued unless the applicant provides proof of financial responsibility. Proof may be: proof of net assets equal to or greater than \$50,000, or a performance bond or insurance of the kind and in an amount determined by the Commissioner of Agriculture. The bond or insurance must cover a period of time equal to or more than the term of the license. The commissioner will immediately suspend the license of a person who fails to maintain the bond or insurance.

Reports

Chapter 401 (Section 51)

The Commissioner of Agriculture, with the consultation of the Commissioner of the PCA and other state farm organizations, shall conduct a study to assess the need and feasibility of a program for **noncommercial manure applicator training and certification**. The commissioner must submit a report to the members of the Senate and House policy committees with jurisdiction over agriculture and the environment by January 20, 1999. The report will include recommendations on: persons and activities that should be exempt, dates by which persons should be required to have certification, content of the noncommercial animal waste technician training curriculum, and procedures and time lines for implementing the training programs.

Board of Water & Soil Resources

Grants

Chapter 401 (Section 5)

\$1,000,000 in fiscal year 1999 is appropriated for grants to soil and water conservation districts for **cost-sharing contracts** for water quality management on feedlots, with priority given to feedlot owners who have received a notice of violation or for those who are conducting or have completed a level 2 or level 3 feedlot inventory.

Chapter 404 (Section 10)

\$1,000,000 is from capital improvements for grants to soil and water conservation districts for cost-sharing contracts for **water quality management** on feedlots. Priority must be given to operators who have received a notice of violation and for feedlots in counties that are conducting or have completed a level 2 or level 3 feedlot inventory.

University of Minnesota

Grants

Chapter 401 (Section 7)

A **\$292,000 grant** will be given in fiscal year 1999. Of this grant, \$125,000 will be given to the Minnesota Institute for Sustainable Agriculture to extend funding for the Alternative Swine Production Systems Task Force and coordinator. Another \$30,000 of this is for the Minnesota Institute for Sustainable Agriculture for alternative and sustainable hog production programs and program support. \$137,000 is to establish a faculty position in agricultural and community sociology at the University of Minnesota-Morris, focusing on sustainability of agricultural systems in rural communities. The position will be defined by the Alternative Swine Production Systems Task Force.

Counties

Permits

Chapter 401 (Section 41)

Any county board, with the approval of the PCA, may assume responsibility for **processing permit applications** for livestock feedlots, poultry lots, or other animal lots. If assumed by the county, the responsibility may be delegated by the board to any appropriate county officer or employee. This allows the county to: (1) distribute forms provided by the PCA; (2) receive and examine completed applications and forms, and provide written certification to the agency that the applicant will or will not comply with the requirements; and (3) render all assistance required or requested to complete the forms. At the option of the county, "processing" may also include issuing, denying, modifying, imposing conditions upon, or revoking permits according to the provisions subject to review by the PCA. The agency has 15 days to examine and make the decision which is subject to appeal.

Counties may adopt more stringent standards for animal feedlots than those developed by the PCA.

Chapter 401 (Section 52)

Until June 30, 2000, the county board cannot issue a permit for the construction of an open-air clay, earthen, or flexible membrane lined **swine waste lagoon** (does not apply to the repair or modification of an existing lagoon).

Public Notice

Chapter 401 (Section 41)

After January 1, 2001, a county that has not adopted a feedlot permit program must hold a public meeting prior to the agency **issuing a feedlot permit** for a facility with 300 or more animal units, unless another public meeting has been held with regard to the feedlot facility.

Chapter 401 (Section 42)

Any local government conducting a **survey of livestock feedlots** under its jurisdiction must notify the public of the inventory in a newspaper circulated within the areas and in other media. The notice must state the dates of the inventory, the information that will be requested, how the information will be provided to the public, and the date for a public meeting to provide information regarding inventory. The county must hold at least one meeting within the boundaries of the jurisdiction of the local unit of government, prior to the inventory.

Reports

Chapter 401 (Section 57)

By August 1, 1998, each county and town that has adopted ordinances related to feedlots shall provide **copies of the ordinances** to the Commissioner of Agriculture. A county or town that adopts a new or amended ordinance shall report the new amended ordinance to the commissioner within 60 days after the adoption. The reporting requirements expire after June 30, 2001.

Individual Farmers

Animal Disposal

Chapter 401 (Section 18)

Every person owning or controlling any **domestic animal** that has died or been killed, other than for human or animal consumption, shall bury the **carcass** at least three feet deep, burn it, or dispose of it in a manner approved by the Board of Animal Health as soon as possible. There are

a few exceptions to this: (1) carcasses collected by rendering plants under permit may be used for pet food or mink food if the owner or operator meets the requirements; (2) sheep carcasses owned by a sheep producer may be composted on the producer's land without a permit and the producer is exempt from compost facility specifications contained in rules of the board.

