

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1170

By: Muegge of the Senate

and

Leist of the House

COMMITTEE SUBSTITUTE

An Act relating to agriculture; creating the Oklahoma

Registered Poultry Feeding Operations Act and providing short title; providing definitions; creating rule advisory committee; requiring submission of rules to the rule advisory committee; providing for membership; setting terms of membership; requiring certain poultry feeding operations to obtain a license; providing for exemptions; providing for procedures; setting time frame for licensure; requiring certain poultry feeding operations to obtain a license; requiring promulgation of rules; specifying certain criteria for licensure; setting minimum numbers for licensure; requiring licensure for expansion; requiring licensing prior to construction for a new facility or expansion; providing for application of original license; specifying certain contents and information; requiring certain records; requiring written notification for change of integrators; requiring certain management practice plans and animal waste management plans; providing for

renewal of licenses; specifying certain criteria for renewal of licenses; authorizing denial of license to certain persons; providing for denial specifications and conditions; requiring licensing prior to construction for a new facility or expansion; providing for transfer of license; specifying certain criteria for transfer application; authorizing time limit; authorizing denial of license to certain persons; providing for denial specifications and conditions; providing for hearing; providing for certain notice; requiring certain information for new or transfer of license; requiring statement of ownership; specifying additional information; requiring environmental history; requiring certain records; providing for other information; requiring education and training in waste handling; providing for curricula; requiring certification of education or training; providing for recordkeeping; providing for certain violation and fines; providing for denial of license; requiring utilization of best poultry management practices; providing certain criteria; requiring promulgation of rules; requiring certain standards for discharges to waters of the state; requiring certain standards for waste handling, treatment, management and removal; requiring animal waste management plans; providing for certain criteria; requiring calculations for land application rates; providing for waste handling procedures; requiring certain nutrient analysis data; requiring certain legal descriptions; providing for procedures; stating specifications

for litter storage; specifying certain applications of litter; providing certain practices; providing for recordkeeping; requiring certain records; providing for nutrient analysis; providing for notification; providing for analysis; requiring promulgation of rules; requiring certain soil analysis; requiring certain operations to perform tests prior to application; providing for retesting; requiring identification of soil prior to testing; providing for disposal of carcasses; providing for procedure during certain emergency; providing for expiration and renewal of license; providing for fees and determination of fees; providing for deposits; allowing for suspension, revocation or denial of licenses; providing for reinstatement of licenses; specifying and authorizing certain specific denials of issuance or transfer of license to certain persons or facilities; requiring certain inspections; providing for unannounced inspections; requiring the establishment of certain precautions for prevention of communicable diseases; requiring observation of certain facility standards; setting penalties and fines for certain violations; providing for separate offenses; providing for administrative hearing and due process; providing for notification; setting penalties for persons making false statements; specifying certain information; requiring promulgation of rules; establishing a violation point system; specifying criteria for points; providing for revocation of license; establishing violations; providing for

time period; providing for certain conditions;  
authorizing Board to employ certain persons;  
creating the Oklahoma Poultry Waste Transfer Act;  
stating purpose; defining terms; creating the  
Poultry Waste Transfer Fund; providing for  
composition; providing for expenditures and  
deposits; providing for allotments; requiring  
application; requiring certain information;  
providing for compensation; providing for  
determination of rates; providing for promulgation  
of rules; requiring report; requiring audits;  
providing for codification; providing for  
noncodification; 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 10-9.1 of Title 2, unless there  
is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma  
Registered Poultry Feeding Operations Act".

B. As used in the Oklahoma Registered Poultry Feeding  
Operations Act:

1. "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 a poultry feeding operation as  
required by the Department pursuant to the provisions of Section 6  
of this act;

2. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of lay hens or broilers multiplied by .01 plus the number of turkeys multiplied by .015;

3. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices which prevent or reduce the pollution of waters of the state as established by the State Department of Agriculture pursuant to Section 6 of this act;

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

5. "Common ownership" includes but is not limited to any person who has power or authority to manage, direct, restrict, regulate or oversee the operation or has financial control of two or more poultry feeding operations;

6. "Department" means the State Department of Agriculture;

7. "Expanding operation" means a registered poultry feeding operation that seeks to increase its registered capacity in excess of ten percent (10%) of the facility's original registered capacity;

