

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1874

S.P. 653

In Senate, May 13, 1997

An Act to Establish Limitations on Swine-feeding Operations.

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PARADIS of Aroostook.

Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 12 MRSA c. 206-A, sub-c V is enacted to read:

SUBCHAPTER V

CONFINED SWINE-FEEDING OPERATIONS

§691. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agricultural facility. "Agricultural facility" means a lot, building or structure that is used for the commercial production of swine in an animal-feeding operation.

2. Animal. "Animal" means a domesticated animal belonging to the porcine species.

3. Animal-feeding operation. "Animal-feeding operation" means an agricultural facility where animals are confined and fed or maintained for a total of 45 days or more in a 12-month period and crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Structures used for the storage of animal waste from animals in the operation are also part of the animal-feeding operation. Two or more animal-feeding operations under common ownership or management are considered to be a single animal-feeding operation if they are adjacent or utilize a common system for animal waste storage.

4. Animal waste. "Animal waste" means animal excreta or other commonly associated organic animal wastes, including, but not limited to, bedding, litter, feed losses or water mixed with the waste.

5. Annual pollutant loading rate. "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to a unit area of a waste utilization area during a 365-day period.

6. Cumulative pollutant loading rate. "Cumulative pollutant loading rate" means the maximum amount of a pollutant that can be applied to an area of land.

7. Ephemeral stream. "Ephemeral stream" means a stream that flows only in direct response to rainfall or snowmelt in which discrete periods of flow persist no more than 29 consecutive days per event.

2 **8. Intermittent stream.** "Intermittent stream" means a
3 stream that generally has a defined natural water course that
4 does not flow year-round but flows beyond periods of rainfall or
5 snowmelt.

6 **9. Lagoon.** "Lagoon" means an impoundment used in
7 conjunction with an animal-feeding operation, the primary
8 function of which is to store or stabilize, or both, organic
9 wastes, wastewater and contaminated runoff.

10 **10. Vector.** "Vector" means a carrier that is capable of
11 transmitting a pathogen from one organism to another, including,
12 but not limited to, flies and other insects, rodents, birds and
13 vermin.

14 **11. Waste storage pond.** "Waste storage pond" means a
15 structure used for impounding or storing manure, wastewater and
16 contaminated runoff as a component of an agricultural waste
17 management system. Waste is stored for a specified period of
18 time, one year or less, and then the pond is emptied.

19 **12. Waste utilization area.** "Waste utilization area" means
20 land on which animal waste is spread as a fertilizer.

21 **13. Watershed.** "Watershed" means a drainage area
22 contributing to a river, lake or stream.

23 **14. Waters of the State.** "Waters of the State" means
24 lakes, bays, sounds, ponds, impounded reservoirs, springs,
25 artesian wells, rivers, perennial and navigable streams, creeks,
26 estuaries, marshes, inlets, canals, the Atlantic Ocean within the
27 territorial limits of the State and all other bodies of water,
28 natural or artificial, public or private, inland or coastal,
29 fresh or salt, that are wholly or partially within or bordering
30 the State or within its jurisdiction. "Waters of the State" does
31 not include ephemeral or intermittent streams. "Waters of the
32 State" includes wetlands as defined in this section.

33 **15. Wetlands.** "Wetlands" means lands that have a
34 predominance of hydric soil, are inundated or saturated by water
35 or groundwater at a frequency and duration sufficient to support
36 a prevalence of hydrophytic vegetation typically adapted for life
37 in saturated soil conditions and under normal circumstances
38 support a prevalence of hydrophytic vegetation. "Normal
39 circumstances" refers to the soil and hydrologic conditions that
40 are normally present without regard to whether the vegetation has
41 been removed.

42 **§692. Setback limits**

2 1. Measurement from property lines. All siting
4 requirements for animal-feeding operations must be measured from
property lines.

6 2. Setback limits for operations using lagoon or waste
8 storage pond. After September 30, 1997, the following setback
limits for new or expanded animal-feeding operations that utilize
a lagoon or a waste storage pond, or both, apply.

