

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1522

By: Begley of the House

and

Price and Muegge of the  
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-201, 9-202, 9-203, 9-204, as amended by Section 1, Chapter 289, O.S.L. 1994, 9-205, 9-206, 9-208, as last amended by Section 29, Chapter 140, O.S.L. 1994, 9-209, 9-210, as amended by Section 1, Chapter 315, O.S.L. 1993, 9-211, 9-212, as amended by Section 1, Chapter 99, O.S.L. 1993 and 9-214 (2 O.S. Supp. 1996, Sections 9-204, 9-208, 9-210 and 9-212), which relate to the Oklahoma Concentrated Animal Feeding Operations Act; changing name of act from Oklahoma Feed Yards Act; stating purpose; modifying and adding to definitions; clarifying and updating certain language; providing for promulgation of rules; requiring submission of rules to the Rule Advisory Committee; setting time periods; requiring certain animal feeding operations to obtain a license; providing for exemptions; clarifying operators to be licensed; requiring certain licensure in case by case basis; requiring consideration of certain factors; authorizing certain discharges; requiring certain inspections; requiring certain preconstruction and operation approval; providing for applications for original licensure, renewal and transfer; providing procedures; specifying certain contents and information; requiring certain background histories; requiring certain records; authorizing denying of licenses to certain persons; providing for denial specifications and conditions; specifying additional information for certain applications; requiring certain notice to certain persons; providing for hearing; providing procedures; specifying type of testimony accepted; providing for determination of certain property rights; requiring public notice; specifying contents; authorizing public meetings; requiring certain documentation; requiring certain management practice plans; providing for pollution prevention plans, best management practices and animal waste management plans; providing for contents; authorizing substitutions in certain cases; providing for changes; requiring certain records; providing for analysis; requiring certain statements; making certain hydrological connections a discharge; requiring certain liners or proof of no hydrologic connection; providing for proof and documentation; requiring certain minimum separations; providing for certain measurements; requiring rules for the prevention of hydrologic

connections between a liquid animal waste management system and the waters of this state; requiring certain documentation; requiring establishment of standards in the design and construction of waste retention structures; specifying when Department may require liners and leak detection systems or monitoring wells; requiring certain inspections and reports; providing for composition of wastewater; providing for sampling; establishing requirements for all irrigation systems and liners; providing for responsible party for certain conditions; requiring certain equipment; requiring certain inspections; providing for unannounced inspections; requiring the establishment of certain precautions for the prevention of communicable diseases; requiring observation of certain facility standards; setting specific requirements and conditions for licensure; clarifying language; increasing certain fees; providing for deposits; establishing financial assurances; providing for categories of financial assurances and ability; providing for rules; setting conditions and qualifications; providing for amounts and determination of amounts; providing for modifications to amounts; providing for notice and hearing in certain situations; providing for forfeiture; authorizing for remedial work; authorizing recovery of costs; requiring submission of financial ability from certain persons; providing for additional information; requiring certain setbacks; providing exceptions; prohibiting certain land applications of liquid animal waste; authorizing certain written waivers; providing conditions and form; providing for change of ownership; allowing for suspension, revocation or denial of licenses; prohibiting certain land applications relating to drinking water wells; providing for determination of distances for setbacks; providing for grandfathering of certain facilities; requiring certain compliance; specifying and authorizing certain specific denials of issuance or transfer of licenses to certain persons or facilities; increasing penalties and fines; directing the Department of Agriculture to conduct a groundwater monitoring program at certain facilities; directing the Oklahoma Water Resources Board to conduct a study on the impact of certain operations on potable water for certain populations; repealing 2 O.S. 1991, Section 9-207, which relates to the deposit of certain fees received for feed yards licenses; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-201, is amended to read as follows:

Section 9-201. ~~This act~~ A. Sections 9-201 through 9-215 of this title shall be known and may be referred to cited as the

"Oklahoma Feed Yards Act Concentrated Animal Feeding Operations Act".

B. The purpose of the Oklahoma Concentrated Animal Feeding Operations Act is to provide for environmentally responsible construction and expansion of animal feeding operations and to protect the safety, welfare and quality of life of persons who live in the vicinity of an animal feeding operation.

SECTION 2. AMENDATORY 2 O.S. 1991, Section 9-202, is amended to read as follows:

Section 9-202. A. Concentrated animal feeding operations are point sources subject to the ~~permit or~~ license program established pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

B. As used in ~~this act~~ the Oklahoma Concentrated Animal Feeding Operations Act:

1. Affected property owner means a surface landowner within one (1) mile of the designated perimeter of an animal feeding operation or an expansion operation for which a license is being sought;

2. "Animal feeding operation" means a lot or facility ~~(other than an aquatic animal production facility)~~ where the following conditions are met:

- a. animals ~~(other than aquatic animals)~~ have been, are, or will be stabled or confined and fed or maintained for a total of ~~forty-five (45)~~ ninety (90) consecutive days or more in any twelve-month period, and
- b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

~~Two or more animal feeding operations under common ownership are considered, for the purposes of this law, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes~~ The term "animal feeding operation" shall not include a race track licensed by the Oklahoma Horse Racing Commission to hold pari-mutuel race

meetings pursuant to the Oklahoma Horse Racing Act if such facility discharges to a publicly owned treatment works (POTW), or an aquatic animal production facility.

2. 3. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by one (1) plus the number of mature dairy cattle multiplied by one and four-tenths (1.4), plus the number of swine weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds, multiplied by four-tenths (0.4), plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (0.1), plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2);

4. "Animal waste" means animal excrement, animal carcasses, feed wastes, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation;

5. "Animal Waste Management Plan" or "AWMP" means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state prepared by an owner or operator of an animal feeding operation as required by the Department pursuant to the provisions of Section 9 of this act;

6. "Animal waste management system" means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste;

7. "Artificially constructed" means constructed by humans;

8. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state as established by the Department of Agriculture pursuant to Section 9 of this act;

9. "Board" means the State Board of Agriculture;

10. "Common ownership" includes but is not limited to any corporation, partnership or individual where the same owner has

power or authority to manage, direct, restrict, regulate or oversee the operation or has financial control of the facility;

11. "Concentrated animal feeding operations operation" or "feed yards CAFO" means:

a. a licensed managed feeding operation, or

b. an animal feeding operation which meets the following criteria set forth as follows:

~~a.~~ (1) more than the number of animals specified in any of the following categories are confined:

~~(1)~~ (a)—1,000 slaughter and feeder cattle,

~~(2)~~ (b)—700 mature dairy cattle ~~(, whether milk or dry cows),~~

~~(3)~~ (c)—2,500 swine each weighing over 25 kilograms ~~(or approximately 55 pounds),~~

~~(4)~~ (d) 10,000 weaned swine each weighing under 25 kilograms,

(e)—500 horses,

~~(5)~~ (f)—10,000 sheep or lambs,

~~(6)~~ (g)—55,000 turkeys,

~~(7)~~ (h)—100,000 laying hens or broilers ~~(, if the facility has continuous overflow watering),~~

~~(8)~~ (i)—30,000 laying hens or broilers ~~(, if the facility has a liquid manure system),~~

