

CHAPTER 240

HEALTH AND ENVIRONMENT

SENATE BILL 06-114

BY SENATOR(S) Kester, Brophy, Taylor, Tochtrop, and Wiens;
also REPRESENTATIVE(S) Gardner, Boyd, Berens, Hall, Harvey, Hoppe, Kerr J., King, McKinley, Penry, Rose, Sullivan, and Vigil.

AN ACT

CONCERNING THE EXPANSION OF ANAEROBIC CONTROLS TO ALLOW ADDITIONAL TECHNOLOGIES TO BE USED IN THE OPERATION OF HOUSED COMMERCIAL SWINE FEEDING OPERATIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 25-7-138 (1), (2), and (5), Colorado Revised Statutes, are amended, and the said 25-7-138 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

25-7-138. Housed commercial swine feeding operations - waste impoundments - odor emissions. (1) All new or expanded anaerobic process wastewater vessels and impoundments, including, but not limited to, treatment or storage lagoons, constructed or under construction for use in connection with a housed commercial swine feeding operation as defined in section ~~28-8-501.1(2)(b)~~, ~~C.R.S.~~, 25-8-501.1 (2)(b) shall be covered, ~~so as~~ OR OPERATED WITH TECHNOLOGIES OR PRACTICES THAT ARE AS EFFECTIVE AS COVERS AT MINIMIZING ODOR FROM THE OPERATION, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. THE HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL SUBMIT TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT INFORMATION SUFFICIENT TO DEMONSTRATE THAT THE TECHNOLOGIES AND PRACTICES USED ARE AS EFFECTIVE AS COVERS AT MINIMIZING ODOR FROM THE OPERATION. THE HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL MANAGE ODOR EMISSIONS SUCH THAT ODOR EMISSIONS FROM THE OPERATION SHALL NOT BE DETECTED AT OR BEYOND THE PROPERTY BOUNDARY AFTER THE ODOROUS AIR HAS BEEN DILUTED WITH SEVEN VOLUMES OF ODOR-FREE AIR. THE HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL MANAGE ODOR EMISSIONS SUCH THAT ODOR EMISSIONS

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

FROM THE OPERATION SHALL NOT BE DETECTED AT ANY OFF-SITE RECEPTOR AFTER THE ODOROUS AIR HAS BEEN DILUTED WITH TWO VOLUMES OF ODOR-FREE AIR. FOR PURPOSES OF THIS SECTION, "RECEPTOR" MEANS ANY OCCUPIED DWELLING USED AS A PRIMARY DWELLING OR ITS CURTILAGE, A PUBLIC OR PRIVATE SCHOOL, OR A PLACE OF BUSINESS. As used in THIS section, ~~25-7-138~~; "anaerobic" means a waste treatment method that, in whole or in part, does not utilize air or oxygen. All new aerobic impoundments shall employ technologies to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable. As used in THIS section, ~~25-7-138~~; "aerobic" means a waste treatment method that utilizes air or oxygen.

(2) All existing anaerobic process wastewater vessels and impoundments, including, but not limited to, aeration tanks and treatment or storage lagoons, owned or operated for use in connection with a housed commercial swine feeding operation as defined in section 25-8-501.1 (2) (b) shall be covered, OR OPERATED WITH TECHNOLOGIES OR PRACTICES THAT ARE AS EFFECTIVE AS COVERS AT MINIMIZING ODOR FROM THE OPERATION, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. THE HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL SUBMIT TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT INFORMATION SUFFICIENT TO DEMONSTRATE THAT THE TECHNOLOGIES AND PRACTICES USED ARE AS EFFECTIVE AS COVERS AT MINIMIZING ODOR FROM THE OPERATION. THE HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL MANAGE ODOR EMISSIONS SUCH THAT ODOR EMISSIONS FROM THE OPERATION SHALL NOT BE DETECTED AT OR BEYOND THE PROPERTY BOUNDARY AFTER THE ODOROUS AIR HAS BEEN DILUTED WITH SEVEN VOLUMES OF ODOR-FREE AIR. THE HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL MANAGE ODOR EMISSIONS SUCH THAT ODOR EMISSIONS FROM THE OPERATION SHALL NOT BE DETECTED AT ANY OFF-SITE RECEPTOR AFTER THE ODOROUS AIR HAS BEEN DILUTED WITH TWO VOLUMES OF ODOR-FREE AIR. FOR PURPOSES OF THIS SECTION, "RECEPTOR" MEANS ANY OCCUPIED DWELLING USED AS A PRIMARY DWELLING OR ITS CURTILAGE, A PUBLIC OR PRIVATE SCHOOL, OR A PLACE OF BUSINESS. All existing aerobic impoundments shall employ technologies to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable.

(5) The division shall enforce the provisions of this section. THE DIVISION MAY DELEGATE ENFORCEMENT OF THE PROVISIONS OF THIS SECTION TO ANY COUNTY OR REGIONAL DEPARTMENT OF HEALTH. IF THE DIVISION DELEGATES ENFORCEMENT OF THIS SECTION, THE DIVISION SHALL MONITOR THE ACTIONS OF ANY COUNTY OR REGIONAL DEPARTMENT OF HEALTH AS SUCH ACTIONS PERTAIN TO ENFORCEMENT OF THIS SECTION. THE DIVISION SHALL ASSESS A HOUSED COMMERCIAL SWINE FEEDING OPERATION AN ANNUAL FEE, NOT TO EXCEED SEVEN CENTS PER ANIMAL, BASED ON THE OPERATION'S WORKING CAPACITY, TO OFFSET THE DIVISION'S DIRECT AND INDIRECT COSTS OF ENFORCEMENT, COMPLIANCE, AND REGULATION PURSUANT TO THIS SECTION. THIS FEE SHALL BE DESIGNATED TO FUND AN INSPECTION AND COMPLAINT RESPONSE AND ENFORCEMENT PROGRAM. BY MUTUAL AGREEMENT, ANY COUNTY OR REGIONAL DEPARTMENT OF HEALTH THAT ASSISTS IN ENFORCEMENT OF THIS SECTION SHALL RECEIVE FUNDING TO CONDUCT INSPECTIONS AND RESPOND TO COMPLAINTS. AS USED IN THIS SUBSECTION (5), "WORKING CAPACITY" MEANS THE NUMBER OF SWINE THE HOUSED COMMERCIAL SWINE FEEDING OPERATION IS CAPABLE OF HOUSING AT ANY ONE TIME. In addition, any person who may be

adversely affected by a housed commercial swine feeding operation may enforce these provisions directly against the operation by filing a civil action in the district court in the county in which the person resides.

(6) ALL MONEYS COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE HOUSED COMMERCIAL SWINE FEEDING OPERATION FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE MONEYS IN SUCH FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE PURPOSES OF THIS SECTION, INCLUDING THE REIMBURSEMENT OF LOCAL AND REGIONAL HEALTH DEPARTMENTS FOR ASSISTANCE IN THE ENFORCEMENT OF THIS SECTION. ANY INTEREST EARNED ON MONEYS IN THE FUND SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR.

SECTION 2. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the housed commercial swine feeding operation fund created in section 25-7-138 (6), Colorado Revised Statutes, not otherwise appropriated, to the department of public health and environment, for the fiscal year beginning July 1, 2006, the sum of fifty-two thousand three hundred twelve dollars (\$52,312) and 0.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2006, the sum of four thousand eight hundred thirty-four dollars (\$4,834), or so much thereof as may be necessary, for the provision of legal services to the department of public health and environment related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of public health and environment out of the appropriation made in subsection (1) of this section.

SECTION 3. 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: May 25, 2006