No person may sell, offer to sell, give away, or convey on land the person does not own, the carcass of a dead domestic animal (that died or was killed for reasons other than consumption) unless it is done with a special permit. The carcass or parts of it may be transported along public roads for medical or scientific purposes if the carcass is enclosed in a leakproof container. The board may adopt rules relative to medical or scientific transportation. A carcass on a public thoroughfare may be transported for burial or other disposition in accordance with this section. No person who owns or controls diseased animals shall negligently or willfully permit them to escape or run at large.

Permits and Licenses

Chapter 401 (Section 17)

After March 1, 2000, a person may not manage or apply animal wastes for hire without a valid **commercial animal waste technician license**. This does not apply to a person managing or applying animal waste on land managed by the person's employer. A person who is not licensed who has had at least two hours of training or experience in animal waste management may manage or apply animal waste for hire under the supervision of a commercial animal waste technician.

A person managing or applying animal wastes for hire must have a valid license identification card and must display it upon demand. The commissioner will prescribe the information required on the card.

A person required to be licensed under this section who performs animal waste management or application for hire, or who employs a person to perform animal waste management or application, is responsible for proper management or application of the animal wastes.

A commercial animal waste technician license: is valid for three years and expires on December 31 of the third year; is not transferrable; and must be prominently displayed to the public in the technician's place of business.

A license may not be issued unless the applicant provides proof of financial responsibility. Proof may be: proof of net assets equal to or greater than \$50,000 or a performance bond or insurance of the kind and in an amount determined by the Commissioner of Agriculture. The bond or insurance must cover a period of time equal to or more than the term of the license. The commissioner will immediately suspend the license of a person who fails to maintain the bond or insurance. An employee of a licensed person is not required to maintain the insurance or the bond during the time the employer is providing the insurance or bond. Applications for reinstatement of a suspended license must be accompanied by proof of financial responsibility.

A person initially applying for or renewing a license must pay a nonrefundable application fee of \$50 and a fee of \$10 for each additional card requested.

Department of Labor and Industry

Study

Chapter 401 (Section 55)

By January 15, 1999, the Commissioner of Labor and Industry, in consultation with the Commissioners of the PCA, Health, and Agriculture, shall report to the Senate and House policy committees with jurisdiction over agriculture and environment on the need for and, if appropriate, suggested changes to standards for **hydrogen sulfide exposure levels** within livestock confinement facilities having a design capacity of 500 animal units or more, and at various distances up to 5,000 feet from animal waste storage facilities.

Board of Animal Health

Permits

Chapter 401 (Section 18)

The Board of Animal Health, through its executive secretary, may issue permits to owners of plants located in Minnesota which are operated in accordance with the law, to transport **carcasses of domestic animals** and fowl that have died or have been killed for reasons other than consumption, over public highways to their plants for rendering purposes in accordance with laws developed by the board relative to transportation to prevent disease. The board may issue the permits to owners of rendering plants located adjacent to the state with which a reciprocal agreement is in effect under subdivision 3.

An authorized employee or agent of the board may enter private or public property and inspect any carcasses that have died for reasons other than consumption. Failure to dispose of the carcasses by the deadline is a public nuisance. The board may petition the district court of the county in which a carcass is located for a writ requiring the abatement of the public nuisance. A civil action commenced under this paragraph does not preclude a possible criminal prosecution. The board may adopt rules relative to the transportation of animals for medical or scientific use.

The board shall develop best management practices for dead animal disposal and the PCA feedlot program shall distribute them to livestock producers in the state.

Legislative Auditor

As part of its 1998-1999 program evaluations, the Office of the Legislative Auditor will be studying the **regulation of feedlots by the PCA** and selected counties (perhaps up to six in number). Specifically, the Legislative Auditor wants to address the following major questions:

- (1) Is the PCA adequately enforcing its rules for feedlots under its direct supervision?
- (2) Are counties with delegated permit authority bringing feedlots into compliance with the appropriate rules and regulations? Does the PCA provide adequate oversight of counties with delegated authority?
- (3) Are PCA rules strong enough to prevent pollution discharges into water from manure storage facilities and manure spreading?

The study will review applicable laws and regulations, examine regulatory agency files, consider relevant studies and literature, and include visiting a number of feedlot facilities.