~~(9)~~ (j)—5,000 ducks, or

~~(10)~~ (k)—1,000 animal units; ~~or, and~~

(2) pollutants are discharged into waters of the state. Provided, no animal feeding operation pursuant to this subparagraph shall be construed to be a concentrated animal feeding operation if such animal feeding operation discharges only in the event of a twenty-five-year, twenty-four-hour storm event, or

~~b.~~ c. an animal feeding operation which meets the following criteria:

(1) more than the ~~following~~ number and ~~types~~ of animals specified in any of the following categories are confined:

- ~~(1)~~ (a) 300 slaughter or feeder cattle,
- ~~(2)~~ (b) 200 mature dairy cattle ~~(, whether milk or dry cows),~~
- ~~(3)~~ (c) 750 swine each weighing over 25 kilograms ~~(or approximately 55 pounds),~~
- ~~(4)~~ (d) 3,000 weaned swine each weighing under 25 kilograms,
- (e) 150 horses,
- ~~(5)~~ (f) 3,000 sheep or lambs,
- ~~(6)~~ (g) 16,500 turkeys,
- ~~(7)~~ (h) 30,000 laying hens or broilers ~~(, if the facility has continuous overflow watering),~~
- ~~(8)~~ (i) 9,000 laying hens or broilers ~~(, if the facility has a liquid manure system),~~
- ~~(9)~~ (j) 1,500 ducks, or
- ~~(10)~~ (k) 300 animal units~~, ,~~ and

(2) either one of the following conditions are met:

- ~~(1)~~ (a) pollutants are discharged into waters of the ~~United States~~ state through a ~~man-made~~ artificially constructed ditch, flushing system or other similar ~~man-made~~ artificially constructed device~~, ,~~ or
- ~~(2)~~ (b) pollutants are discharged directly into navigable waters which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation pursuant to this subparagraph is a concentrated animal feeding operation ~~as defined above~~ if such animal feeding operation discharges only in the

event of a twenty-five-year, twenty-four-hour storm event., or

- e. d. the Board determines that the operation is a significant contributor of pollution to waters of the ~~United States.~~ state pursuant to Section 5 of this act;

~~3. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by one (1) plus the number of mature dairy cattle multiplied by one and four-tenths (1.4), plus the number of swine weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), multiplied by four-tenths (0.4), plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2).~~

~~4. "Man-made" means constructed by man and used for the purpose of transporting wastes:~~

- ~~a. Case-by-case designation of concentrated animal feeding operations:~~

~~(1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the United States. In making this designation the Board shall consider the following factors:~~

- ~~(a) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;~~
- ~~(b) The location of the animal feeding operation relative to waters of the United States;~~
- ~~(c) The means of conveyance of animal wastes and process wastewater into waters of the United States;~~

- ~~(d) The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the United States; and~~
  - ~~(e) Other such factors relative to the significance of the pollution problem sought to be regulated.~~
- ~~(2) No animal feeding operation with less than the number of animals set forth in paragraph 2, subparagraphs (a) and (b) of this subsection designated as a concentrated animal feeding operation unless:~~
- ~~(a) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; or~~
  - ~~(b) Pollutants are discharged directly into waters of the United States which originate outside the facility and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.~~
- ~~(3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this division until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program:~~
- ~~(a) Subject to the provisions of division (3) of paragraph (2) of subparagraph (b) of this subsection, the following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this section, which may be~~

~~discharged by a point source subject to the provisions of this subsection after application of the best conventional pollutant control technology. There shall be no discharge of process wastewater pollutants to navigable waters.~~

~~(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed and operated to contain all process generated wastewaters plus the runoff from a twenty-five year, twenty-four-hour rainfall event for the location of the point source.~~

~~(4) "Board" means the Oklahoma State Board of Agriculture~~

12. "Department" means the Oklahoma Department of Agriculture;

13. "Expanding operation" means:

- a. a facility that either increases its animal unit capacity to a number that causes the facility to initially meet the definition of a license managed feeding operation, or
- b. a licensed managed animal feeding operation that seeks to increase its licensed capacity in excess of five percent (5%) of the original facility's licensed capacity;

14. "Facility" means any place, site or location or part thereof where animals are kept, handled, housed, or otherwise maintained and processed and includes but is not limited to buildings, lots, pens, and animal waste management systems;

15. "Interested party" means an affected property owner who validly requests an individual hearing, in accordance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto regarding the issuance

of an animal feeding operation license and asserts rights to relief in respect to or arising out of the same license;

16. "Licensed managed feeding operations (LMFO)" means an animal feeding operation primarily using a liquid animal waste management system, where animals are primarily housed in a roof-covered structure and which has more than the number of animals specified in any of the following categories confined:

- a. 2,000 slaughter and feeder cattle,
- b. 1,400 mature dairy cattle, whether milk or dry cows,
- c. 5,000 swine each weighing over 25 kilograms, approximately 55 pounds,
- d. 20,000 weaned swine each weighing under 25 kilograms,
- e. 1,000 horses,
- f. 20,000 sheep or lambs,
- g. 110,000 turkeys,
- h. 200,000 laying hens or broilers, if the facility has continuous overflow watering,
- i. 60,000 laying hens or broilers, if the facility has a liquid manure system,
- j. 10,000 ducks, or
- k. 2,000 animal units;

17. "Liquid animal waste management system" means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure;

18. "Occupied residence" means a habitable structure designed and constructed for full-time occupancy in all weather conditions which:

- a. is not readily mobile,
- b. is connected to a public or permanent source of electricity and a permanent waste disposal system or public waste disposal system, and
- c. is occupied as a residence;

19. "Pollution Prevention Plan" or "PPP" means a written plan to control the discharge of pollutants which has been prepared in accordance with industry-acceptable engineering and management

practices by the owner or operator of an animal feeding operation as required pursuant to Section 8 of this act;

20. "Process wastewater" means any water utilized in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of animals and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact, swimming, washing or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste;

21. "Retention structures" includes but is not limited to all collection ditches, conduits and swales for the collection of runoff water and process wastewater, and basins, ponds and lagoons or other structures used to store animal wastes;

22. "Waste facility" means any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. Such structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing animals, compostors, waste storage sites, or retention structures or appurtenances or additions thereto; and

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

SECTION 3. AMENDATORY 2 O.S. 1991, Section 9-203, is amended to read as follows:

Section 9-203. The State Board of Agriculture is authorized to promulgate rules ~~and regulations~~ for the administration, ~~regulation,~~ and implementation and enforcement of ~~this act,~~ and ~~for~~ the Oklahoma Concentrated Animal Feeding Operations Act. For the performance of its duties and responsibilities, the Board is authorized to employ such personnel and agents as may be required within the funds available.

SECTION 4. AMENDATORY 2 O.S. 1991, Section 9-204, as amended by Section 1, Chapter 289, O.S.L. 1994 (2 O.S. Supp. 1996, Section 9-204), is amended to read as follows:

Section 9-204. A. The State Board of Agriculture shall appoint a rule advisory committee who, without compensation, shall act as advisors to the Board in the formulation of the rules promulgated pursuant to the Oklahoma ~~Feed Yards Act~~ Concentrated Animal Feeding Operations Act.

