

TITLE 22
AGRICULTURE AND HORTICULTURE

CHAPTER 49
BEEF CATTLE ENVIRONMENTAL CONTROL ACT

22-4901. SHORT TITLE. This chapter shall be known and cited as the "Beef Cattle Environmental Control Act."

[22-4901, added 2000, ch. 63, sec. 1, p. 139.]

22-4902. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. (1) The legislature recognizes the importance of protecting state natural resources including surface water and ground water. It is the intent of the legislature to protect the quality of these natural resources while maintaining an ecologically sound, economically viable, and socially responsible beef cattle industry in the state. The beef cattle industry produces manure and process wastewater which, when properly used, supplies valuable nutrients and organic matter to soils and is protective of the environment, but may, when improperly stored and managed, create adverse impacts on natural resources, including waters of the state. This chapter is intended to ensure that manure and process wastewater associated with beef cattle operations are handled in a manner which protects the natural resources of the state.

(2) Successful implementation of this chapter is dependent upon the department receiving adequate funding from the legislature. Moreover, the legislature recognizes that it is important for the state to obtain a delegated national pollutant discharge elimination system (NPDES) program from the United States environmental protection agency under the clean water act. The department's authority to enforce this chapter should be consistent and coordinated with the department of environmental quality's authorities pursuant to [title 39](#), Idaho Code, to protect state ground and surface waters, and to obtain approval from the United States environmental protection agency to implement and administer an Idaho NPDES program governing the discharge of pollutants to the waters of the United States as defined in the federal clean water act.

[22-4902, added 2000, ch. 63, sec. 1, p. 139; am. 2001, ch. 103, sec. 7, p. 261; am. 2004, ch. 187, sec. 1, p. 579; am. 2010, ch. 343, sec. 1, p. 900; am. 2016, ch. 129, sec. 1, p. 376.]

22-4903. AUTHORITY AND DUTIES OF DIRECTOR CONCERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS. (1) The director of the department of agriculture through the division of animal industries is authorized to regulate beef cattle animal feeding operations to protect state natural resources, including surface water and ground water. The department is authorized to adopt rules to implement the provisions of this chapter.

(2) Nothing in this chapter shall affect the authority of the department of environmental quality to administer and enforce an Idaho NPDES program for beef cattle feeding operations, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement action, as set forth in [chapter 1, title 39](#), Idaho Code, and the rules adopted pursuant thereto. The provisions of this chapter do not al-

ter the requirements, liabilities and authorities with respect to or established by an Idaho NPDES program.

(3) The director of the department of environmental quality and the director of the department of agriculture shall, as appropriate, establish an agreement relating to the administration of an Idaho NPDES program that recognizes the expertise of the department of agriculture. The director shall have the authority to exercise any other authorities delegated by the director of the department of environmental quality regarding the protection of ground water, surface water and other natural resources associated with beef cattle feeding operations, and this shall be the authority for the director of the department of environmental quality to so delegate.

(4) The director of the department of environmental quality shall consult with the director of the department of agriculture before certifying discharges from beef cattle animal feeding operations as provided under 33 U.S.C. section 1341.

[22-4903, added 2000, ch. 63, sec. 1, p. 140; am. 2001, ch. 103, sec. 8, p. 262; am. 2004, ch. 187, sec. 2, p. 580; am. 2016, ch. 129, sec. 2, p. 377.]

22-4904. DEFINITIONS. When used in this chapter:

(1) "Administrator" means the administrator, or his designee, for the animal industries division of the Idaho department of agriculture.

(2) "Beef cattle" means slaughter and feeder cattle or dairy heifers that are kept on or contiguous to the animal feeding operation and are owned or controlled by the animal feeding operation.

(3) "Beef cattle animal feeding operation" means an animal feeding operation which confines the number of slaughter and feeder cattle or dairy heifers as set forth in 40 CFR 122.23(b) (1), (b) (2), (b) (4), (b) (6) or (b) (9).

(4) "Best management practices" means practices, techniques or measures which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state. Best management practices for water quality shall be adopted pursuant to the state water quality management plan, the Idaho ground water quality plan or this chapter.

