

Agriculture Odor Management

This Act addresses odor management from agriculture (animal) operations. It provides for regulations concerning construction of animal waste facilities in order to manage animal agriculture odor. It also gives first-time violators the opportunity to work through the problem rather than fines.

It is the intent of this Act to manage animal odors when they are generated at a level in excess of those odors normally associated with accepted agricultural practices. It authorizes the state department of agriculture as the lead agency to administer and implement the provisions and to ensure that any requirements imposed upon agricultural operations are cost-effective and economically, environmentally and technologically feasible.

The design and construction of new or modified liquid waste systems are to be done by licensed professional engineers, approved by the director of the department of agriculture and constructed in accordance with the state department of environmental quality standards.

The draft provides opportunities for first-time violators to work with the state department of agriculture to develop and implement odor management plans. It maintains confidentiality of any reports or records, specifies the format for filing complaints, and stipulates penalties for subsequent violations. It also creates an Agriculture Odor Management Fund to provide money for research, grants, and projects dealing with agriculture animal odor.

Submitted as:

Idaho

Title 25, Chapter 3801-3809

Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “The Agriculture Odor Management
2 Act.”

3

4 Section 2. [*Legislative Findings.*]

5 (1) The agriculture industry is a vital component of this state’s economy and during the
6 normal course of producing the food and fiber required by this state and our nation, odors are
7 generated. It is the intent of the [legislature] to manage these odors when they are generated at a
8 level in excess of those odors normally associated with accepted agricultural practices in this
9 state.

10 (2) The [state department of agriculture] is hereby authorized as the lead agency to
11 administer and implement the provisions of this Act. In carrying out the provisions of this Act,
12 [the department] will make reasonable efforts to ensure that any requirements imposed upon
13 agricultural operations are cost-effective and economically, environmentally, and
14 technologically feasible.

15

16 Section 3. [*Authority and Duties of the Director Concerning Odors from Agricultural*
17 *Operations.*] The [director of the department of agriculture] is authorized to regulate odors from
18 agricultural operations. In order to carry out its duties pursuant to the provisions of this Act, the

19 [director of the department] shall be authorized to promulgate necessary administrative rules in
20 compliance with [insert citation].

21

22 Section 4. [Definitions.] When used in this Act:

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

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

28 (3) "Agricultural operations" means those operations where livestock or other
29 agricultural animals are raised, or crops are grown, for commercial purposes, not to include
30 those operations set forth within [insert citation].

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

34 (5) "Department" means the [state department of agriculture].

35 (6) "Director" means the [director of the state department of agriculture].

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

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

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

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

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

48 (12) "Nutrient management standard" means the 1999 publication by The United States
49 Department Of Agriculture, Natural Resources Conservation Service, Conservation Practice
50 Standard, Nutrient Management Code 590, and all subsequent amendments, additions or other
51 revisions thereto, or other equally protective standard approved by the [director].

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

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

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

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

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

66

67 Section 5. [*Design and Construction.*] All new or modified liquid waste systems shall be
68 designed by licensed professional engineers, approved by the [director of the department of
69 agriculture] for compliance with the provisions of this Act, and constructed in accordance with
70 standards and specifications either approved by the [director for management of odors] or in
71 accordance with any existing relevant memorandums of understanding with the [state
72 department of environmental quality], provided however, that all persons shall submit plans and
73 specifications for new or modified liquid waste systems to the director for approval and shall not
74 begin construction of a liquid waste system prior to approval of plans and specifications by the
75 [director]. If construction is commenced prior to receiving necessary approval, the [director]
76 may order construction activities to be ceased. No material deviation shall be made from the
77 approved plans and specifications without the prior written approval of the [director]. Within
78 [thirty (30) days] of completion of construction, alteration or modification of any new or
79 modified liquid waste system, complete and accurate plans and specifications depicting the
80 actual construction, alteration or modification performed must be submitted by the operator to
81 the [director]. If construction does not materially deviate from the plans approved by the
82 director, a statement to that effect shall be filed by the agricultural operation with the [director].
83

84 Section 6. [*First-Time Violators, Odor Management Plan, Exceptions.*]

85 (1) If it is determined by the [department] that an agricultural operation, not to include
86 those operations set forth within [insert citation], is generating odors in excess of levels
87 associated with accepted agricultural practices, the agricultural operation shall be deemed to
88 have committed a first-time violation of the provisions of this Act, provided that the agricultural
89 operation has never been determined by the [department] to have committed a prior violation of
90 the provisions of this Act. The [department] shall provide the owner or operator of the
91 agricultural operation with written notice of the violation and an opportunity for a hearing
92 pursuant to the [state administrative procedure act].

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

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

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

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

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

110 (7) An odor emission caused by an act of God or a mechanical failure shall not constitute
111 a violation of this Act provided that the agricultural operation from which the odor emission is
112 emanating takes reasonable steps to promptly repair the cause of the emission.
113

114 Section 7. [*Inspections -- Records Confidential.*] The [director or his designee] is
115 authorized to enter and inspect any agricultural operation and have access to or copy any facility

116 records deemed necessary to ensure compliance with the provisions of this Act or required odor
117 management plans. Prior to conducting an investigation, the [department] shall notify the board
118 of county commissioners for the county in which the agricultural operation is located and the
119 board of county commissioners may have a designee accompany the [director or his designee]
120 during the inspection. All records copied or obtained by the [director or his designee] as a result
121 of an inspection pursuant to this section shall be confidential private records and shall be exempt
122 from disclosure under [insert citation] except:

123 (1) Records otherwise deemed to be public records not exempt from disclosure pursuant
124 to [insert citation]; and

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

127
128 Section 8. [*Complaints.*] The [department] shall respond to all odor complaints lodged
129 against agriculture operations. A complaint must include the name, address and telephone
130 number of the complainant. The response of the [department] may be limited to informing the
131 complainant that an odor plan is being implemented. Complaints pursuant to this section are a
132 public record open to public inspection and copying pursuant to [insert citation].

133
134 Section 9. [*Subsequent Violations -- Penalties.*]

135 (1) An agricultural operation, after having been determined to have committed a first-
136 time violation of the provisions of this Act, shall be deemed to have committed a subsequent
137 violation if the operation:

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

140 (b) Failed to comply with an odor management plan developed pursuant to
141 [insert citation].

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

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

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

153 (5) No civil penalty may be imposed unless the person charged was given notice and
154 opportunity for a hearing pursuant to the [state administrative procedure act].

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

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

162 (8) Money collected for violations shall be deposited in the [state treasury] and credited
163 to the [general fund].

164 (9) The imposition or computation of monetary penalties shall take into account the
165 seriousness of the violation, and such other matters as justice requires. The [director] shall
166 prepare a written report setting forth the basis upon which any monetary penalty is imposed
167 and/or computed and shall retain the report on file with the [department].
168

169 Section 10. [*Agriculture Odor Management Fund.*] There is hereby created in the [state
170 treasury] a fund to be known as the [Agriculture Odor Management Fund], which shall consist
171 of all money that may be appropriated to it by the [legislature] or made available to it from
172 federal, private or other sources. The [department] may expend such amounts as are
173 appropriated by the [legislature] from the fund for research, grants, projects, programs or other
174 expenditures.
175

176 Section 11. [*Severability.*] [Insert severability clause.]
177

178 Section 12. [*Repealer.*] [Insert repealer clause.]
179

180 Section 13. [*Effective Date.*] [Insert effective date.]