B. Six members shall be ~~feed yard~~ animal feeding operators; one member shall represent the field of geology; one member shall be a soil scientist; and one member shall represent the general public. Two shall serve for a one-year term; three shall serve for two-year terms; and four shall serve for three-year terms.

C. Upon reappointment for the one-year terms and the two-year terms herein created, all appointments shall be for a three-year term. All advisors shall serve in such capacity during said term at the pleasure of the Board.

D. 1. Except for emergency rules, the Department shall submit proposed rules to the rule advisory committee thirty (30) days prior to the rules being considered by the Board. The Board shall consider the comments of the rule advisory committee at least fifteen (15) days prior to any official action by the Board on the rules.

2. Proposed emergency rules shall be submitted by the Department to the rule advisory committee at least five (5) days prior to the rules being considered by the Board.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-204.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Any animal feeding operation meeting the criteria defining a concentrated animal feeding operation shall be required to obtain a license to operate pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

2. No animal feeding operation which voluntarily obtains a license pursuant to the Concentrated Animal Feeding Operations Act shall be considered to be a concentrated animal feeding operation unless the operation meets the definition of concentrated animal feeding operation.

3. Any animal feeding operation other than a concentrated animal feeding operation, regardless of the number of animals, shall only be required to be licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto if the State Board of Agriculture determines the operation to be a significant contributor of pollution to waters of the state pursuant to subsection D of this section.

B. 1. Two or more animal feeding operations under common ownership are considered, for the purposes of licensure to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

2. After September 1, 1997, any licensed managed feeding operation shall be required to obtain a license for any increase in excess of five percent (5%) of the original facility's licensed capacity.

C. Expanding operations shall be required to seek a new license prior to expansion. Change in species or ratio of species mix alone shall not be defined as an expanding operation as long as the increase in animal unit capacity does not exceed the five percent (5%).

D. 1. The State Board of Agriculture may make a case-by-case designation of concentrated animal feeding operations pursuant to this section. Any animal feeding operation may be designated as a concentrated animal feeding operation if it is determined to be a significant contributor of pollution to the waters of the state.

In making this designation the Board shall consider the following factors:

- a. the size of the animal feeding operation and the amount of wastes reaching waters of the state,
- b. the location of the animal feeding operation relative to waters of the state,
- c. the means of conveyance of animal waste and wastewater into waters of the state,
- d. the method of disposal for animal waste and process wastewater disposal,
- e. the slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the state, and
- f. other such factors relative to the significance of the pollution problem sought to be regulated.

2. In no case shall an application for a license be required from an animal feeding operation pursuant to this subsection until there has been an onsite inspection of the operation and a determination by the Department that the operation is a concentrated animal feeding operation. Should the Department determine that the operation is a concentrated animal feeding operation, the Department shall notify the operation of such determination and of an opportunity for the owner or operator of the facility to request an administrative hearing on the issue;

3. Process wastewater in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a retention structure properly designed, constructed and operated to contain all process wastewaters plus the runoff from a twenty-five-year, twenty-four-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from a waste facility constructed and properly maintained to contain the twenty-five-year, twenty-four-hour storm event; provided the proper design, construction and operation of

the retention structure shall include but not be limited to one (1) foot of free board.

E. After September 1, 1997, no new concentrated animal feeding operation or expansion of a concentrated animal feeding operation requiring a license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall be constructed or placed in operation unless final design plans, specifications and a Pollution Prevention Plan developed pursuant to Section 8 of this act have been approved by the Department.

SECTION 6. AMENDATORY 2 O.S. 1991, Section 9-205, is amended to read as follows:

Section 9-205. A. The State Board of Agriculture shall cause to be prepared and available, for persons any person desiring or required to apply for feed yards a license, to operate a new or previously unlicensed animal feeding operation or expanding operation, the necessary forms and applications. Such forms shall provide for the disclosure of necessary information to determine the capability of the person applying for a license to comply with rules and regulations of the Board and the standards for operation set forth.

B. The application for a license to operate a new or previously unlicensed animal feeding operation or expanding operation shall contain, as a minimum, the following information:

1. Name and address of the owner and operator of the facility;
2. Name and address of the animal feeding operation;
3. Capacity in animal units, and number and type of animals housed or confined;
4. Diagram or map and legal description showing geographical location of the facility on which the perimeters of the facility are designated, location of waters of the state, including, but not limited to, drainage from the facility, animal waste storage facilities and land application sites owned or leased by the applicant;
5. A copy of the Pollution Prevention Plan containing an Animal Waste Management Plan, Best Management Practices or such

other plan authorized by the Oklahoma Concentrated Animal Feeding Operations Act and approved by the Department;

6. Copy of the written waiver by an adjacent property owner to the facility releasing specified setback requirements as provided by Section 17 of this act; and

7. Any other information deemed necessary by the Department to administer the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto.

C. 1. An application for renewal of a license to operate an animal feeding operation shall be considered to be properly filed when the Department has received a completed renewal application and payment of fees from the applicant.

2. If the application for renewal is denied, written notification of the denial and an opportunity for an administrative hearing on the denial shall be given to the applicant by the Department. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for issuance of the renewal license and the opportunity for the applicant to request an administrative hearing.

D. For transfer of a license to a new owner or operator, the following conditions shall be met:

1. The new owner or operator shall submit to the Department a transfer application, attaching any change of conditions resulting from the transfer of ownership or operation;

2. After receipt of the information required, the Department shall review the information, and within thirty (30) days, issue approval or denial of the transfer. Transfer of a license shall be denied only if:

- a. the new owner or operator can not comply with the requirements of transfer,
- b. the Department finds a material or substantial change in conditions since the issuance of the original license to operate the animal feeding operation,
- c. failure of the new owner or operator to meet any other conditions or requirements for compliance

established by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto, or

d. the new owner or operator has failed to meet the requirements of Section 19 of this act; and

3. If a transfer is denied, written notification of such denial and an opportunity for an administrative hearing on the denial shall be given to the applicant for a transfer license by the Department. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for a transfer license and the opportunity for the applicant to request an administrative hearing.

E. Any suspension or revocation or nonrenewal of a license issued pursuant to the Oklahoma Concentrated Animal Feeding Operations Act by the Board shall be made in accordance with Section 19 of this act.

F. In addition to other information required for issuance of a new or transfer license, an application for a new or transfer license for a concentrated animal feeding operation shall be under oath and shall contain the following information:

1. a. A statement of ownership.

(1) If the applicant is a firm or partnership, the name and address of each member thereof shall be included in the application.

(2) If the applicant is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation shall be included in the application.

(3) If the applicant is a partnership or other legal entity, the name and address of each partner and stockholder with an ownership interest of ten percent (10%) or more shall be included in the statement.

b. The information contained in the statement of ownership shall be public information and shall be available upon request from the Board;

2. The name and address of the management, if the management is not the applicant and is acting as agent for the applicant;

3. a. An environmental history from the past three (3) years of any concentrated animal feeding operation established and operated by the applicant or any other operation with common ownership in this state or any other state. Such environmental history shall include but not be limited to all citations, administrative orders or penalties, civil injunctions or other civil actions, criminal actions, past, current and ongoing, taken by any person, agency or court relating to noncompliance with any environmental law, rule, agency order, or court action relating to the operation of an animal feeding operation.

b. A copy of all records relating to the environmental history required by this paragraph shall accompany the application.

c. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this subsection;

4. Environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the applicant; and

5. Any other information or records required by the Department for purposes of implementing the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated thereto.