(5) "Department" means the Idaho department of agriculture.

(6) "Director" means the director of the Idaho department of agriculture or his designee.

(7) "Manure" means animal excrement that may also contain bedding, spilled feed, water or soil.

(8) "Modification" or "modified" means structural changes and alterations to the wastewater storage containment facility which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility.

(9) "Noncompliance" means a practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected, will cause an unauthorized discharge.

(10) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(11) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e) (1), or other equally protective standard for managing the amount, placement, form and timing of the land application of nutrients and soil amendments.

(12) "Nutrient management standard" means the 1999 publication by the United States department of agriculture, natural resources conservation service, conservation practice standard, nutrient management code 590 or other equally protective standard approved by the director.

(13) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(14) "Process wastewater" means liquid containing beef cattle manure, process-generated wastewater and any precipitation which comes into direct contact with livestock manure and facility products or byproducts.

(15) "Unauthorized discharge" means a discharge of process wastewater or livestock manure to state surface waters that does not meet the requirements of this chapter or water quality standards.

(16) "Wastewater storage and containment facilities" means the portion of an animal feeding operation where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds.

(17) "Waters of the state" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

[22-4904, added 2000, ch. 63, sec. 1, p. 140; am. 2004, ch. 187, sec. 3, p. 580; am. 2016, ch. 129, sec. 3, p. 377.]

22-4905. DESIGN AND CONSTRUCTION. Each new beef cattle animal feeding operation and each modified beef cattle animal feeding operation shall design and construct all new and modified wastewater storage and containment facilities in accordance with the engineering standards and specifications provided by the natural resource conservation service or the American society of agricultural engineers (ASAE) or other equally protective standard approved by the director. The department's review and approval of plans under this section shall supersede the Idaho department of environmental quality's implementation of plan and specification review and approval provided under section [39-118](#), Idaho Code. Such design and construction shall be considered a best management practice.

[22-4905, added 2000, ch. 63, sec. 1, p. 141; am. 2001, ch. 103, sec. 9, p. 263.]

22-4906. NUTRIENT MANAGEMENT PLAN. Each beef cattle animal feeding operation shall submit a nutrient management plan to the director for approval. Beef cattle animal feeding operations that are operating on or before July 1, 2000, shall submit a nutrient management plan to the director for approval no later than January 1, 2005. Any new operation commencing operations after July 1, 2000, shall not operate prior to the director's

approval of a nutrient management plan. An approved nutrient management plan shall be implemented and considered a best management practice. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. Such plans shall be available to the administrator on request. Operations that elect to utilize a web-based nutrient management planner, housed with the Idaho state department of agriculture, are consenting to allow the plan to be housed on file with the Idaho state department of agriculture. The nutrient management plan, information provided and generated in utilization of a web-based nutrient management planner, and all information generated by the beef cattle animal feeding operation as a result of a plan shall be deemed to be trade secrets, production records, or other proprietary information, shall be kept confidential, and shall be exempt from disclosure pursuant to section [74-107](#), Idaho Code.

[22-4906, added 2000, ch. 63, sec. 1, p. 141; am. 2004, ch. 187, sec. 4, p. 581; am. 2020, ch. 66, sec. 1, p. 154.]

22-4907. INSPECTIONS. (1) The director or his designee in the division of animal industries is authorized to enter and inspect any beef cattle animal feeding operation and have access to or copy any facility records deemed necessary to ensure compliance with this chapter. The director shall comply with the biosecurity protocol of the operation so long as the protocol does not inhibit reasonable access to:

- (a) Enter and inspect at reasonable times the premises or land application site(s) of a beef cattle animal feeding operation;
- (b) Review and/or copy, at reasonable times, any records that must be kept under conditions of this chapter;
- (c) Sample or monitor, at reasonable times, substances or parameters directly related to compliance with this chapter.

(2) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with section 17, article I, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or other authorized person.

