TITLE 25
ANIMALS

CHAPTER 38
AGRICULTURE ODOR MANAGEMENT ACT

25-3801. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. (1) The agriculture industry is a vital component of Idaho's economy and during the normal course of producing the food and fiber required by Idaho and our nation, odors are generated. It is the intent of the legislature to manage these odors when they are generated at a level in excess of those odors normally associated with accepted agricultural practices in Idaho.

(2) Large swine operations are addressing odor management through chapter 1, title 39, Idaho Code, and the department of environmental quality's rules regulating large swine operations, and the beef cattle industry will address odor management as needed through implementation of the beef cattle environmental control act as provided for in chapter 49, title 22, Idaho Code, and rules promulgated thereunder.

(3) The Idaho department of agriculture is hereby authorized as the lead agency to administer and implement the provisions of this chapter. In carrying out the provisions of this chapter, the department will make reasonable efforts to ensure that any requirements imposed upon agricultural operations are cost-effective and economically, environmentally and technologically feasible.

[25-3801, added 2001, ch. 383, sec. 1, p. 1341; am. 2002, ch. 261, sec. 1, p. 781; am. 2011, ch. 227, sec. 2, p. 621.]

25-3802. AUTHORITY AND DUTIES OF THE DIRECTOR CONCERNING ODORS FROM AGRICULTURAL OPERATIONS. The director of the department of agriculture is authorized to regulate odors from agricultural operations. In order to carry out its duties pursuant to the provisions of this chapter, the director of the department shall be authorized to promulgate necessary administrative rules in compliance with chapter 52, title 67, Idaho Code.

[25-3802, added 2001, ch. 383, sec. 1, p. 1341.]

25-3803. DEFINITIONS. When used in this chapter:

(1) "Accepted agricultural practices" means those management practices normally associated with agriculture in Idaho, and which should include management practices intended to control odor generated by an agricultural operation.

(2) "Agricultural animals" means those animals including, but not limited to, mink, domestic cervidae, horses and ratites raised for agricultural purposes.

(3) "Agricultural operations" means those operations where livestock or other agricultural animals are raised, or crops are grown, for commercial purposes, not to include those operations set forth within section 25-3801(2), Idaho Code.

(4) "Best management practices" means practices, techniques or measures which are determined by the department to be a cost-effective and practicable means of managing odors generated on an agricultural operation to a level associated with accepted agricultural practices.

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

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

(7) "Liquid waste system" means those wastewater storage and containment facilities and associated waste collection and conveyance systems where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis including the final distribution system.

(8) "Livestock" means cattle, sheep, swine and poultry.

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

(10) "Modified" means structural changes and alterations to the livestock operation which would require increased wastewater storage or containment capacity or such changes which would increase the amount of manure entering wastewater storage containment facilities.

(11) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard.

(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, and all subsequent amendments, additions or other revisions thereto, or other equally protective standard approved by the director.

(13) "Odor" means the property or quality of a substance that stimulates or is perceived by the sense of smell, or by other means as the department may determine by rule, the standards for which shall be judged on criteria that shall include intensity, duration, frequency, offensiveness and health risks.

(14) "Odor management plan" means a site specific plan approved by the director to manage odor from an agricultural operation to a level associated with accepted agricultural practices by utilizing best management practices.

(15) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, private corporation, or any legal entity, which is recognized by law as the subject of rights and duties.

(16) "Wastewater" means water containing manure which is generated on a livestock operation.

(17) "Wastewater storage and containment facilities" means wastewater storage ponds, wastewater treatment lagoons and evaporative ponds.

[25-3803, added 2001, ch. 383, sec. 1, p. 1341; am. 2002, ch. 261, sec. 2, p. 781.]

25-3804. DESIGN AND CONSTRUCTION. All new or modified liquid waste systems shall be designed by licensed professional engineers, approved by the director of the department of agriculture for compliance with the provisions of this chapter, and constructed in accordance with standards and specifications either approved by the director for management of odors or in accordance with any existing relevant memorandums of understanding with the department of environmental quality. Provided however, that all persons shall submit plans and specifications for new or modified liquid waste systems to the director for approval and shall not begin construction of a liquid waste system prior to approval of plans and specifications by the director. If construction is commenced prior to receiving necessary approval, the direc-

tor may order construction activities to be ceased. No material deviation shall be made from the approved plans and specifications without the prior written approval of the director. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration or modification performed must be submitted by the operator to the director. If construction does not materially deviate from the plans approved by the director, a statement to that effect shall be filed by the agricultural operation with the director.

[25-3804, added 2001, ch. 383, sec. 1, p. 1342; am. 2002, ch. 261, sec. 3, p. 782.]