G. 1. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation, or certification in, or omits material data from,

any application for a license, or notice relating to the determination of affected property owners, shall, upon conviction thereof, be guilty of a misdemeanor and may be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each such violation. In addition, the Department shall deny licensure to the applicant or may require submission of a new application.

2. The responsibility for ensuring that all affected property owners are notified pursuant to the provisions of this section shall be upon the applicant.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-205.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Any person applying for a license for an animal feeding operation shall comply with the notice and hearing requirements as specified by this section and rules promulgated pursuant thereto.

2. Notice requirements shall include notice to affected property owners by certified mail return receipt requested pursuant to subsection C of this section and public notice pursuant to subsection D of this section.

B. After submission of a completed application as provided by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto, the Department shall review the application for a new or expanding operation for physical and technical suitability.

C. 1. After such review the Department shall require the applicant to notify all affected property owners of the proposed facility or expanding operations. Such notice shall be sent by certified mail, return receipt requested. The notice shall identify that an application for an animal feeding operation has been submitted to the Department, the location where the facility is to be located, that a hearing may be requested pursuant to this subsection, the date the application will be available for public review which shall begin no earlier than the day following the certified mailing of all the required notices and such other information required by the Department.

2. Each affected property owner requesting a hearing shall submit, in writing, the following information:

- a. the name and address of the interested party and proof of standing by showing that the interested party is an affected property owner,
- b. a statement of specific allegations showing that the proposed facility or expanding operation may have a direct, substantial and immediate effect upon a legally protected interest of the interested party, and
- c. the relief sought by the interested party.

3. If any of the affected property owners request an administrative hearing, such hearing shall be held by the Department within not less than thirty (30) days nor more than sixty (60) days of receiving the request. All interested parties may be joined as parties to the hearing pursuant to rules promulgated by the State Board of Agriculture.

4. In addition to any other information deemed necessary by the Department, at the hearing the Department shall hear testimony and accept evidence pertaining to the physical and technical suitability of the proposed facility or expanding operations. In addition, any interested party may present specific allegations based on scientific and technical findings of fact showing that the proposed facility or expanding operations may have a direct, substantial and immediate effect upon a legally protected interest of the affected property owner.

5. Any administrative hearing held pursuant to the provisions of this subsection shall comply with Article II of the Administrative Procedures Act and rules promulgated pursuant thereto by the Department.

6. Establishment of property usage which is the date the animal feeding operation application was made available, pursuant to this section, for public review versus date of initial construction or placement of occupied residence, shall be given consideration when determining a contested matter between an

applicant and an interested party on issues other than pollution of the waters of the state.

D. 1. In addition to the individual notice required by subsection C of this section, the Department shall require the applicant to give public notice of the opportunity to comment on the granting of the license.

2. The public notice for a new or expanding operation shall be published as a legal notice prior to the date the application is available for public viewing, in at least one newspaper of general circulation in the county where the proposed facility or expanding operation is to be located.

3. The notice shall identify locations where the application shall be available for viewing. Such locations shall include office of the Department of Agriculture and a specific public location in the county where the proposed facility or expanding operation is to be located.

4. The application shall be available for public review during normal business hours. The copies of the application posted for public viewing shall be complete except for proprietary provisions otherwise protected by law and must remain posted during normal business hours for at least twenty (20) working days after notice is published.

5. The Department, as necessary, may hold public meetings at a location convenient to the population center nearest the proposed facility or expanding operation to address public comments on the proposed facility or expanding operation.

E. Prior to the issuance of any license for an animal feeding operation, or expanding operation, the Department shall require the applicant to submit:

1. Documentation certifying notice has been issued to all affected property owners. A map of all landowners within one (1) mile and the corresponding mailing list shall be submitted with each application; and

2. Proof of publication notice of a new or expanding application for a concentrated animal feeding license required by this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-205.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A Pollution Prevention Plan shall be developed by each licensed managed feeding operation prior to the submission of an application pursuant to the provisions of this section and rules promulgated by the State Board of Agriculture pursuant thereto. The Pollution Prevention Plan shall include, but not be limited to, provisions for documentation of structural controls, documentation of Best Management Practices, an approved plan for the disposal of animal waste and record-keeping provisions.

B. An animal feeding operation licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act, other than a licensed managed feeding operation, shall develop a Pollution Prevention Plan or may substitute equivalent measures contained in a site-specific Animal Waste Management Plan prepared pursuant to Section 9 of this act. Design and construction criteria developed by the United States Department of Agriculture, Natural Resources Conservation Service, may be substituted for the documentation of design capacity and construction requirements.

C. 1. The Pollution Prevention Plan shall be signed by the owner or as otherwise authorized by the Department of Agriculture and a copy shall be retained on site.

2. The animal feeding operation shall amend the Pollution Prevention Plan and obtain approval of the Department prior to any change in design, construction, operation or maintenance, which has significant effect on the potential for the discharge of pollutants to the waters of the state.

D. If, after reviewing of the Pollution Prevention Plan, the Department determines that the Plan does not meet one or more of the minimum requirements, the animal feeding operation shall make and implement appropriate changes to the Plan as required by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

E. The Pollution Prevention Plan shall provide and require presite approval by Departmental personnel prior to construction. During construction, the Department shall monitor the construction process as deemed necessary by the Department in an attempt to verify the construction of the facility is done according to plans and acceptable engineering standards to reduce or eliminate the potential of pollution.

F. In addition to other requirements specified by this section, the Pollution Prevention Plan shall include but not be limited to:

1. A description of potential sources, activities and materials which may reasonably be expected to or could potentially add pollutants to runoff from the facility;

2. A map, indicating an outline of the drainage area of the facility, and each existing structural control measure designed to reduce pollutants in wastewater and precipitation runoff in all surface waters of the state;

3. A spill contingency plan for potential pollutants;

4. All existing sampling data of groundwater, nitrate and coliform bacteria levels, soil tests from land application sites and animal waste nutrient sampling;

5. A description of management controls appropriate for the facility. The management controls shall include, but not be limited to:

a. the location and a description of existing structural and nonstructural controls,

b. documentation of retention structure capacity and the assumptions and calculations used in determining the appropriate volume capacity, and

c. a description of the design standards for the retention facility embankments;

6. A description of the design standards for any retention facilities;

7. Training requirements for employees;

8. Documentation relating to any hydrologic connection between the contained wastewater and waters of the state which complies with Section 10 of this act; and

9. Requirements that all irrigation systems into which any animal waste will be injected shall be equipped as specified by Section 11 of this act.