10 A. For an animal-feeding operation with a capacity of
12 420,000 to 840,000 pounds of normal production animal live
14 weight at any one time, the minimum separation distance
16 required between a lagoon and a waste storage pond and real
18 property owned by another person is 1,000 feet. The minimum
separation distance required between an agricultural
facility and real property owned by another person is 1,000
feet.

20 B. For an animal-feeding operation with a capacity of
22 840,001 to 1,260,000 pounds of normal production animal live
24 weight at any one time, the minimum separation distance
26 required between a lagoon and a waste storage pond and real
property owned by another person is 1,250 feet. The minimum
separation distance required between an agricultural
facility and real property owned by another person is 1,000
feet.

28 C. For an animal-feeding operation with a capacity of
30 1,260,001 to 1,680,000 pounds of normal production live
32 weight at any one time, the minimum separation distance
34 required between a lagoon and a waste storage pond and real
36 property owned by another person is 1,500 feet. The minimum
separation distance required between an agricultural
facility and real property owned by another person is 1,000
feet.

38 D. For an animal-feeding operation with a capacity of more
40 than 1,680,000 pounds of normal production animal live
42 weight at any one time, the minimum separation distance
44 required between a lagoon and a waste storage pond and real
property owned by another person is 1,750 feet. The minimum
separation distance between an agricultural facility and
real property owned by another person is 1,000 feet.

46 E. The minimum separation distance between a lagoon and a
48 waste storage pond and a public or private drinking water
well is 500 feet.

2 F. The minimum separation distance required between a
3 lagoon and a waste storage pond and waters of the State is
4 1,320 feet. If the waters of the State are critical habitat
5 waters for federally designated endangered species or
6 shellfish harvesting waters, the minimum separation distance
7 required between a lagoon and a waste storage pond and
8 waters of the State is 2,640 feet. A minimum 100-foot
9 vegetative buffer of plants and trees between a lagoon and a
10 waste storage pond and waters of the State is required.
11 However, if an owner or operator of an animal-feeding
12 operation has a state-certified engineer create a waste
13 management plan to control the discharge from a failed
14 lagoon so that it will not enter waters of the State and
15 certify that the plan has been implemented as specified,
16 then the minimum separation distance between a lagoon and a
17 waste storage pond and waters of the State is 500 feet.

18 G. The minimum separation distance required between a
19 lagoon and a waste storage pond constructed of concrete to
20 standards outlined in commission rules and waters of the
21 State is 500 feet. If the waters are critical habitat
22 waters for federally designated endangered species or
23 shellfish harvesting waters, the minimum separation distance
24 required between a lagoon and a waste storage pond
25 constructed of concrete to standards outlined in commission
26 rules and waters of the State is 1,000 feet. A minimum
27 100-foot vegetative buffer of plants and trees between a
28 lagoon and a waste storage pond constructed of concrete to
29 standards outlined in commission rules and waters of the
30 State is required.

31 H. If a lagoon or a waste storage pond, or both, breaches
32 or fails in any way, the owner or operator of the
33 animal-feeding operation immediately shall notify the
34 commission and the appropriate local government officials.

35 3. Setback limits for all animal-feeding operations. The
36 minimum separation distance in feet required between a ditch or
37 swale that drains directly into waters of the State and all
38 animal-feeding operations is 100 feet.

39 4. Location in floodplain prohibited. A new animal-feeding
40 operation or expansion of an established animal-feeding operation
41 may not be located in the 100-year floodplain unless protected
42 from flooding as provided for in regulations of the Federal
43 Emergency Management Agency and the National Flood Insurance
44 Program on Floodplain Management. Such construction or expansion
45 must be certified by the commission.

2 5. Surface intake for potable water supply. Streams or
3 rivers used as surface intake for a potable water supply may not
4 be used as a receiving stream outflow from animal-feeding
5 operations, and there may not be any direct water linkage or
6 flood facility drainage linkage between the animal-feeding
7 operation and a stream or river utilized as a supply of drinking
8 water unless waste is treated to drinking water quality standards.

