

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 2000

By: Leist

AS INTRODUCED

An Act relating to agriculture; creating the Oklahoma Confined Animal Waste Management Act; specifying certain findings; defining terms; providing purpose; requiring permits; requiring public meetings; requiring educational requirements; authorizing certain modifications; specifying technical requirements; requiring certain specifications; requiring various permits; providing for closure; providing penalties; prohibiting unfair competition; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-301 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Confined Animal Waste Management Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-302 of Title 2, unless there is created a duplication in numbering, reads as follows:

The purpose of the Oklahoma Confined Animal Waste Management Act is to establish the minimum qualifications, standards and procedures for issuance of permits for confined animal feeding operations within the state and for the issuance of permits for land application sites within the state. The Oklahoma Confined Animal Waste Management Act provides management, operational and maintenance procedures necessary to prevent point source pollution and minimize nonpoint source pollution to the waters of the state and control, to the degree practicable, the generation of offensive odors by regulated confined animal feeding operations.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-303 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Confined Animal Waste Management Act:

1. "Animal waste" means animal excrement, animal carcasses, feed wastes, wastewaters, or any other waste associated with the confinement of animals, disposal of which could have an adverse effect on the environment;
2. "Department" means the Oklahoma Department of Agriculture;
3. "Commissioner" means the Commissioner of the Oklahoma Department of Agriculture;
4. "Discharge" means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching or other means of release of wastes or wastewater into any surface or groundwaters of the state;
5. "Animal waste management system" means any system, liquid or dry, used for the collection, storage, distribution or disposal of animal waste generated by a confined animal feeding operation;
6. "Confined animal feeding operation" means any lot or facility where animals or fowl have been, are or will be confined, which is primarily indoors, and fed or maintained.

7. "Pollution prevention plan" means a plan to control pollutants prepared in accordance with best engineering and management practices;

8. "Process wastewater" means any process-generated wastewater that comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or products directly or indirectly used in the operation of a facility including, but not limited to: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; dust control; and any precipitation;

9. "Waste management plan" means a written plan prepared by a professional engineer registered in the State of Oklahoma or qualified groundwater scientist detailing the management and disposal of liquid wastes generated in a confined animal operation which when properly applied will protect the natural resources of the State of Oklahoma;

10. "Site management plan" means a plan prepared by a professional engineer registered in the State of Oklahoma or qualified groundwater scientist, which includes a detailed map of the land application site showing all buffer zones, a description of the land use and the crops grown on the site, and a land use agreement if the site is not owned by the permittee; and

11. "Waters of the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial and public or private, which are contained within, flow through, or border upon this state or any portion thereof and shall include in all instances waters of the United States. Process wastewater shall not be considered as waters of the state.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-304 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The siting and separation requirements set forth in the Oklahoma Confined Animal Waste Management Act are intended to protect water quality, to protect public health, and to abate odor. In order to minimize odor, the Department's policy shall be to encourage permittees to adopt a good neighbor policy and consider the use of biological additives or other effective management practices in the operation of animal waste management systems, such as the minimal use of water to flush or clean areas containing waste, and use of open air lagoons. Use of irrigation systems for spreading liquid waste shall not be permitted within two thousand six hundred (2,600) feet of an occupied dwelling unless the dwelling is owned by the applicant or permittee or by written agreement with the owners of any dwelling located within two thousand six hundred (2,600) feet of the property. The Department shall conduct ambient air quality monitoring as deemed necessary to establish criteria for air releases of gases and constituents which may contribute to environmental and human health concerns.

B. No confined animal feeding operation using a waste disposal system shall be constructed or operated unless the owner has first obtained a permit from the Department. The Department shall promulgate rules for facilities regarding size, number of animals, releases, discharges, lagoons or ponds, disposal methods and applications.