G. The following records shall be maintained at the site for at least three (3) years:

1. Water level in the retention structure;
2. Daily precipitation records from on-site rain gauge;
3. Incident reports such as spills and other discharges;
4. Inspection and maintenance reports;
5. Findings from annual inspections of the entire facility;
6. Log of preventative maintenance and employee training that was completed;

7. Log of removal of animal waste sold or given to other persons for disposal; and

8. Other specific information deemed necessary by the Department to implement the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

H. The following records shall be maintained at the site as long as the site is in operation:

1. Copy of general permit issued by the federal Environmental Protection Agency if applicable, a copy of the completed Pollution Prevention Plan, and other specific records deemed necessary by the Department to implement the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto; and

2. The notarized statement signed by the applicant accepting full responsibility for properly closing all waste retention structures pursuant to subsection J of this section.

I. Any analyses required by the provision of the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated thereto shall be performed by a qualified independent testing laboratory certified by the Department of Environmental Quality.

J. The applicant shall sign a notarized statement accepting full responsibility for properly closing all waste retention structures if the facility ceases to function or is ordered to close by action of the Department. When a license is transferred, the new owner or lessee shall submit a signed notarized statement accepting full responsibility for properly closing all waste retention structures if the facility ceases to function or is ordered to close by action of the Department.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-205.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. All licensed managed feeding operations shall utilize Best Management Practices meeting the conditions and requirements established by subsection B of this section and by rules promulgated by the State Board of Agriculture pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

2. Animal feeding operations licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act other than licensed managed feeding operations shall utilize Best Management Practices, or may substitute for best management practice equivalent measures contained in a site-specific Animal Waste Management Plan meeting the conditions and requirements established by subsection C of this section and by rules promulgated by the Board pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

B. The criteria for Best Management Practices shall be promulgated by rule by the Board, based upon existing physical and economic conditions, opportunities and constraints and shall include, but not be limited to, the following:

1. There shall be no discharge of process wastewater to waters of the state except in accordance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act;

2. Animal waste shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures except for a twenty-five-year, twenty-four-hour rainfall event;

3. No waters of the state shall come into direct contact with the animals confined on the animal feeding operation;

4. Animal waste handling, treatment, management and removal shall:

- a. not create an environmental or a public health hazard,
- b. not result in the contamination of public or private drinking water supplies,
- c. conform with Oklahoma Water Quality Standards,
- d. not create unnecessary and unreasonable odors. Odors are unnecessary and unreasonable if such odors may be reduced by more efficient management practices at a reasonable expense,
- e. not unreasonably result in the destruction of endangered or threatened species or contribute to the taking of any federally endangered or threatened species of plant, fish or wildlife, or interfere with or cause harm to migratory birds, and
- f. conform to such other handling, treatment and management and removal requirements deemed necessary by the Department to implement the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto; and

5. If, for any reason, there is a discharge, the licensee is required to make immediate notification to the Department. This notification shall include:

- a. a description and cause of the discharge, including a description of the flow path to the receiving water body,
- b. an estimation of the flow rate and volume discharged,
- c. the period of discharge, including exact dates and times, and if not already corrected, the anticipated time the discharge is expected to continue,
- d. steps taken to reduce, eliminate and prevent recurrence of the discharge, and

- e. test results for fecal coliform bacteria, five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), ammonia nitrogen, total Kjeldahl nitrogen (TKN), any pesticides which the operator has reason to believe could be in the discharge, or such other parameters as required by the Department which the Department has reason to believe could be in the discharge.

C. The Animal Waste Management Plan (AWMP) shall include at a minimum:

- 1. Animal waste removal procedures;
- 2. Records of inspections of retention structures, including, but not limited to, specific measurement of wastewater level;
- 3. All calculations in determining land application rates, acreage and crops for the land application rate of both solid and liquid animal wastes on land owned or controlled by the licensee;
- 4. Requirements including that:
  - a. (1) land application of animal waste shall not exceed the nitrogen uptake of the crop coverage or planned crop planting with any land application of wastewater or manure. Where local water quality is threatened by phosphorous, in no case shall the applicant or licensee exceed the application rates in the most current Natural Resources Conservation publication titled Waste Utilization Standard, and
  - (2) timing and rate of applications shall be in response to crop needs, expected precipitation and soil conditions,
  - b. land application practices shall be managed so as to reduce or minimize:
    - (1) the discharge of process water or animal waste to waters of the state,
    - (2) contamination of waters of the state, and
    - (3) odor,

- c. facilities including waste retention structures, waste storage sites, ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to ensure ability to fully comply with the terms of the Oklahoma Concentrated Animal Feeding Operations Act, and
- d. adequate equipment and land application area shall be available for removal of such waste and wastewater as required to maintain the proper operating volume of the retention structure;

5. Records shall be maintained of all animal wastes applied on land owned or controlled by the licensee, and sold or given to other persons for disposal; and

6. Such other information deemed necessary by the Department to administer the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

D. Soils in areas in which animal waste is applied shall be analyzed, annually, for phosphates and nitrates. A copy of the results of the analysis shall be submitted to the Department upon request by the Department. Such analysis shall be retained by the animal feeding operation for at least three (3) years.

E. 1. The animal feeding operation licensed pursuant to the provisions of Oklahoma Concentrated Animal Feeding Operations Act shall develop a plan for the disposal of carcasses associated with normal mortality.

2. In the event of a major disease outbreak or other emergency resulting in deaths significantly higher than normal mortality rates, the Department may approve, in writing, an alternate method of disposal of carcasses during the emergency period.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-205.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any hydrologic connection between wastewater and groundwater outside that authorized by the provisions of the

Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto shall constitute a discharge to waters of the state.

B. Except as otherwise provided by Section 18 of this act, to prevent hydrologic connections between a retention structure and waters of the state, all animal feeding operations in this state operating a liquid animal waste management system whether or not such waste facilities are licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall:

1. Utilize, as required by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, a natural or geomembrane liner or other liner constructed of synthetic materials in any retention structure containing liquid animal waste; or

2. Documentation that there is no hydrologic connection between the waters of the state and the retention structure.

C. Except as otherwise provided by Section 18 of this act, all retention structures shall maintain a minimum separation of four (4) feet between the bottom of the retention structure and the maximum groundwater elevation which is measured from the bottom of the retention structure and the highest point of the seasonal groundwater table.

D. 1. An animal feeding operation can document lack of hydrologic connection by either:

a. documenting that there will be no leakage from the retention structure outside that authorized pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated pursuant thereto, or

b. documenting that any leakage from the retention structure will not migrate to waters of the state.

2. This documentation shall be certified by a professional engineer or qualified groundwater scientist and shall include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the maximum operating level.

E. The Department of Agriculture shall establish standards for retention structures pursuant to the provisions of this section.

F. If the Department determines that the documentation of barriers to hydrologic connections between the retention structure and waters of the state is not sufficient to establish by clear and convincing evidence that the retention structure does not constitute a threat to contamination of the waters of the state, the Department may require the applicant or licensee to install a natural or geomembrane liner or other liner constructed of synthetic material.

G. If the Department determines that evidence shows a likelihood exists for the contamination of public or private drinking water, the Department shall require the licensee to install a leak detection system or monitoring wells.