9
10 6. Rules. The setback limits are minimum siting
11 requirements. The commission shall adopt rules specifying
12 factors that the commission shall evaluate in determining whether
13 additional separation distances are required under certain
14 circumstances. These factors must include, at a minimum:

15 A. Proximity to the 100-year floodplain;

16 B. Soil type;

17 C. Location in watershed;

18 D. Nutrient sensitivity of receiving waters;

19 E. Proximity to a historic preservation district; state or
20 national park or forest; state or federal research area; and
21 privately owned wildlife refuge, park or trust property;

22 F. Proximity to other point and nonpoint sources; and

23 G. Slope of land.

24
25 Rules adopted are routine technical rules pursuant to Title 5,
26 chapter 375, subchapter II-A.

27 **§692. Waiver of setback limits**

28
29 A separation distance requirement as provided in section 691
30 does not apply to an animal-feeding operation that is constructed
31 or expanded, if the title holder of land adjoining the
32 animal-feeding operation executes a written waiver with the title
33 holder of the land where the animal-feeding operation is
34 established or proposed to be located, under terms and conditions
35 that the parties negotiate. The written waiver becomes effective
36 only upon the recording of the waiver in the office of the
37 register of deeds of the county in which that land is located.
38 The filed waiver precludes enforcement by the State of section
39 691 as it relates to the animal-feeding operation and to the
40 title holder of adjoining land.

41 **§693. Animal waste land application**

1 1. Land application. The commission shall adopt rules
2 relating to land application rates for animal waste for
3 animal-feeding operations with a capacity for more than 420,000
4 pounds of normal production animal live weight at any one time.
5 These rates must be based on the waste's impact on the
6 environment, animals and people living in the environment. In
7 developing annual pollutant loading rates and cumulative
8 pollutant loading rates, the commission shall consider:

10 A. Soil type;

12 B. Type of vegetation growing in land application area;

14 C. Proximity to 100-year floodplain;

16 D. Location in watershed;

18 E. Nutrient sensitivity of receiving land and waters;

20 F. Soil and sediment tests of receiving land and waters;

22 G. Nutrient, heavy metal and pollutant content of the waste
23 being applied;

24 H. Proximity to a historic preservation district; state or
25 national park or forest; state or federal research area; and
26 privately owned wildlife refuge, park or trust property;

28 I. Proximity to other point and nonpoint sources;

30 J. Slope of land;

32 K. Distance to water table or groundwater aquifer;

34 L. Timing of waste application to coincide with vegetative
35 cover growth cycle;

38 M. Timing of harvest of vegetative cover;

40 N. Hydraulic loading limitations;

42 O. Soil assimilative capacity;

44 P. Type of vegetative cover and its nutrient uptake
45 ability; and

46 Q. Method of land application.

48 2. Spray. The commission shall require calibration of
50 spray irrigation equipment.

2 **3. Vertical separation.** Waste may not be applied to or
3 discharged onto land surface when the vertical separation between
4 the waste and the water table is less than 1 1/2 feet.

6 **4. Adherence.** The commission shall ensure that owners or
7 operators comply with land application rates.

8 **5. Routine technical.** Rules adopted pursuant to this
9 section are routine technical rules pursuant to Title 5, chapter
10 375, subchapter II-A.

12 **§694. Minimum separation distances**

14 The following application rates apply only to animal-feeding
15 operations with a capacity of more than 420,000 pounds of normal
16 production animal live weight at any one time.

18 **1. Residence.** The minimum separation distance in feet
19 required between a waste utilization area and real property owned
20 by another person on which a residence is located is 200 feet
21 from property lines that are within 1,000 feet of the residence.
22 The 200-foot setback is waived with the consent of the owner of
23 the residence; however, the owner may not agree to a setback of
24 less than 100 feet from the residence.

26 **2. Waters of the state, ditches, swales.** The minimum
27 separation distance in feet required between a waste utilization
28 area and waters of the State and ditches and swales that drain
29 directly into waters of the State is 100 feet.

32 **3. Drinking water well.** The minimum separation distance in
33 feet required between a waste utilization area and a public or
34 private drinking water well is 200 feet.

