

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 109

An Act to amend and reenact § 62.1-44.17:1 of the Code of Virginia, relating to permits for confined animal feeding operations; certification of notice.

[H 2073]

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.17:1 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.17:1. General Permits for confined animal feeding operations.

A. For the purposes of this chapter, "confined animal feeding operation" means a lot or facility, together with any associated treatment works, where both of the following conditions are met:

1. Animals 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
2. Crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Two or more confined animal feeding operations under common ownership are considered to be a single confined animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of liquid waste.

B. A confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system, upon fulfillment of the requirements of this section, shall be permitted by a General Virginia Pollution Abatement permit (hereafter referred to as the "General Permit"), adopted by the Board. In adopting the General Permit the Board shall:

1. Authorize the General Permit to pertain to confined animal feeding operations having 300 or more animal units;
2. Establish procedures for submitting a registration statement meeting the requirements of subsection C. Submitting a registration statement shall be evidence of intention to be covered by the General Permit; and
3. Establish criteria for the design and operation of confined animal feeding operations only as described in subsection E.

C. For coverage under the General Permit, the owner of the confined animal feeding operation shall file a registration statement with the Department of Environmental Quality providing the name and address of the owner of the operation, the name and address of the operator of the operation (if different than the owner), the mailing address and location of the operation, and a list of the types, maximum number and average weight of the animals which will be maintained at the facility. The owner shall attach to the registration statement:

1. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation;
2. A copy of the approved nutrient management plan;
3. A notification from the governing body of the locality where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2;
4. A certification that the owner or operator meets all the requirements of the Board for the General Permit; and

5. A certification that the owner has given notice of the registration statement to all owners or residents of property that adjoins the property on which the proposed operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. *Such certification of notice shall be waived whenever the registration is for the purpose of renewing coverage under a permit for which no expansion is proposed and the Department of Environmental Quality has not issued any special or consent order relating to violations under the existing permit.*

D. Any person may submit written comments on the proposed operation to the Department within thirty days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the Director determines that the proposed operation will not be capable of complying with the provisions of this section, the Director shall require the owner to obtain an individual permit for the operation. Any such determination by the Director shall be made in writing and received by the owner not more than forty-five days after the filing of the registration statement or, if in the Director's sole discretion additional time is necessary to evaluate comments received from the public, not more than sixty days after the filing of the registration statement.

E. The criteria for the design and operation of a confined animal feeding operation shall be as follows:

1. The operation shall have a liquid manure collection and storage facility designed and operated to: (i) prevent any discharge to state waters, except a discharge resulting from a storm event exceeding a twenty-five-year, twenty-four-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste;

2. The operation shall implement and maintain on site a nutrient management plan approved pursuant to subdivision 1 of subsection C. The nutrient management plan shall contain at a minimum the following information: (i) a site map indicating the location of the waste storage facilities and the fields where waste will be applied; (ii) site evaluation and assessment of soil types and potential productivities; (iii) nutrient management sampling including soil and waste monitoring; (iv) storage and land area requirements; (v) calculation of waste application rates; (vi) waste application schedules; and (vii) a plan for waste utilization in the event the operation is discontinued;

3. Adequate buffer zones, where waste shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings;

4. The operation shall be monitored as follows: (i) waste shall be monitored at least once per year; (ii) soil shall be monitored at least once every three years; (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required ground water monitoring shall continue such monitoring. In such facilities constructed below the water table, the top surface of the waste must be maintained at a level of at least two feet above the water table. The Department of Environmental Quality and the Department of Conservation and Recreation may include in the permit or nutrient management plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters. Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. Such records shall be available for inspection by the Department of Environmental Quality and shall be maintained for a period of five years after recorded application is made;

5. New earthen waste storage facilities shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least twenty mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this section;

6. New waste storage facilities shall not be located on a 100-year flood plain;

7. All facilities must maintain one foot of freeboard at all times, up to and including a twenty-five-year, twenty-four-hour storm;

8. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. Manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate;

9. The owner or operator of the operation shall notify the Department of Environmental Quality at least fourteen days prior to animals being placed in the confined facility; and

10. Each operator of a facility covered by the General Permit on July 1, 1999, shall, by January 1, 2000, complete the training program offered or approved by the Department of Conservation and Recreation under subsection F. Each operator of a facility permitted after July 1, 1999, shall complete such training within one year after the registration statement required by subsection C has been submitted. Thereafter, all operators shall complete the training program at least once every three years.

F. The Department of Conservation and Recreation, in consultation with the Department of Environmental Quality and the Virginia Cooperative Extension Service, shall develop or approve a training program for persons operating confined animal feeding operations covered by the General Permit. The program shall include training in the requirements of the General Permit; the use of best management practices; inspection and management of liquid manure collection, storage and application systems; water quality monitoring and spill prevention; and emergency procedures.

G. Operations having an individual Virginia Pollution Abatement permit or a No Discharge Certificate may submit a registration statement for operation under the General Permit pursuant to this section.

H. The Director of the Department of Environmental Quality may require the owner of a confined animal feeding operation to obtain an individual permit for an operation subject to this section upon determining that the operation is in violation of the provisions of this section. New or reissued

individual permits shall contain criteria for the design and operation of confined animal feeding operations including, but not limited to, those described in subsection E.

I. No person shall operate a confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in subsection C or being covered by an individual permit.

J. Any person violating this section shall be subject only to the provisions of §§ 62.1-44.23 and 62.1-44.32 (a), except that any civil penalty imposed shall not exceed \$2,500.