[22-4907, added 2000, ch. 63, sec. 1, p. 142; am. 2004, ch. 187, sec. 5, p. 582; am. 2016, ch. 129, sec. 4, p. 378.]

22-4908. DISCHARGES. No animal feeding operation shall cause an unauthorized discharge. Noncompliance with the provisions of this act or unauthorized discharges may subject a facility to enforcement as provided in this act.

[22-4908, added 2000, ch. 63, sec. 1, p. 142.]

22-4909. ENFORCEMENT. (1) Informal administrative resolution of non-compliance. When the director identifies items of noncompliance at a beef cattle animal feeding operation, the deficiencies will be noted and appropriate corrective actions will be identified and scheduled informally. When corrective actions cannot be commenced within thirty (30) days and completed within a reasonable time, the director may negotiate a compliance order as specified in subsection (2) (b) of this section.

(2) (a) Administrative enforcement. Any beef cattle animal feeding operation not complying with the provisions of this act may be assessed a civil penalty by the director or his duly authorized agent in an administrative enforcement action by the issuance of a notice of noncompliance. The notice of noncompliance shall identify the alleged violation with specificity, shall specify each provision of the act or permit which has been violated, and shall state the amount of any civil penalty claimed for each violation and identify appropriate corrective action.

(b) The notice of noncompliance shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A compliance schedule must be requested within fifteen (15) days of receipt of the notice of noncompliance. The compliance conference shall provide an opportunity for the recipient of a notice of noncompliance to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged noncompliance and to assure future compliance, they may enter into a compliance order formalizing their agreement. The compliance order may include a schedule to correct deficiencies and a provision providing for payment of any agreed civil penalty.

(c) A compliance order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged noncompliance. If a party does not comply with the terms of the compliance order, the director may seek and obtain, in any appropriate district court, specific performance of the compliance order and such other relief as authorized in this act.

(d) If the parties cannot reach agreement on a compliance order within sixty (60) days after the receipt of the notice of noncompliance, or if the recipient does not timely request a compliance conference under this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (3) of this section.

(3) Civil enforcement. The director may initiate a civil enforcement action through the attorney general. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this act or any permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any permit or order promulgated hereunder and for any relief or remedies authorized in this act. No civil or administrative proceeding may be brought to recover for a violation of any provision of this act or a violation of any permit or order issued pursuant to this act, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(4) Civil penalty. Any person determined in a civil enforcement action to have violated any provision of this act or any permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. Moneys collected for vio-

lations of this section or rules promulgated thereunder shall be deposited in the state treasury and credited to the state school building fund. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator, the economic benefit, if any, of the violation and such other matters as justice requires.

[22-4909, added 2000, ch. 63, sec. 1, p. 142.]

22-4909A. EFFECT OF FEDERAL ENVIRONMENTAL PROTECTION AGENCY ENFORCEMENT ACTION. The nutrient management plan, and all information generated by the beef cattle feeding operation as a result of such plan, shall be deemed to be trade secrets, production records or other proprietary information, shall be kept confidential and shall be exempt from disclosure pursuant to section [74-107](#), Idaho Code. In any case in which the United States environmental protection agency initiates an enforcement action regarding an alleged noncompliance at a beef cattle animal feeding operation, any pending administrative or civil enforcement action initiated by the director regarding the same alleged noncompliance shall be deemed void. If a compliance order addressing the alleged noncompliance has already been issued by the director, that order shall remain in full force and effect.

[22-4909A, added 2009, ch. 46, sec. 1, p. 127; am. 2010, ch. 343, sec. 2, p. 900; am. 2015, ch. 141, sec. 35, p. 411; am. 2016, ch. 129, sec. 5, p. 379.]

22-4910. SAFE HARBOR. All beef cattle animal feeding operations operating in compliance with this act and approved best management practices shall not be subject to state enforcement action due to violations of state water quality standards or state ground water quality standards except in the event of imminent and substantial danger as provided in [chapter 1, title 39](#), Idaho Code. However, the department shall evaluate and modify such best management practices as necessary.

[22-4910, added 2000, ch. 63, sec. 1, p. 144.]