36 **§695. Emission of undesirable level of odor**

38 **1. Prohibition.** A person may not cause, allow or permit
39 emission into the ambient air of any substance or combination of
40 substances in quantities that create an undesirable level of odor
41 unless preventive measures of the type set out in this subsection
42 are taken to abate or control the emission to the satisfaction of
43 the commission. When an odor problem comes to the attention of
44 the commission through field surveillance or specific complaints,
45 the commission shall determine if the odor is at an undesirable
46 level by considering the character and degree of injury to or
47 interference with:

48 A. The health or welfare of the people;

2 B. Plant, animal or marine life;

4 C. Property; and

6 D. Enjoyment of life or use of affected property.

8 2. Abatement or control. The commission may require the following abatement or control practices:

10 A. Removal or disposal of odorous materials;

12 B. Methods of handling and storing odorous materials in order to minimize emissions;

14 C. Prescribed standards in the maintenance of premises to reduce odorous emissions; and

16 D. Use of the best available control technology to reduce odorous emissions.

18 3. Remediation. After determining that an undesirable level of odor exists, the commission shall require remediation of the undesirable level of odor.

20 4. Complaint. Nothing in this section prohibits an individual or group of persons from bringing a complaint against an animal-feeding operation.

22 §696. Permit decisions

24 1. Prevention of increased pollution. The commission shall act on all permits issued pursuant to section 699 to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources.

26 2. Prevention of degradation of water quality. The commission shall act on all permits issued pursuant to section 699 to prevent degradation of water quality due to the cumulative and secondary effects of permit decisions. Cumulative and secondary effects are impacts attributable to the collective effects of a number of animal-feeding operations in a defined area, and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity. All permit decisions must ensure that the waste treatment and utilization alternative with the least adverse impact on the environment be utilized. Cumulative and secondary effects include but are not limited to runoff from an animal-feeding operation or land application of animal waste, evaporation and atmospheric deposition of elements, groundwater

2 or aquifer contamination, buildup of elements in the soil and
3 other potential and actual point and nonpoint sources of
4 pollution in the vicinity.

6 **§697. Annual inspections; fees**

8 The commission shall establish the amount of an application
9 and annual operation fee to cover, at a minimum, an annual
10 inspection of all animal-feeding operations in the State with a
11 capacity of more than 420,000 pounds of normal production animal
12 live weight at any one time. The annual inspection must include
13 but is not limited to an on-site visit, review of the
14 implementation of a waste management plan, review of results of
15 monitoring analysis, annual pollutant loading rates and
16 cumulative pollutant loading rates and review of all records
required by this chapter.

18 **§698. Notice of intent to construct or expand; public hearings**

20 **1. Publication of notice of intent.** If an animal-feeding
21 operation that has the capacity of more than 420,000 pounds of
22 normal production animal live weight at any one time seeks to
23 construct or expand an established animal-feeding operation, the
24 commission shall publish in a local newspaper of general
25 circulation a notice of intent to construct or to expand an
26 established animal-feeding operation governed by this chapter
27 notify persons residing on adjoining property and notify the
28 relevant county commission and water supply district at the
29 expense of the animal-feeding operation applicant. Proof of
30 notification of neighboring land owners and residents must be
31 supplied by the applicant. This notice must contain instructions
32 for public review and comment to the commission on the proposed
33 construction and operation of the facility. The notice must
34 allow for a minimum 30-day comment period.

36 **2. Public hearing.** The commission shall conduct a public
37 hearing and shall provide notice of the public hearing in
38 accordance with the notice requirements provided for in
39 subsection 1 in any case in which the commission receives letters
40 from at least 20 interested persons requesting a public hearing.

42 **§699. Permits**

44 **1. Renewal.** Permits for animal-feeding operations covered
45 under this chapter must be renewed every 7 years. Subsequent to
46 the issuance of a permit, if the animal-feeding operation is not
47 in operation or production for 2 consecutive years, the permit is
48 not valid and a new permit must be obtained.

2 2. Fee. The commission shall determine the appropriate fee
3 for permit renewals.

4

SUMMARY

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7 This bill, which is based on South Carolina law, establishes
8 limits on swine feeding operations.