

CHAPTER 352

**HEALTH AND ENVIRONMENT**

HOUSE BILL 09-1330

BY REPRESENTATIVE(S) Curry, Fischer, Hulinghorst, Labuda, Merrifield, Vigil;  
also SENATOR(S) Isgar.

**AN ACT**

**CONCERNING FEES ASSESSED ON CERTAIN FEEDING OPERATIONS UNDER THE "COLORADO WATER QUALITY CONTROL ACT", AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** The introductory portion to 25-8-502 (1) (b) (I) and 25-8-502 (1) (b) (I) (E), (1) (b) (I) (R), (1) (b) (I) (S), and (1) (c), Colorado Revised Statutes, are amended to read:

**25-8-502. Application - definitions - fees - water quality control fund - public participation.** (1) (b) (I) ~~Effective July 1, 2007,~~ EXCEPT AS OTHERWISE PROVIDED BY LAW, in addition to the fees assessed pursuant to paragraphs (b.5), (b.6), ~~and~~ (b.7), AND (g) of this subsection (1), the only fee the division may assess is an annual fee upon a discharger, and such fee shall be in accordance with the following schedule:

<b>Facility Categories and Subcategories for Permit Fees</b>	<b>Annual Fees</b>
(E) <b>Category 05</b>	<b>Concentrated animal feeding operations (CAFOs)</b>
Subcategory 1	General permit: The division shall assess a CAFO an annual permit fee, not to exceed \$250 plus \$0.04 per animal unit, based on the CAFO's <del>peak working</del> PERMITTED capacity; EXCEPT THAT, FROM JULY 1, 2009, THROUGH JULY 1, 2012, THE DIVISION SHALL ASSESS A CAFO AN ANNUAL PERMIT FEE NOT TO EXCEED \$750 PLUS \$0.09 PER ANIMAL UNIT,

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

BASED ON THE CAFO'S PERMITTED CAPACITY

Subcategory 2 Individual permit: The division shall assess a CAFO an annual permit fee, not to exceed \$500 plus \$0.08 per animal unit, based on the CAFO's ~~peak working~~ PERMITTED capacity; EXCEPT THAT, FROM JULY 1, 2009, THROUGH JULY 1, 2012, THE DIVISION SHALL ASSESS A CAFO AN ANNUAL PERMIT FEE NOT TO EXCEED \$1,500 PLUS \$0.09 PER ANIMAL UNIT, BASED ON THE CAFO'S PERMITTED CAPACITY

**(R) Category 24.5 Housed commercial swine feeding operations**  
 EXCEPT AS OTHERWISE PROVIDED IN THIS SUB-SUBPARAGRAPH (R), the division shall assess on each housed commercial swine feeding operation an annual permit fee, not to exceed twenty cents per animal, based on the operation's working capacity, to offset the direct and indirect costs of the program created in section 25-8-501.1. FROM JULY 1, 2009, THROUGH JULY 1, 2012, THE DIVISION SHALL ASSESS ON EACH HOUSED COMMERCIAL SWINE FEEDING OPERATION AN ANNUAL PERMIT FEE THAT SHALL NOT EXCEED TWENTY-SIX CENTS PER ANIMAL, BASED ON THE OPERATION'S WORKING CAPACITY, TO OFFSET THE DIRECT AND INDIRECT COSTS OF THE PROGRAM CREATED IN SECTION 25-8-501.1. As used in this sub-subparagraph (R), "working capacity" means the number of swine the housed commercial swine feeding operation is capable of housing at any one time.

**(S) Category 25 Permit Amendments** Should a permittee holding a permit issued under any of categories 1 to 24 or 26 to 46 OR, THROUGH JUNE 30, 2012, CATEGORY 24.5, request an amendment to said permit, the following fees shall apply:

Subcategory 1 Minor amendment - an amount equal to twenty-five percent of the annual fee for the permit being amended, not to exceed \$ 2,810

Subcategory 2 Major amendment - an amount equal to fifty-five percent of the annual fee for the permit being amended, not to exceed \$ 5,950

(c) ~~At~~ EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (i) OF THIS SUBSECTION (1), fees collected pursuant to paragraphs (b), (b.6), and (b.7) of this subsection (1) shall be transmitted to the state treasurer, who shall credit the same to the water

quality control fund, which fund is hereby created. The moneys in such fund that are collected pursuant to paragraph (b) of this subsection (1) shall be appropriated annually to the department of public health and environment by the general assembly, which shall review expenditures of such moneys to assure that they are used only to fund the expenses of the discharge permit system and other activities included in paragraphs (b), (b.6), and (b.7) of this subsection (1). All interest earned on the investment or deposit of moneys in the fund and all unencumbered or unappropriated balances in the fund shall remain in the fund, shall be appropriated only for the expenses of the discharge permit system, and shall not be transferred or revert to the general fund or any other fund at the end of any fiscal year or any other time. It is the intent of the general assembly that a portion of the expenses of the discharge permit system be funded from the general fund, reflecting the benefit derived by the general public; except that the general assembly may determine, in any given fiscal year, that general fund revenues are inadequate to meet general fund demands and that, as a consequence, it shall be necessary to forego, subject to future reconsideration, all or some portion of such general fund contribution to the discharge permit program pursuant to this part 5.