H. Site-specific conditions shall be considered in the design and construction of liners. Liners for retention structures shall be designed and constructed in accordance with the provisions of this section and generally accepted engineering practices pursuant to Technical Note 716 of the Natural Resources Conservation Service or by the federal Environmental Protection Agency.

I. 1. When a liner is installed to prevent hydrologic connection, the licensee must maintain the liner to inhibit infiltration of wastewaters. Documentation of liner maintenance shall be maintained with the Pollution Prevention Plan.

2. A professional engineer, or qualified groundwater scientist shall conduct a site evaluation every five (5) years on the retention structure to ensure liner integrity. If the owner or operator suspects that a retention structure is leaking, the owner or operator shall report such suspected leakage to the Department.

J. All substances entering the retention structures shall be composed entirely of wastewaters from the proper operation and maintenance of an animal feeding operation and the runoff from the animal feeding operation area. The disposal of any materials, other than substances associated with proper operation and

maintenance of the facility into the containment structures, including but not limited to human waste, is prohibited.

K. Documentation, sampling data, and any other records required by this section shall be maintained on site for three (3) years. Samples collected during the first year of the retention structure shall be considered the baseline data and must be retained on site for the life of the retention structure.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-205.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All irrigation systems into which any animal waste will be injected shall be equipped with one or both of the following systems:

1. An antipollution system, approved by the State Board of Agriculture, capable of preventing the backflow of such animal waste into the groundwater. The system shall include a safety check valve with a removable inspection port, anti-syphon vent, and low-pressure escape drain. An interlock device shall be installed on pumps that pump the animal waste so that if a fresh water irrigation pump shuts down, the pump that pumps the animal waste will also immediately shut down, preventing the chance of leakage past the check valve; or

2. A system which provides for a complete and total disconnection between the flow of fresh water and the flow of animal waste. Such system shall be capable of a manual disconnection between fresh water and the animal waste.

B. The Department of Agriculture shall make annual on-site inspections examining the operative status of the check valves and interlock devices.

C. The operator of said irrigation system shall be responsible to ensure:

1. That the valves and interlock devices remain operative between annual inspections by the Department of Agriculture; or

2. Complete disconnection from fresh water when introducing animal waste into the system.

SECTION 12. AMENDATORY 2 O.S. 1991, Section 9-206, is amended to read as follows:

Section 9-206. A. The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of ~~feed yards~~ any animal feeding operation for the purpose of investigating complaints as to ~~its~~ the operation or to determine whether there are any violations of ~~this act~~ the Oklahoma Concentrated Animal Feeding Operations Act. The Department shall make at least one unannounced inspection per year of every animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

B. 1. The Board shall promulgate standard precautions for the prevention of the transmission of communicable diseases to humans and animals to be used by employees of the Department of Agriculture when inspecting animal feeding operations pursuant to their official duties specified by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

2. Except for emergency situations or when enforcement of the provisions of the Oklahoma Concentrated Animal Feeding Operations Act requires the use of the standard precautions as promulgated by the Board pursuant to paragraph 1 of this subsection, Department employees shall observe the health standards and sanitary requirements of the facility.

C. The Board shall maintain necessary records and undertake such studies, investigations and surveys for the proper administration of ~~this act~~ the Oklahoma Concentrated Animal Feeding Operations Act.

SECTION 13. AMENDATORY 2 O.S. 1991, Section 9-208, as last amended by Section 29, Chapter 140, O.S.L. 1994 (2 O.S. Supp. 1996, Section 9-208), is amended to read as follows:

Section 9-208. A. 1. It shall be unlawful for any person to operate a ~~feed yard or a concentrated animal feeding operation which meets the criteria set forth in subparagraphs a, b or c of paragraph 2 of subsection B of Section 9-202 of this title~~

concentrated animal feeding operation, without having first obtained a ~~permit or~~ license from the State Board of Agriculture.

2. The owner or operator of ~~livestock feed yards~~ an animal feeding operation not ~~meeting these criteria~~ classified as a concentrated animal feeding operation may apply for a license if such owner or operator elects to come under the provision of the Oklahoma ~~Feed Yards~~ Concentrated Animal Feeding Operations Act and the rules of the Board.

B. 1. The Department of Environmental Quality shall have environmental jurisdiction over:

- ~~(1)~~ a. commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
- ~~(2)~~ b. slaughterhouses, but not including feedlots at such facilities, and
- ~~(3)~~ c. animal aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, ~~and.~~

~~b.~~ 2. Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

~~2.~~ 3. Any point source and nonpoint source discharges related to agriculture, as specified in paragraph 1 of subsection D of Section 6 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 1 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for

issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

SECTION 14. AMENDATORY 2 O.S. 1991, Section 9-209, is amended to read as follows:

Section 9-209. ~~Upon the filing of an application for operation of feed yards with the Board and the payment of the required fees, the Board shall issue a license therefor, provided the application discloses information assuring the Board that the operation of such feed yards will be conducted in accordance with the standards set forth in this act and the rules and regulations of the Board. Such licenses~~

A. Licenses issued pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall expire on June 30 of each year and may be renewed upon payment of the annual license fee and continued compliance with the provisions of ~~this act~~ the Oklahoma Concentrated Animal Feeding Operations Act and the rules ~~and regulations~~ of the Board.

B. An original license issued after January 1 of a license year shall require only fifty percent (50%) of the annual fee.

C. The fees for ~~a feed yards~~ an animal feeding operations license and annual renewal thereof shall be:

<del>Feed lot</del>		
<u>Animal feeding</u>	Amount	
<u>operations</u> capacity	of Fee	
Under two hundred fifty animal units	<del>\$ 10.00</del>	<u>\$ 15.00</u>
Two hundred fifty to five hundred animal units	<del>25.00</del>	<u>37.50</u>
Five hundred to three thousand animal units	<del>50.00</del>	<u>75.00</u>
Three thousand to ten thousand animal units	<del>100.00</del>	<u>150.00</u>
Over ten thousand animal units	<del>150.00</del>	<u>225.00</u>

D. All fees received by the Board for licensure of animal feeding operations shall be deposited in the Department of Agriculture Revolving Fund.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-209.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any person who is licensed to operate an animal feeding operation with a liquid animal waste management system within this state shall furnish to the Department of Agriculture evidence of financial ability to comply with the requirements for closure of retention structures and other waste facilities as established pursuant to the provisions of this section and rules promulgated by the State Board of Agriculture.

B. 1. To establish evidence of financial ability the Department shall require:

a. Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with banks and other financial institutions. The financial statement shall be confidential and shall not be opened to public inspection. The statement shall prove a net worth of not less than:

- (1) Ten Thousand Dollars (\$10,000.00) for any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act having a capacity of more than three hundred (300) animal units but having one thousand (1,000) animal units or less,
- (2) Twenty-five Thousand Dollars (\$25,000.00) for any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act having a capacity of more than one thousand (1,000) animal units but less than two thousand (2,000) animal units, or

(3) Fifty Thousand Dollars (\$50,000.00) for any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act having a capacity of more than two thousand (2,000) animal units, or

b. Category B surety which shall include an irrevocable commercial letter of credit, cash, a cashier's check, a Certificate of Deposit, Bank Joint Custody Receipt, other negotiable instrument or a blanket surety bond. Except as provided in paragraph 2 of this subsection, amount of such letter of credit, cash, check, certificate, bond, receipt or other negotiable instrument shall be in the amount of Twenty-five Thousand Dollars (\$25,000.00). The Department is authorized to determine the amount of Category B surety based upon the past performance of the owner or operator regarding compliance with the laws of this state, and any rules promulgated pursuant thereto. Any instrument shall constitute an unconditional promise to pay and be in a form negotiable by the Department.

