

Chapter 248 Oregon Laws 2001

AN ACT

HB 2156

Relating to confined animal feeding operations; creating new provisions; amending ORS 468B.035, 468B.050, 468B.205, 468B.215, 468B.225, 468B.230, 537.141, 537.545 and 561.175; repealing ORS 468B.223 and 468B.227; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) The State Department of Agriculture and the Department of Environmental Quality are directed to pursue United States Environmental Protection Agency approval of the transfer of the permitting program implemented pursuant to 33 U.S.C. 1342, as it relates to confined animal feeding operations, from the Department of Environmental Quality to the State Department of Agriculture.

(2) The State Department of Agriculture is directed to assume all permitting and enforcement responsibilities for confined animal feeding operations at such time as the United States Environmental Protection Agency approves the transfer.

(3) In order to encourage the assumption of all permitting and enforcement responsibilities for confined animal feeding operations by the State Department of Agriculture, the Department of Environmental Quality and the State Department of Agriculture shall notify the United States

Environmental Protection Agency of the completion of the interagency agreements and administrative procedures necessary for the transfer of the permitting program to the State Department of Agriculture.

(4) If the State Department of Agriculture assumes all permitting and enforcement responsibilities for confined animal feeding operations, the State Department of Agriculture shall, to the extent that funds are available for the creation and implementation of an educational program, inform and familiarize operators of confined animal feeding operations with any new administrative rules or related regulatory programs implemented as a result of the assumption.

SECTION 2. The State Department of Agriculture shall inform the President of the Senate, the Speaker of the House of Representatives and the Legislative Counsel Committee of the assumption of permitting and enforcement responsibilities for confined animal feeding operations pursuant to section 1 of this 2001 Act at the time the United States Environmental Protection Agency approves the transfer.

SECTION 3. ORS 468B.035 is amended to read:

468B.035. (1) The Environmental Quality Commission may perform or cause to be performed any [*and all*] acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, [*enacted by Congress, October 18, 1972, and Acts amendatory thereof or supplementary thereto,*] **P.L. 92-500, as amended, and federal regulations [*and*] **or** guidelines issued pursuant [*thereto*] **to the Act.** The commission may adopt, modify or repeal rules, pursuant to ORS 183.310 to 183.550, for the administration and implementation [*of this section*] **of this subsection.****

(2) The State Department of Agriculture may perform or cause to be performed any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and any federal regulations or guidelines issued pursuant to the Act, relating to the control and prevention of water pollution from livestock and other animal-based agricultural operations. The department may adopt rules pursuant to ORS 183.310 to 183.550 for the administration and implementation of this subsection.

SECTION 4. ORS 468B.050 is amended to read:

468B.050. (1) Except as provided in ORS 468B.053 or 468B.215, without first obtaining a permit from the Director of the Department of Environmental Quality **or the State Department of Agriculture**, which permit shall specify applicable effluent limitations, no person shall:

- (a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.
- (b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.
- (c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.
- (d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or

which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

(2) As used in this section, "confined animal feeding operation" has the meaning given [*in ORS 468B.205*] **that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality.**

SECTION 5. Section 6 of this 2001 Act is added to and made a part of ORS 468B.200 to 468B.230.

SECTION 6. The provisions of ORS 468B.200 to 468B.230 apply to animal feeding operations regulated under 33 U.S.C. 1342 only to the extent that the operation of the provisions of ORS 468B.200 to 468B.230 are consistent with federal law, regulations or guidelines issued pursuant to the Federal Water Pollution Control Act, P.L. 92-500, as amended.

SECTION 7. ORS 468B.205 is amended to read:

468B.205. (1) As used in ORS 468B.200 to 468B.230, "confined animal feeding operation" [*means the concentrated confined feeding or holding of animals or poultry, including, but not limited to horse, cattle, sheep or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms, in buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather or which have waste water treatment works*] **has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality. The definition must**

distinguish between various categories of animal feeding operations, including but not limited to those animal feeding operations that are subject to regulation under 33 U.S.C. 1342.

(2) A rule implementing ORS 468B.200 to 468B.230 may not be adopted using the procedures provided in ORS 183.337 for agency adoption of federal rules.

SECTION 8. ORS 468B.215 is amended to read:

468B.215. (1) Any person operating a confined animal feeding operation shall pay a fee established under ORS 561.175.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, a fee shall not be assessed to nor a permit required under ORS 468B.050 (1)(d) of confined animal feeding operations of four months or less duration or that do not have waste water control facilities. A confined animal feeding operation [*in this category shall be*] **of four months or less duration or that does not have waste water control facilities is subject to all requirements of ORS chapters 468, 468A and 468B if found to be discharging wastes into the waters of the state [*without a permit or in violation of a permit*].**

[(3) In order to recover costs associated with increased monitoring and inspection, for the three years after a confined animal feeding operation owner or operator is assessed a civil penalty for violation of any provisions of ORS chapters 468, 468A and 468B, any rule adopted under ORS chapter 468, 468A and 468B or any permit condition, the owner or operator shall pay an annual inspection fee of \$1,000 rather than the fee established under ORS 561.175 and shall have an annual inspection for each of the three years. An owner or operator shall be considered to have been

assessed a civil penalty only if the penalty has been adjudicated pursuant to ORS 468.135.]