C. Upon submission of an application to construct or operate a confined hog or poultry facility involving liquid animal waste handling, or upon submission of an application to modify any existing permit pursuant to the Oklahoma Confined Animal Waste Management Act, the applicant shall cause to be published in a newspaper having general circulation in the county or counties where

the operation is to be located a public notice of the application. The Department shall be provided a copy of the notice. All notices shall be published in accordance with rules established by the Department governing public notices and comment periods.

D. A thirty-day comment period shall commence on the day of the publishing of a proposed application in the appropriate newspapers. During the public comment period, any person affected by the application may ask for a public meeting. If a meeting is requested, the Department shall schedule a public meeting and shall notify the applicant and all persons who have submitted comments of the date, time, and place thereof. The Department shall also publicize the meeting in the same newspapers as those used to publish notice of application for a permit. If a meeting is held, the public comment period shall be extended to fifteen (15) days beyond the date of the hearing. All oral and written comments submitted during the public comment period shall be considered by the Department in making a final decision concerning the permit application.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-305 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Commencing six (6) months from the effective date of the Oklahoma Confined Animal Waste Management Act, applicants for permits and all managing owners or managing operators of the proposed operation shall provide certification of satisfactory completion of formal education or training in the areas of waste management and odor control. Proof of certification of a minimum of four (4) hours of individualized training and education must be submitted with the permit application or within one (1) year of the effective date of the issued permit. Appropriate curricula and course content shall be developed under the supervision of the

Oklahoma State University Agricultural Extension Service, which shall provide certification to the Department.

B. Commencing one (1) year from the effective date of the Oklahoma Confined Animal Waste Management Act, all managing owners or managing operators of all permitted liquid animal waste disposal systems subject to the provisions of the Oklahoma Confined Animal Waste Management Act, which have been in operation for no less than eighteen (18) months, shall provide certification of satisfactory completion of annual refresher training in the areas of waste management and odor control as described in and in addition to the educational requirements provided in subsection A of this section of the Oklahoma Confined Animal Waste Management Act. Appropriate curricula and course content must be developed under the supervision of Oklahoma State University Extension Service which shall provide certification to the Department.

C. Failure to obtain the prerequisite and annual training and education as provided in this section shall be deemed a violation of the Oklahoma Confined Animal Waste Management Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-306 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. An applicant who applies for a permit pursuant to the Oklahoma Confined Animal Waste Management Act shall provide a complete permit application to the Department on such form or forms as the Department may require. Subsequent to the filing of a complete permit application, the Department shall determine whether to issue or deny a final permit. In the event a final permit is issued, the permittee and any interested party to the permit, as defined in the Department's administrative rules, has thirty (30) days from its issuance date to appeal the permit in accordance with the Department's administrative rules. In the event a final permit is denied, the Department shall provide to the applicant a written

statement setting out the basis for the denial. The applicant has thirty (30) days from the date of the denial notice to appeal the denial in accordance with the Department's administrative rules.

B. 1. The operator shall notify and describe to the Department in writing prior to any change in operational procedures of the permitted facility, including, but not limited to, the following:

- a. change in ownership and control of the facility,
- b. increase in the number of confined animals greater than ten percent (10%) or more of the existing permitted confined animal operation,
- c. change in land application sites, and
- d. change in waste treatment, handling or disposal.

2. Any changes in procedures as described in subparagraphs a through c of paragraph 1 of this subsection shall require a permit modification. The Department in its discretion may require the operator to modify its permit with regard to subparagraph d of paragraph 1 of this subsection.

C. All permit modifications shall follow the requirements of this section.

D. The Department shall require the operator to provide construction plans and specifications, amended plans of operation or any other information required by the Oklahoma Confined Animal Waste Management Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-307 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. No animal waste management system shall be constructed, modified, or placed into operation after the effective date of the Oklahoma Confined Animal Waste Management Act unless in accordance with final design plans and specifications approved by the Department.