8. "Facility" means any place, site or location or part thereof where poultry are kept, handled, housed or otherwise maintained including but not limited to buildings, lots, pens and poultry waste management systems;

9. "Integrator" means an entity which unites the elements associated with the poultry industry, including but not limited to hatching, feeding, processing and marketing. It includes situations when growing is contracted out to others and when the integrator operates its own growing facilities or farms;

10. "Land application" means the distribution to, or incorporation into, the soil mantle primarily for beneficial reuse purposes;

11. "Registered poultry feeding operation (RPFO)" means a poultry feeding operation using a dry litter waste management

system, which has more than the number of poultry confined as specified in any of the following categories:

- a. thirty thousand (30,000) laying hens or broilers,
- b. twenty thousand (20,000) turkeys, or
- c. three hundred (300) animal units;

12. "Litter handler" means any person, employee, or independent contractor, or other persons deemed appropriate by the Department, involved in the collection, storage, treatment, or disposal of poultry waste at a registered poultry feeding operation;

13. "Operator" means the person who performs the daily management functions associated with the poultry feeding operation;

14. "Person" means an individual, association, partnership, firm, company, public trust, corporation, joint stock company, trust estate, any other legal entity, or any agent, employee, representative assignor or successor thereof;

15. "Poultry" includes chickens, turkeys, ducks, geese and any other domesticated bird used for human food and/or animal feed;

16. "Poultry feeding operation" means a property or facility where the following conditions are met:

- a. poultry have been, are or will be confined and fed or maintained for a total of forty-five (45) 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 property or facility;

17. "Poultry waste" means poultry excrement, poultry carcasses, feed wastes or any other waste associated with the confinement of poultry from a poultry feeding operation;

18. "Poultry waste management system" means a combination of structures and practices serving a poultry feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of poultry waste;

19. "Waste facility" means any structure or combination of structures utilized to control poultry 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 poultry, compostors, waste storage sites, or retention structures or appurtenances or additions thereto; and

20. "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 if contaminated at the site.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

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 Registered Poultry Feeding Operations Act.

1. One member shall represent the integrators; three members shall represent the contract growers; one member shall represent the field of hydrogeology; one member shall be a soil scientist; one member shall represent the Oklahoma Conservation Districts; one member shall represent the Oklahoma Water Resources Board; one member shall represent the field of water quality science; and three members shall represent the general public. Four shall serve for

one-year terms; four shall serve for two-year terms; and four shall serve for three-year terms.

2. 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.

B. Except for emergency rules, the Board 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.

C. 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. It shall be unlawful for any person to operate a new registered poultry feeding operation without having first registered with the State Board of Agriculture.

2. The owner or operator of a poultry feeding operation not classified as a registered poultry feeding operation may register if such owner or operator elects to come under the provisions of the Oklahoma Registered Poultry Feeding Operations Act and the rules of the Board.

B. Any registered poultry feeding operation in operation on the effective date of this act shall take all actions necessary to register within six (6) months of the effective date of this act.

C. Any registered poultry feeding operation that is or becomes licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall not be required to register pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any poultry feeding operation meeting the criteria defining a registered poultry feeding operation shall be required to register to operate pursuant to the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

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

2. Once the cumulative number of poultry managed by a person meets the minimum numbers specified for a RPFO, all additional poultry feeding operations owned or managed by the person shall be required to obtain licenses.

3. After the effective date of this act, any registered poultry feeding operation shall be required to register for any increase in excess of ten percent (10%) of the facility's original registered capacity.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Agriculture shall cause to be prepared and available the necessary forms and applications for any person desiring or required to register for a new or previously unregistered RPFO or expanding operation.

B. The application to register to operate a new or previously unregistered RPFO or expanding operation shall be under oath and 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 registered poultry feeding operation;

3. Capacity in animal units, and number and type of poultry housed or confined;

4. Name and address of the integrator whose poultry will be raised on the RPF0;

5. A 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, poultry waste storage facilities and land application sites owned or leased by the applicant or which the applicant has contracted with for the application of poultry litter;

6. A copy of the Animal Waste Management Plan, or proof of application for such plan, Best Management Practices or any other plans authorized by the Department; and

7. A statement of ownership.

a. 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.

b. 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.

