

FINANCIAL ASSURANCE REQUIREMENTS FOR LARGE
LIVESTOCK CONFINEMENT FEEDING FACILITIES

BE IT ORDAINED THIS 28TH DAY OF JULY, 1997, BY THE BOARD OF SUPERVISORS OF CLARKE COUNTY, IOWA THAT THE FOLLOWING ORDINANCE PERTAINING TO LARGE LIVESTOCK CONFINEMENT FEEDING FACILITIES BE ADOPTED.

SECTION I. BOARD FINDINGS

Because of the large number of surface drainage structures located in Clarke County and the dependence of a large portion of the population of Clarke County on surface drained waters for drinking water, the Board finds that construction of large livestock confinement feeding facilities on land that drains into those surface drainage facilities poses a risk that the health, safety and welfare of the citizens of Clarke County. The Board further finds that the risk of environmental damage resulting from the operation or closure of large livestock confinement feeding facilities can be lessened by providing a source of funding for immediate remediation in the event environmental damage does occur.

SECTION II. APPLICABILITY

This Ordinance shall apply to all large livestock confinement feeding facilities except those that have begun operations prior to August 1, 1997.

SECTION III. DEFINITIONS

1. "Owner" shall mean the individual in whose name fee title to the tract of land is shown. It shall further mean any contract purchasers, lessees, renters, or other parties or entities having a direct interest in the construction and use of the proposed structure. It shall include natural persons, partnerships, corporations, limited liability companies, estates, trusts, and other artificial entities capable of holding title to or controlling the use of real estate under the laws of the State of Iowa.
2. "Large Livestock Confinement Feeding Facility" means a livestock feeding operation in which the animal weight capacity is :
 - a. for cattle, more than 500,000 pounds
 - b. for swine, more than 300,000 pounds
 - c. for chicken, more than 300,000 pounds
 - d. for turkeys, more than 500,000 poundsand where the livestock are or can be confined to areas which are totally roofed.
3. "Livestock" means cattle, swine, chickens or turkeys.
4. "Livestock Owner" means the person or persons who own or co-own the livestock kept or raised on a site.
5. "Site" means any real estate in Clarke County, Iowa, where a large livestock confinement feeding facility is located
6. "Begun Operation" means the date that the animal weight capacity of livestock is sufficient for the site to qualify as a large livestock confinement feeding facility as defined in Section III(2) above.
7. "Department" means the Iowa Department of Natural Resources
8. "Board" means the Board of Supervisors of Clarke County, Iowa
9. "Treasurer" means the Treasurer of Clarke County, Iowa
10. "Animal Weight Capacity" is the result of multiplying the maximum number of animals which the owner or operator confines in a large livestock confinement feeding facility at any time by the average weight during a production cycle.
11. "Natural Resources" means water, air, land or crops
12. "Manure" means animal excreta or other commonly associated wastes of animals, including but not limited to bedding, litter, or food losses
13. "Anaerobic lagoon" means an impoundment used in conjunction with a large livestock confinement feeding facility, if the primary function of the impoundment is to store and stabilize organic wastes, the impoundment is designed to receive wastes on a regular basis, and the impoundment's design waste loading rates provide that the predominant biological activity is anaerobic
14. "Earthen manure storage basin" means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a large livestock confinement feeding facility
15. "Formed manure storage structure" means a structure, either covered or uncovered, used to store manure from a large livestock confinement feeding facility, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar material.
16. "Site" means any real estate in Clarke County where a large livestock confinement feeding facility is located
17. "Facility" means all large livestock confinement feeding facilities located on a single site
18. "Operator" means any person, firm, partnership, association, corporation, company, or organization of any kind who operates a large livestock confinement feeding facility

SECTION IV FINANCIAL ASSURANCE REQUIRED

Subject to the exception set out in Section II above, no person shall operate any large livestock confinement feeding facility within Clarke County without first providing to the Board Financial Assurance as required under this Ordinance.

SECTION V FINANCIAL ASSURANCE

A large livestock confinement feeding facility must submit to the Board a detailed written estimate, in current dollars, of the cost to clean up the natural resources which could be contaminated, polluted, defiled or soiled by leaks or spills from the manure storage structures which are a part of the facility. The owner or operator must annually adjust the cost estimate for inflation using the U.S. Consumers Price Index for rural arms. The cost estimate shall be calculated as follows:

1. Cost of clean-up of above ground facilities. The clean-up of above ground facilities and manure shall be calculated by determining the cost of a third party:
 - a. Disposing of all manure stored on-site at an identified site; and
 - b. Cleaning or removing all above ground structures

For purposes of this calculation, it shall be assumed that the manure storage facility is 100% full. The estimate submitted shall be certified by a registered engineer and shall set out how the cost was determined.