2. The Department upon certification by any animal feeding operation subject to Category B surety that its liability statewide is less than the twenty-five-thousand-dollar standard specified in this section may allow said owner or operator to provide Category B type surety in an amount less than the required Twenty-five Thousand Dollars (\$25,000.00), but at least sufficient to cover the estimated cost of all closure and removal operations currently the responsibility of that owner or operator.

C. 1. Any animal feeding operation licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act which does not have any outstanding contempt citations or fines may post Category A surety.

2. Any animal feeding operation licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act which does have outstanding fines or contempt citations shall

be required to post Category B surety. Animal feeding operations which have posted Category B surety and have operated under this type surety and have no outstanding fines at the end of three (3) years may post Category A surety.

D. For good cause shown concerning pollution by the animal feeding operations posting either Category A or B surety, the Department, after notice and hearing, may require the filing of additional Category B surety in an amount greater than Twenty-five Thousand Dollars (\$25,000.00) but not to exceed Five Dollars (\$5.00) times the number of animal units for the facility being licensed.

E. 1. If the Department, after notice and an opportunity for hearing, determines that the animal feeding operation licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act has neglected, failed, or refused to close any surface impoundment, or remove or cause to be removed any equipment, or has abandoned the facility, then the animal feeding operation shall be deemed to have forfeited the letter of credit or negotiable instrument required by this section or shall pay to this state, for deposit in the State Treasury, a sum equal to the cost of closure of any surface impoundment or removal of equipment.

2. The Department may cause the remedial work to be done, issuing a warrant in payment of the cost thereof drawn against the monies accruing in the State Treasury from the forfeiture or payment.

3. The Department shall also recover any costs arising from litigation to enforce this provision. Provided, before an animal feeding operation is required to forfeit or pay any monies to the state pursuant to this section, the Department shall notify the animal feeding operation at the last-known address of the determination of neglect, failure or refusal to close any surface impoundment or remove equipment and the animal feeding operation shall have ten (10) days from the date of notification within which to commence remedial operations. Failure to commence

remedial operations shall result in forfeiture or payment as provided in this subsection.

F. If title to an animal feeding operation is transferred, the transferee shall furnish the evidence of financial ability to close surface impoundments required by the provisions of this section, prior to the transfer.

SECTION 16. AMENDATORY 2 O.S. 1991, Section 9-210, as amended by Section 1, Chapter 315, O.S.L. 1993 (2 O.S. Supp. 1996, Section 9-210), is amended to read as follows:

Section 9-210. A. ~~Owners~~ In addition to any other requirement of the Oklahoma Concentrated Animal Feeding Operations Act, animal feeding operations owners and operators who are granted a ~~feed yards~~ an animal feeding operations license shall:

~~(1) provide reasonable methods for the disposal of animal excrement; (2) provide chemical and scientific control procedure for prevention and eradication of pests; (3) provide adequate drainage from feed yards premises of surface waters falling upon the area occupied by such feed yards; take such action as may be necessary to avoid pollution of any stream, lake, river or creek; (4) provide~~

1. Provide adequate veterinarian services for detection, control, and elimination of livestock diseases; ~~(5) have~~

2. Have available for use at all necessary times mechanical means of scraping, cleaning, and grading feed yards premises; ~~(6) provide and~~

3. Provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks, and feeding devices; ~~(7) conduct feed yards operations in conformity with established practices in the feed yards industry as approved by regulations made and promulgated by the Board and in accordance with the standards set forth in this act.~~

B. 1. Any animal feeding operation licensed pursuant to the Oklahoma ~~Feed Yards Act, Section 9-201 of this title~~ Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with the ~~regulations made and~~ rules promulgated by the Board, shall be deemed to be prima facie

evidence that a nuisance does not exist; provided, no animal feeding operation shall be located or operated in violation of any zoning regulations.

~~C. No 2.~~ Any animal feeding operation licensed pursuant to the Oklahoma ~~Feed Yards Act~~ Concentrated Animal Feeding Operations Act, ~~Section 9-201 of this title~~, operated in compliance with such standards, and in compliance with ~~regulations made and~~ rules promulgated by the Board, that is located on land more than three (3) miles outside the incorporated limits of any municipality and which is not located within one (1) mile of ten ~~(10)~~ or more occupied residences shall not be deemed a nuisance unless it is shown by a preponderance of the evidence that the operation endangers the health or safety of others.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-210.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Based upon Oklahoma's variety and varying topography, climatological conditions, and geographic and stratigraphic boundaries, the state shall be divided east and west based on the Indian Meridian for the purpose of determining setback requirements for animal feeding operations from occupied residences pursuant to the provisions of this section.

B. Except as otherwise provided by Section 18 of this act, no new or expanding licensed managed feeding operation with a capacity of two thousand (2,000) or more animal units:

1. Located in the eastern half of the state shall be constructed where its closest waste facility is within a distance of one-half (1/2) mile of any occupied residence not owned or leased by the owner or operator of the licensed managed feeding operation; or

2. Located in the western half of the state shall be constructed where its closest waste facility is within a distance of three-fourths (3/4) mile of any occupied residence not owned or leased by the owner or operator of the licensed managed feeding operation.

C. Except as otherwise provided by Section 18 of this act, no new or expanding animal feeding operation with a capacity of less than two thousand (2,000) animal units but more than one thousand (1,000) animal units which primarily uses a liquid animal waste management system and where animals are primarily housed in a roof-covered structure:

1. Located in the eastern half of the state shall be constructed where its closest waste facility is located within a distance of one-fourth (1/4) mile of any dwelling not owned or leased by the owner of the animal feeding operation; or

2. Located in the western half of the state shall be constructed where its closest waste facility is located within a distance of one-half (1/2) mile of any dwelling not owned or leased by the owner of the animal feeding operation.

D. Except as otherwise provided by Section 18 of this act, no new or expanding animal feeding operation with a capacity of more than three hundred (300) animal units but having one thousand (1,000) animal units or less which primarily uses a liquid animal waste management system and where animals are primarily housed in a roof-covered structure shall be constructed where its closest waste facility is located within a distance of one-fourth (1/4) mile of any occupied residence not owned or leased by the owner of the animal feeding operation.

E. Except as otherwise authorized by this subsection, no liquid animal waste shall be land applied within five hundred (500) feet of the nearest corner of an occupied residence not owned or leased by the owner of the animal feeding operation.

F. Except as otherwise provided by Section 18 of this act, no concentrated animal feeding operation shall be established after the effective date of this act which is within one (1) mile of ten or more residences which are occupied residences at the time of the establishment of the concentrated animal feeding operation.