25-3805. FIRST TIME VIOLATORS -- ODOR MANAGEMENT PLAN -- EXCEPTIONS. (1) If it is determined by the department that an agricultural operation, not to include those operations set forth within section 25-3801(2), Idaho Code, is generating odors in excess of levels associated with accepted agricultural practices, the agricultural operation shall be deemed to have committed a first time violation of the provisions of this chapter, provided that the agricultural operation has never been determined by the department to have committed a prior violation of the provisions of this chapter. The department shall provide the owner or operator of the agricultural operation with written notice of the violation and an opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(2) The department shall require any agricultural operation determined to have committed a first time violation of the provisions of this chapter to cooperate with the department and to develop and submit an odor management plan to the director for approval.

(3) All odor management plans shall be in writing and signed by the director of the department of agriculture and the owner or operator of the agricultural operation. Odor management plans shall designate a period of time in which the agricultural operation will be in full compliance with the plan and shall provide for periodic review by the department, no less than annually, for a period of three (3) years from the date of the plan. Failure to comply with the odor management plan shall constitute a subsequent violation of the provisions of this chapter.

(4) All approved odor management plans shall be implemented as approved by the director.

(5) If, after a reasonable period of time as determined by the department, an approved odor management plan does not reduce odor to a level associated with accepted agricultural practices, the department shall review the plan with the owner or operator of the agricultural operation and adjust the plan to meet the goals of this chapter.

(6) Odor management plans shall be designed to work in conjunction with any required nutrient management plans.

(7) An odor emission caused by an act of God or a mechanical failure shall not constitute a violation of this chapter provided that the agricultural operation from which the odor emission is emanating takes reasonable steps to promptly repair the cause of the emission.

[25-3805, added 2001, ch. 383, sec. 1, p. 1342.]

25-3806. INSPECTIONS -- RECORDS CONFIDENTIAL. The director or his designee is authorized to enter and inspect any agricultural operation and have access to or copy any facility records deemed necessary to ensure compliance with the provisions of this chapter or required odor management plans. Prior to conducting an investigation, the department shall notify the board of county commissioners for the county in which the agricultural operation is located and the board of county commissioners may have a designee accompany the director or his designee during the inspection. All records copied or obtained by the director or his designee as a result of an inspection pursuant to this section shall be confidential private records and shall be exempt from disclosure under chapter 1, title 74, Idaho Code, except:

(1) Records otherwise deemed to be public records not exempt from disclosure pursuant to chapter 1, title 74, Idaho Code; and

(2) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to this section.

[25-3806, added 2001, ch. 383, sec. 1, p. 1343; am. 2015, ch. 141, sec. 40, p. 413.]

25-3807. COMPLAINTS. The department shall respond to all odor complaints lodged against agriculture operations. A complaint must include the name, address and telephone number of the complainant. The response of the department may be limited to informing the complainant that an odor plan is being implemented. Complaints pursuant to this section are a public record open to public inspection and copying pursuant to chapter 1, title 74, Idaho Code.

[25-3807, added 2001, ch. 383, sec. 1, p. 1343; am. 2015, ch. 141, sec. 41, p. 413.]

25-3808. SUBSEQUENT VIOLATIONS -- PENALTIES. (1) An agricultural operation, after having been determined to have committed a first time violation of the provisions of this chapter, shall be deemed to have committed a subsequent violation if the operation:

(a) Is determined by the department to have committed a subsequent violation within a three (3) year period of time; or

(b) Failed to comply with an odor management plan developed pursuant to section 25-3805, Idaho Code.

(2) An agricultural operation, after having been determined to have committed a first time violation of the provisions of this chapter, may be deemed to have committed a subsequent violation if the director determines that the operation has failed to cooperate by failing to submit an acceptable odor management plan.

(3) Those agricultural operations determined to have committed a subsequent violation of this chapter shall be assessed a civil penalty by the department or its duly authorized agent not to exceed ten thousand dollars ($10,000) for each offense and be liable for reasonable attorney's fees and costs.

(4) Assessment of a civil penalty as provided herein may be made in conjunction with any other department administrative action and shall be based on the severity of the offense and the degree of cooperation with the department.

(5) No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(6) If the department is unable to collect the civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court.

(7) Any person against whom the department has assessed a civil penalty under this section may, within thirty (30) days of the final action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(8) Moneys collected for violations shall be deposited in the state treasury and credited to the general fund.

(9) The imposition or computation of monetary penalties shall take into account the seriousness of the violation, and such other matters as justice requires. The director shall prepare a written report setting forth the basis upon which any monetary penalty is imposed and/or computed and shall retain the report on file with the department.

[25-3808, added 2001, ch. 383, sec. 1, p. 1343; am. 2002, ch. 261, sec. 4, p. 783.]

25-3809. AGRICULTURE ODOR MANAGEMENT FUND. There is hereby created in the state treasury a fund to be known as the agriculture odor management fund, which shall consist of all moneys which may be appropriated to it by the legislature or made available to it from federal, private or other sources. The department may expend such amounts as are appropriated by the legislature from the fund for research, grants, projects, programs or other expenditures.

[25-3809, added 2002, ch. 261, sec. 5, p. 784.]