[(4)] **(3)** The Department of Environmental Quality **or the State Department of Agriculture** may impose on the permit required for a confined animal feeding operation only those conditions necessary to [*assure*] **ensure** that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state.

[(5)] **(4)** A permit for a confined animal feeding operation [*shall not expire, but*] may be revoked or modified by the [*Director of the*] Department of Environmental Quality **or the State Department of Agriculture** or may be terminated upon request by the permit holder. [*Each confined animal feeding operation under permit may be inspected by the State Department of Agriculture.*] **An animal feeding operation may be inspected for compliance with water quality laws and regulations by the Department of Environmental Quality or the State Department of Agriculture.**

SECTION 9. ORS 468B.225 is amended to read:

468B.225. (1) Prior to conducting an investigation of [*a confined*] **an** animal feeding operation under ORS 468B.217 on the basis of a complaint, the State Department of Agriculture shall:

(a)(A) Require the person making the complaint to specify the complaint in writing; **or**

(B) Make a detailed written record of the complaint; and

(b) Determine which provision of ORS chapter 468 or 468B, which rule adopted under ORS chapter 468 or 468B or which

permit issued under ORS chapter 468 or 468B the operator of the [*confined*] animal feeding operation may have violated.

(2) If, upon investigation under ORS 468B.217 on the basis of a complaint received under subsection (1) of this section, the State Department of Agriculture determines that [*a confined*] **an** animal feeding operation has not violated a provision of ORS chapter 468 or 468B, a rule adopted under ORS chapter 468 or 468B or the conditions of a permit issued under ORS chapter 468 or 468B, **and the department has reason to believe that the complaint was groundless and made for the purpose of harassing the operator, the department may refuse to consider future complaints made by the person** [*the State Department of Agriculture shall require that any additional complaint filed by the same person in the same calendar year shall be accompanied by a security deposit of \$100. If, after investigation, the State Department of Agriculture determines that a violation has occurred, the security deposit shall be returned to the person who filed the complaint. If the State Department of Agriculture determines that a violation has not occurred, the security deposit shall be forfeited*].

SECTION 10. ORS 468B.230 is amended to read:

468B.230. (1) In addition to any liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS chapter 468 or 468B or any rule adopted under, or a permit issued under ORS chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. For the purposes of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the State Department of Agriculture finds

that a different period of time is more appropriate to describe a specific violation event.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, the State Department of Agriculture may not impose a civil penalty under subsection (1) of this section for a first violation by an owner or operator of a confined animal feeding operation:

(a) That is more than \$2,500; and

(b) Unless the State Department of Agriculture notifies the violator that the violation must be eliminated no later than 30 business days from the date the violator receives the notice. If the violation requires more than 30 days to correct, the State Department of Agriculture may allow such time as is necessary to correct the violation. In all cases, the legal owner of the property shall also be notified, prior to the assessment of any civil penalty.

(3) The State Department of Agriculture may not impose a civil penalty under subsection (1) of this section that exceeds \$10,000 for a subsequent violation.

(4) In imposing a civil penalty under this section, the State Department of Agriculture may consider:

(a) The past history of the owner or operator in taking all feasible steps or procedures necessary and appropriate to correct a violation.

(b) A past violation of a rule or statute relating to a water quality plan.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was a sole event, repeated or continuous.

(e) Whether the cause of the violation was as a result of an unavoidable accident, negligence or an intentional act.

(f) Whether the owner or operator cooperated in an effort to correct the violation.

(g) The extent to which the violation threatens the public health and safety.

(5) No notice of violation or period for compliance shall be required under subsection (2) of this section if:

(a) The violation is intentional; or

(b) The owner or operator has received a previous notice of the same or similar violation.

(6) A civil penalty collected by the State Department of Agriculture under this section shall be deposited into a special subaccount in the Department of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the department to be used for educational programs on animal waste management and to carry out animal waste management demonstration or research projects.

(7) Any civil penalty imposed under this section shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission, the Department of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation.