G. The proscription contained in subsections B, C, D, E and F of this section shall not apply if the adjacent property owner executes a written waiver with the owner or operator of the animal feeding operation, under such terms and conditions that the

parties negotiate. The written waiver becomes effective upon recording of the waiver in the offices of the recorder of deeds in the county in which the adjacent property is located. The filed waiver shall preclude enforcement of the setback requirements contained in subsections B, C, D, E and F of this section. A change in ownership of the adjacent property or change in the ownership of the property on which the animal feeding operation is located shall not affect the validity of the waiver.

H. No liquid animal waste shall be land applied within three hundred (300) feet of an existing public or private drinking water well.

I. Except as otherwise provided by Section 18 of this act, no concentrated animal feeding operation shall be established after the effective date of this act which is:

1. Within three (3) miles of a state park or resort;
2. Located on land more than three (3) miles within the incorporated limits of any municipality; or
3. Within three (3) miles of the high water mark of a public water supply if the concentrated animal feeding operation is located within the drainage basin for the public water supply.

J. All distances between occupied residences and animal feeding operations shall be measured from the closest corner of the walls of the occupied residence to the closest point of the nearest waste facility, as determined by the Department of Agriculture. The property boundary line of the real property is not used unless it coincides with the closest point of the waste facility or occupied residence.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-210.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Any concentrated animal feeding operation which is licensed by or which has submitted a substantially completed application to the Department of Agriculture on or before September 1, 1997, shall be required to comply with all applicable

provisions within one (1) year of such date or may enter into a compliance schedule with the Department to come into compliance.

2. The provisions of Section 17 of this act relating to setback requirements and the provisions of subsections B and C of Section 10 of this act relating to utilization of liners in retention structures or documentation of no hydrologic connection and to a minimum separation of four (4) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to the facilities specified by this subsection.

B. 1. Any animal feeding operation, other than a concentrated animal feeding operation, which is licensed by or which has submitted a substantially completed application to the Department of Agriculture on or before September 1, 1997, and desiring to retain such licensure, shall be required to comply with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act within one (1) year of such date or may enter into a compliance schedule with the Department to come into compliance.

2. The provisions of Section 17 of this act relating to setback requirements and the provisions of subsections B and C of Section 10 of this act relating to utilization of liners in retention structures or documentation of no hydrologic connection and to a minimum separation of four (4) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to the facilities specified by this subsection.

C. 1. Animal feeding operations, other than a concentrated animal feeding operation, not licensed pursuant to the provisions of the Oklahoma Feed Yards Act in operation on the effective date of this act shall not be subject to any setback requirements not in effect on the date of past construction.

2. Provided, that the provisions of subsections B and C of Section 10 of this act relating to utilization of liners in retention structures or documentation of no hydrologic connection and to a minimum separation of four (4) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to facilities specified by this subsection except as a condition to the issuance of a license pursuant to the

provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

D. On or after September 1, 1997, any expanding operations shall be in accordance with the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

SECTION 19. AMENDATORY 2 O.S. 1991, Section 9-211, is amended to read as follows:

Section 9-211. A. The State Board of Agriculture shall have the power and the duty to suspend or, revoke or not renew the license of any ~~feed yards operator,~~ animal feeding operation after a hearing, and after an administrative determination that such ~~operator~~ animal feeding operation has violated or has failed to comply with any of the provisions of ~~this act~~ the Oklahoma Concentrated Animal Feeding Operations Act, or any ~~regulation adopted thereunder;~~ it rule promulgated pursuant thereto. The Board shall have the power and duty to reinstate any such suspended or revoked licenses, or renew such licenses, upon a satisfactory and acceptable showing and assurance that such ~~feed yards operator~~ animal feeding operation conducted ~~feed yards~~ animal feeding operations in conformity with, and in compliance with, the provisions of ~~this act~~ the Oklahoma Concentrated Animal Feeding Operations Act and ~~regulations adopted thereunder~~ rules promulgated pursuant thereto, and that such conformity and compliance will be continuous.

B. In order to protect the public health and safety and the environment of this state, the Board, pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, may deny issuance of a license or transfer of a license to establish and operate an animal feeding operation on and after September 1, 1997, to any person or other legal entity which:

1. Is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any state or federal agency relating to animal feeding operations; or

2. Has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of

noncompliance with environmental laws and rules resulting in endangerment of human health or the environment.

C. Any action taken in regard to the denial, suspension or revocation of a license shall be in conformity with the rules of the Board governing Administrative Procedures and the ~~Oklahoma~~ Administrative Procedures Act.

SECTION 20. AMENDATORY 2 O.S. 1991, Section 9-212, as amended by Section 1, Chapter 99, O.S.L. 1993 (2 O.S. Supp. 1996, Section 9-212), is amended to read as follows:

Section 9-212. A. Any person violating the provisions of the Oklahoma ~~Feed Yards Act~~ Concentrated Animal Feeding Operations Act or any rule ~~or regulation~~ of the Board promulgated pursuant thereto shall, upon conviction, be deemed guilty of a misdemeanor and upon conviction thereof may be punished by a fine not exceeding ~~One Hundred Dollars (\$100.00)~~ Two Hundred Dollars (\$200.00).

B. Any owner or operator who fails to take such action as may be reasonable and necessary to avoid pollution of any stream, lake, river or creek, except as otherwise provided by law, or who violates any rule ~~or regulation~~ of the Board adopted to prevent water pollution from ~~feed yards~~ animal feeding operations pursuant to this act shall, upon conviction, be deemed guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of ~~Two Hundred Dollars (\$200.00)~~ Five Hundred Dollars (\$500.00) to Ten Thousand Dollars (\$10,000.00) for each violation, by imprisonment in the county jail for not more than six (6) months for each violation, or by the assessment of ~~a civil~~ an administrative penalty up to Ten Thousand Dollars (\$10,000.00) for each violation or by any of such fine, imprisonment, and ~~civil~~ administrative penalty.

C. For the purposes of this section, each day upon which a violation is committed or is permitted to continue shall be deemed a separate offense.

D. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification in any water pollution form, notice or report, or

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who knowingly renders inaccurate any monitoring device or method required to be maintained by any water pollution regulations adopted by the Board, shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each such violation.

SECTION 21. AMENDATORY 2 O.S. 1991, Section 9-214, is amended to read as follows:

Section 9-214. ~~This act~~ The Oklahoma Concentrated Animal Feeding Operations Act shall be enacted as a part of the Agricultural Code and shall be codified accordingly.

SECTION 22. The State Department of Agriculture shall conduct a groundwater monitoring program to detect groundwater impurities at all facilities which house swine and employ a liquid animal waste retention structure.

SECTION 23. The Oklahoma Water Resources Board shall conduct a study on the impact of concentrated animal feeding operations on the watershed which supplies potable water to municipalities with a population of over two hundred fifty thousand (250,000) according to the last federal decennial census.

SECTION 24. REPEALER 2 O.S. 1991, Section 9-207, is hereby repealed.

SECTION 25. NONCODIFICATION The provisions of Sections 22 and 23 of this act shall not be codified in the Oklahoma Statutes.

SECTION 26. This act shall become effective September 1, 1997.

46-1-7786 KSM