**SECTION 2.** 25-8-502 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

**25-8-502. Application - definitions - fees - water quality control fund - animal feeding operations fund - public participation - repeal.**

(1) (g) (I) EFFECTIVE JULY 1, 2009, THROUGH JUNE 30, 2012, THE DIVISION SHALL ASSESS UNPERMITTED CONCENTRATED ANIMAL FEEDING OPERATIONS AN ANNUAL ADMINISTRATIVE FEE, NOT TO EXCEED SIX CENTS PER ANIMAL UNIT BASED UPON THE CAFO'S REGISTERED CAPACITY, TO COVER THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE ENVIRONMENTAL AGRICULTURE PROGRAM, INCLUDING INSPECTIONS, COMPLIANCE ASSURANCE, COMPLIANCE ASSISTANCE, AND ASSOCIATED REGULATORY INTERPRETATION AND REVIEW.

(II) THIS PARAGRAPH (g) IS REPEALED, EFFECTIVE JULY 1, 2012.

(h) COMMENCING WITH THE FIRST REGULAR SESSION OF THE SIXTY-EIGHTH GENERAL ASSEMBLY, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL REPORT ANNUALLY TO THE SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE AND THE HOUSE OF REPRESENTATIVES AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, ON THE ENVIRONMENTAL AGRICULTURE PROGRAM. THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, THE NUMBER OF PERMITS PROCESSED, THE NUMBER OF INSPECTIONS CONDUCTED, THE NUMBER OF ENFORCEMENT ACTIONS TAKEN, AND THE COSTS ASSOCIATED WITH ALL PROGRAM ACTIVITIES DURING THE PRECEDING YEAR. SUCH REPORT SHALL BE MADE ON OR BEFORE MARCH 31 OF EACH YEAR.

(i) THERE IS HEREBY CREATED THE ANIMAL FEEDING OPERATIONS FUND, WHICH SHALL CONSIST OF FEES COLLECTED PURSUANT TO SUB-SUBPARAGRAPHS (E) AND (R) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (1), FEES COLLECTED FOR AMENDMENTS REQUESTED BY HOUSED COMMERCIAL SWINE FEEDING OPERATIONS PURSUANT TO SUB-SUBPARAGRAPH (S) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (1), AND FEES COLLECTED UNDER PARAGRAPH (g) OF THIS SUBSECTION (1). ANY UNEXPENDED AND UNENCUMBERED MONEYS

REMAINING IN THE ANIMAL FEEDING OPERATIONS FUND AT THE END OF ANY FISCAL YEAR SHALL REMAIN IN THE ANIMAL FEEDING OPERATIONS FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND OR ANY OTHER FUND. MONEYS IN THE ANIMAL FEEDING OPERATIONS FUND SHALL BE ANNUALLY APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE PERMITTING AND OVERSIGHT OF ANIMAL FEEDING OPERATIONS UNDER THIS ARTICLE.

**SECTION 3. Appropriation - adjustments to the 2009 long bill.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the animal feeding operations fund created in section 25-8-502 (1) (i), Colorado Revised Statutes, to the department of public health and environment, for allocation to the water quality control division, for the fiscal year beginning July 1, 2009, the sum of three hundred twenty-five thousand six hundred thirteen dollars (\$325,613) and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2009, shall be adjusted as follows:

(a) The appropriation to the department of public health and environment, water quality control division, for permitting and oversight of concentrated animal feeding operations and housed commercial swine feeding operations, is decreased by two hundred eighty-five thousand seven hundred sixty dollars (\$285,760) and 0.3 FTE. Of said sum, two hundred eighty-five thousand seven hundred sixty dollars (\$285,760) shall be cash funds from the water quality control fund created in section 25-8-502 (1) (c), Colorado Revised Statutes, and 0.3 FTE shall be from federal funds.

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 2009, and shall apply to fees paid under section 25-8-502, Colorado Revised Statutes, on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2009