SECTION 11. ORS 537.141 is amended to read:

537.141. (1) The following water uses do not require an application under ORS 537.130 or 537.615, a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

(a) Emergency fire-fighting uses;

(b) Nonemergency fire-fighting training conducted by public fire departments and rural fire protection districts, provided:

(A) The source of the water is existing storage and the use occurs with permission of the owner of the stored water; or

(B) If the source of water is other than existing storage, the use occurs with the prior written approval of the watermaster in the district where the training will take place and subject to any conditions the watermaster determines are necessary to prevent injury to existing water rights and to protect in-stream resources;

(c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water right permit or certificate for the reservoir;

(d) Fish screens, fishways and fish by-pass structures, as exempted by rule of the Water Resources Commission;

(e) Land management practices intended to save soil and improve water quality by temporarily impeding or changing the natural flow of diffuse surface water across agricultural lands when storage of public waters is not an intended purpose. Such practices include but are not limited to:

(A) Terraces;

(B) Dikes;

(C) Retention dams and other temporary impoundments; and

(D) Agronomic practices designed to improve water quality and control surface runoff to prevent erosion, such as ripping, pitting, rough tillage and cross slope farming;

(f) Livestock watering operations that comply with the requirements under subsections (2) and (3) of this section;

(g) Forest management activities that require the use of water in conjunction with mixing pesticides as defined in ORS 634.006, or in slash burning;

(h) The collection of precipitation water from an artificial impervious surface and the use of such water; and

(i) Land application of ground water so long as the ground water:

(A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;

(B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and

(C) Is applied pursuant to a permit issued by the Department of Environmental Quality **or the State Department of Agriculture** under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.

(2) The use of surface water for livestock watering may be exempted under subsection (1) of this section if:

(a) The water is diverted from a stream or other surface water source to a trough or tank through an enclosed water delivery system;

(b) The delivery system either is equipped with an automatic shutoff or flow control mechanism or includes a means for returning water to the surface water source through an enclosed delivery system; and

(c) The operation is located on land from which the livestock would otherwise have legal access to both the use and source of the surface water source.

(3) If the diversion system described in subsection (2) of this section is located within or above a scenic waterway, the amount of water that may be used without a water right is limited to one-tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall prevent the Water Resources Commission from approving an application for a water right permit for a delivery system not qualifying under subsection (2) of this section.

(4) The Water Resources Department, in conjunction with local soil and water conservation districts, **the Oregon State University Extension Service**, the State Department of Agriculture and the State Department of Fish and Wildlife and any other organization interested in participating, shall develop and implement a voluntary educational program on livestock management techniques designed to keep livestock away from streams and riparian areas.

(5) To qualify for an exempt use under subsection (1)(g) of this section, the user shall:

(a) Submit notice of the proposed use, including the identification of the proposed water source, to the Water Resources Department and to the State Department of Fish and Wildlife at the time notice is provided to other affected agencies pursuant to ORS 527.670; and

(b) Comply with any restrictions imposed by the department pertaining to sources of water that may not be used in conjunction with the proposed activity.

(6) Except for the use of water under subsection (1)(i) of this section, the Water Resources Commission by rule may require any person or public agency diverting water as described in subsection (1) of this section to furnish information with regard to such water and the use thereof. For a use of water described in subsection (1)(i) of this section, the Department of Environmental Quality **or the State Department of Agriculture** shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse.

SECTION 12. ORS 537.545 is amended to read:

537.545. (1) Except as provided in subsection (4) of this section, no registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is required for the use of ground water for:

(a) Stockwatering purposes;

(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

(c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located within a critical ground water area established pursuant to ORS 537.730 to 537.740;

(d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

(e) Down-hole heat exchange purposes;

(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day; or

(g) Land application, so long as the ground water:

(A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;

(B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and

(C) Is applied pursuant to a permit issued by the Department of Environmental Quality **or the State Department of Agriculture** under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.

(2) The use of ground water for a use exempt under subsection (1) of this section, to the extent that it is beneficial, constitutes a right

to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700. Except for the use of water under subsection (1)(g) of this section, the Water Resources Commission by rule may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof. For a use of water described in subsection (1)(g) of this section, the Department of Environmental Quality **or the State Department of Agriculture** shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse.

(3) If it is necessary for the Water Resources Department to regulate the use or distribution of ground water, including uses exempt under subsection (1) of this section, the department shall use as a priority date for the exempt uses the date indicated in the log for the well filed with the department under ORS 537.765 or other documentation provided by the well owner showing when water use began.

(4) After declaration of a ground water management area, any person intending to make a new use of ground water that is exempt under subsection (1) of this section shall apply for a ground water permit under ORS 537.505 to 537.795 and 537.992 to use the water. Any person applying for a permit for an otherwise exempt use shall not be required to pay a fee for the permit.

SECTION 13. ORS 561.175 is amended to read:

561.175. (1) The State Department of Agriculture by rule shall establish a schedule of annual fees, not to exceed \$25, to be paid under ORS 468B.215 by any persons operating a confined animal feeding operation.

(2) As used in this section, "confined animal feeding operation" has the meaning given [*in ORS 468B.205*] **that term in rules adopted by the State Department of Agriculture.**

SECTION 14. ORS 468B.223 and 468B.227 are repealed.

SECTION 15. This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect July 1, 2001.

Approved by the Governor May 30, 2001

Filed in the office of Secretary of State May 30, 2001

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