2. Cost of remediation of off-site contamination. The cost of remediation of off-site contamination shall be calculated by multiplying the animal weight capacity of the operation by Two dollars (\$2.00) for those facilities which store manure in anaerobic lagoons and by Fifty cents (\$.50) for those facilities which store manure in formed manure storage structures.
3. Credit for Maintaining Wells. The financial assurance amount for a facility that has installed groundwater monitoring wells with at least one well located up gradient, and two wells located down gradient from the manure lagoon, basin or structure, shall be reduced by fifty percent (50%), provided the test results are submitted to the Board annually and reveal no groundwater contamination. Using EPA approved methods and procedures for chemical analysis each water and procedures for the following chemical constituents:

pH	Conductivity
Temperature	Total Alkalinity
Sulfate	Total Kjeldahl nitrogen
Ammonia-nitrogen	Chloride
Total Dissolved solids	Chemical Oxygen demand
Total organic carbon	Sodium
Nitrate-nitrogen	

If appropriate, the facility may substitute Vadose Zone monitoring devices for groundwater monitoring wells, subject to the approval of the County Sanitarian

4. Amount of financial Assurance Required. The cost determined under sub-paragraphs "1" and "2" above and the credit, if any, under sub-paragraph "3" above shall be the financial assurance amount required under the provisions of the Section.

SECTION VI ALLOWABLE FINANCIAL ASSURANCE MECHANISMS

The mechanisms used to demonstrate financial assurance must insure that the funds necessary to meet the costs of clean up and remediation, as established in Section V above, will be available when they are needed. In establishing financial assurance, owners and operators must choose from the following options:

1. Surety Bond. A facility may demonstrate financial assurance by obtaining a payment or performance surety bond which conforms to the requirements of this section. The bond must be effective before the initial receipt of livestock into the facility, and a copy of the bond must be filed with the Board. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal Bonds and Circular 570 of the U.S. Department of the Treasury. In addition, the bond shall:
 - a. Be in an amount at least equal to the cost estimates established under Section V above
 - b. Provide that the surety will become liable under the bond obligations when the facility fails to perform as guaranteed by the bond.
 - c. Provide that the surety may cancel the bond by sending notice of cancellation by certified mail to the facility and to the Board one-hundred twenty (120) days in advance of the cancellation. If the surety cancels the bond, the facility must obtain alternate financial assurance or cease operations.
2. Insurance. A facility may demonstrate financial assurance by obtaining insurance which conforms to the requirements of this section. Insurance must be effective before the initial receipt of livestock at the operation. At a minimum, the insurer must be authorized to transact the business of insurance in Iowa. A copy of the policy must be filed with the Board and shall provide:
 - a. All funds will be available for any on-site clean-up resulting from the operation. The policy must also guarantee that once environmental cleanup has begun, the Insurer will be

responsible for the paying out of funds to the facility or other persons authorized to conduct the clean-up an amount equal to the face amount of the policy.

- b. The policy must be issued for a face amount at least equal to the cost estimate for financial assurance established pursuant to Section V above. The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount although the Insurer’s future liability will be lowered by the amount of payments.
- c. The policy must contain a provision allowing assignment of the policy to a successor facility. Said assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.
- d. The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insurer with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium the insurer may cancel the policy by sending notice of cancellation by certified mail to the facility and to the county auditor one-hundred twenty (120) days in advance of the cancellation. If the insurer cancels the policy, the facility must obtain alternate financial assurance or cease operations.

SECTION VII EXPANSION OF EXISTING FACILITIES

Any person, who expands an existing livestock confinement feeding facility exempt under Section II above, shall be required to post financial assurance for the entire facility if the total animal weight capacity of the existing and expanded facility qualifies as a large livestock confinement feeding facility as defined in Section III (1) above.

SECTION VIII SEVERABILITY

If any section, provision or part of this Ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION IX EFFECTIVE DATE

This Ordinance being deemed of immediate importance shall become effective upon passage and publication.

SECTION X VIOLATIONS

Any person who violates this Ordinance shall be guilty of a County infraction punishable by a civil penalty of not more than one hundred dollars (\$100) for each day the person is in violation of the Ordinance. In addition, the County shall have the right to seek alternate relief as provided in Iowa Code Section 333.307 (1997).

SECTION XI INSPECTIONS

The County shall have the right to inspect the site to insure compliance with the provisions of this Ordinance.

First reading:	Waived _____	Approved <u> x </u>
Second reading:	Waived <u> x </u>	Approved _____
Third reading:	Waived <u> x </u>	Approved _____

Signed: Dennis E. Chaney, Chairman of the Board of Supervisors

Attest: Anita Chandler, Clarke County Auditor