B. Designs and waste management plans shall be in accordance with the criteria established by the Department and include a minimum of the following:

1. Guidelines for sampling of soils and vegetation in field application properties. Sampling will be at least monthly during the first two (2) years of operation during application months and quarterly thereafter;

2. To control odor, waste from lagoons or other manure holding pits or tanks shall be spread and incorporated into the soil or knifed in. Spreading with any type of irrigation equipment shall not be allowed within two thousand six hundred (2,600) feet of an occupied dwelling or upon written agreement with the owner of the dwelling. Waste or effluent will either be knifed in or spread and incorporated no more than one time each year on each acre on which it is applied. Waste will not be spread on land with a slope of over eight percent (8%). Application of liquid wastes to lands shall be low-to-the-ground so as to minimize wind-blown vapor, and shall not be allowed to saturate soil sufficient to cause runoff to occur. Application areas shall be bermed to prevent runoff of application wastes during rain events or errors which cause over-application. Runoff from land application of liquid confined animal waste, causing contamination of nearby soils and streams, shall be considered a violation of the Oklahoma Confined Animal Waste Management Act;

3. If lagoons collecting wastes from confined animal operations are utilized, they will be constructed of appropriate materials as defined by the Department of Agriculture by rule; and

4. Monitoring wells shall be established sufficient to detect as early as possible migration of wastes from confined animal operations into groundwater. Monitoring wells shall be placed around lagoons and pits collecting wastes, as well as around land application areas and clusters of animal containment buildings, if

utilizing liquid animal waste management. Monitoring wells shall be placed upgradient and downgradient of groundwater flow to ensure early detection of contamination. Upgradient wells shall be used to supply background information, and will be sampled to establish background information prior to the generation, storage, and application of any wastes.

C. Confinement buildings, settling basins, holding ponds, and other liquid animal waste containment structures shall not be constructed within two thousand six hundred (2,600) feet of the nearest existing occupied dwelling, if that dwelling utilizes groundwater from within its property as the source of its household use. This buffer distance shall not apply if the existing dwelling is owned by owners or operators of the animal waste management system or if the adjoining property owner consents in writing. Confined animal operations existing as of the effective date of the Oklahoma Confined Animal Waste Management Act and proposing to construct a liquid animal waste containment structure in order to reduce wastewater runoff to waters of the state shall comply with these buffer distances.

D. The subsurface investigation for earthen holding pond and treatment lagoon suitability may consist of auger holes, dozer pits, or backhoe pits that should extend to at least two (2) feet below the planned bottom of the excavation. In those situations where this depth is not practical in the initial on-site subsurface investigation, the applicant shall provide additional subsurface investigation documentation to the Department. The Department shall require monitoring wells established upgradient and downgradient from animal waste storage and treatment facilities to monitor groundwater quality.

E. The waste management plan shall be developed in accordance with the United States Department of Agriculture (USDA) Soil Conservation Service Technical Guide and shall address the timing of

land application of wastes with respect to the nutrient uptake cycle of the vegetation found on any land application site and, to the extent possible, shall include measures to minimize off-site obnoxious and offensive odors.

F. 1. All animal confinement operations shall be required to have sufficient spreadable acres for the application of waste to prevent overapplication of any other soil contaminant.

2. Waste and wastewater shall be evenly distributed over application sites at the rates specified in site management plans. Core samples, taken with an auger, and surface and plant sampling will be completed on a monthly basis during application months for the first two (2) years of operation, and then quarterly thereafter, to determine proper application rates for specific fields.

3. Land application of waste and wastewater shall not be undertaken when soil is saturated, frozen, covered with ice or snow, or when significant precipitation is reasonably anticipated in the next twenty-four (24) hours.

4. Monitoring wells will be placed upgradient and downgradient of the groundwater flow and will sample the shallow and deeper aquifers below the site.

5. Application of waste and wastewater shall not be made within five hundred (500) feet of property lines or within two thousand six hundred (2,600) feet of neighboring occupied buildings existing as of the date of the permit. The restrictions regarding property lines or neighboring occupied buildings shall not apply if the adjoining property is also approved as a land application site under a permit issued by the Department or if the adjoining property owner consents in writing.

6. Application of waste and wastewater shall not be made in areas where the land application of waste and wastewater is prohibited by state health regulations for the protection of public water supplies.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-308 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Records shall be kept of all waste and wastewater applied. These records shall be kept in sufficient detail to determine the application rate. A log shall be kept of all land-applied waste and wastewater. The log shall include date, weight and/or volume, destination and acreage over which the load was spread. All records and logs shall be kept at the facility and provided to the Department for placement in files.

B. A representative sample of the waste and wastewater to be land applied shall be collected periodically, at the rate specified four times per year, and analyzed as required by the Department of Agriculture by rule.

C. Methods of sampling and analysis described in this section shall be in accordance with the Oklahoma State University Extension Service guidelines. Annual reports for the previous calendar year shall be submitted to the Department as required by rule.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-309 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All permitted facilities shall have a waste management plan for the farm, a site management plan for each land application site, and a Pollution Prevention Plan prepared by a professional engineer registered in the State of Oklahoma or a groundwater scientist, to be approved by the Department. The Department shall require proof of land ownership or of contractual agreements for use of the land as a land application site.

B. All permittees with permits issued prior to the effective date of the Oklahoma Confined Animal Waste Management Act that do not have a waste management plan approved by the Department or are applying waste and wastewater on sites for which a site management

plan has not been approved by the Department shall submit a waste management plan, site management plan, and a Pollution Prevention Plan for each site in compliance with the Oklahoma Confined Animal Waste Management Act no later than one (1) year from the effective date of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-310 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. A separate permit may be issued for a land application site if the owner submits an application which includes a site management plan for the land application site and a plan detailing nutrient application rates; the timing of waste application with respect to the nutrient application rates; the timing of waste application with respect to the nutrient uptake cycle of the vegetation found on any land application site; and waste storage and distribution methods prepared in accordance with the requirements of the Oklahoma Confined Animal Waste Management Act.

2. The applicant for such a permit shall notify the Department of any contractual agreement for the use of the land as a land application site by submitting a copy of the agreement.

3. Records of the waste and wastewater application shall be kept as specified in Section 8 of this act and shall include information regarding the source of the waste, including location and permit number if applicable. Sampling, analysis and annual reporting as specified in Section 8 of this act are required.

B. Waste management plans submitted in accordance with this act may include composting as an alternative to land application of liquid waste. Any such plans may provide for composting at a permitted composting facility. If no such facility is referenced in the plan, it must include sufficient detail for a determination by the Department that point or nonpoint source pollution to the waters of the state will not result from the use of this alternative.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-311 of Title 2, unless there is created a duplication in numbering, reads as follows:

Should a permitted confined animal operation using a liquid waste management system cease operation, the permittee shall submit to the Department a closure plan for the liquid waste system storage and treatment structures within sixty (60) days of the final day of operation. This plan shall be prepared by a professional engineer registered in the State of Oklahoma.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-312 of Title 2, unless there is created a duplication in numbering, reads as follows:

Failure to comply with the provisions of the Oklahoma Confined Animal Waste Management Act shall be deemed by the Department as a violation. The Department will develop a penalty system for a confined animal feeding operation which complies with the present penalty system applicable to solid and hazardous waste facilities permitted within the Oklahoma Department of Environmental Quality. Penalties shall include financial payments, environmental restoration, and additional environmental technologies as appropriate. A fine of up to Twenty-five Thousand Dollars (\$25,000.00) per day may be assessed by the Department until such violations cease.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-313 of Title 2, unless there is created a duplication in numbering, reads as follows:

In order to avoid unfair competition, no individual or corporation engaged in farming or any segment of farming shall qualify for tax abatements or government subsidies, such as is offered through enterprise zones, that is not available to all farmers without regard to the size of the operation, including but

not limited to, feed mills, offices, slaughter houses or packing plants or any other part or segment of any farming operation.

SECTION 14. This act shall become effective November 1, 1995.

45-1-5741

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