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

8. The name and address of the person having day to day control of the operation, if such person is not the applicant and is acting as agent for the applicant;

9. a. An environmental history from the past three (3) years of any poultry 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 a poultry 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;

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

11. Any other information or records to be required by the Department for purposes of implementing the Oklahoma Registered Poultry Feeding Operations Act or rules promulgated pursuant thereto.

C. Written notification shall be sent to the Department upon changing integrators.

D. For a transfer of registration to a new owner or operator, the new owner must register the operation.

E. 1. After the effective date of this act, all operators of registered poultry feeding operations and all litter handlers shall attend educational courses on poultry waste handling. All such persons shall attend educational training on poultry waste

management as provided by Oklahoma State University (OSU) through the Oklahoma Cooperative Extension Service (OCES). All current and new operators shall receive no less than nine (9) hours of training in the first year and no less than three (3) hours each year thereafter. The Oklahoma Cooperative Extension Service will develop the educational training course to aid in certification. Curricula for the training course will include the OCES Waste Management Facts series and record books or their current equivalent. Courses for poultry waste management shall include the following topics:

- a. environmental process relevant to protecting water quality in poultry production,
- b. basic handling systems to manage poultry waste (litter/manure) from all types of poultry operations,
- c. nutrient management, including sampling procedures, application rate determination, equipment calibration, and record keeping systems,
- d. relevant laws and regulations applicable to poultry waste management in the State of Oklahoma, and
- e. any other related subject as determined by OSU in consultation with the Department.

2. At the completion of each course, the operator shall receive a certification verifying completion. The certification shall be kept on site for five (5) years.

3. The integrator shall maintain records of all sponsored education seminars and shall verify the attendance of the operators, employees, contractors and litter handlers.

4. Failure to obtain the prerequisite and annual training and education as provided in this subsection shall be deemed a violation of the Oklahoma Registered Poultry Feeding Operations Act.

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

application for registration shall, upon conviction thereof, be guilty of a misdemeanor and may be subject to a fine of not to exceed Ten Thousand Dollars (\$10,000.00) for each such violation.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All registered poultry 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 Registered Poultry Feeding Operations Act.

B. The criteria for Best Management Practices shall be promulgated by rules 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 poultry waste to waters of the state except in accordance with the provisions of the Oklahoma Registered Poultry Feeding Operations Act;

2. Stored poultry waste shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures;

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

4. Poultry 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, and
- c. conform to such other handling, treatment and management and removal requirements deemed necessary by the Department to implement the Oklahoma Registered

Poultry Feeding Operations Act and rules promulgated pursuant thereto.

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

1. Where the operator decides to land apply litter, the plan shall include all calculations in determining land application rates, acreage and crops for the land application rate of waste on land owned or controlled by the registrar;

2. A description of waste handling procedures and availability of equipment and type of equipment to be used;

3. The calculations and assumptions used for determining land application rates;

4. All nutrient analysis data, including soil and litter testing;

5. Legal description of lands to be used by an operation for land application;

6. Land application rates of litter shall be based on the available nitrogen and phosphorus content of the litter and shall provide controls for runoff and erosion as appropriate for site conditions;

7. The procedures documented in the AWMP must ensure that the handling and disposal of litter complies with the following requirements:

- a. adequate litter storage shall be provided. Litter shall not be stored without adequate roofing or other Department-approved storage methods. Tarp covers shall be prohibited except for short term emergency protection from runoff when land application is delayed due to unexpected rainfall events. Storage of litter in the one-hundred-year flood plain is prohibited unless protected by adequate covers and berms or other structures,

- b. litter shall not be applied to land when the ground is saturated or during rainfall events. Litter shall not be applied to land when the ground is frozen unless applied to an actively growing cover crop,
- c. litter shall only be applied to suitable land at appropriate times and rates. Discharge or runoff of waste from the application site is prohibited. Timing and rate of applications shall be based on storage capacity of the soil profile, assuming usual nutrient losses, expected precipitation, and soil conditions,
- d. all practices necessary to minimize transport of waste to watercourses shall be utilized and documented in the plan,
- e. edge of field, grassed strips shall be used to separate water courses from runoff which is carrying eroded soil and litter particles, and
- f. litter application shall be prohibited on land subject to excessive erosion;

8. Records shall be maintained of all poultry wastes applied on land owned or controlled by the registrar, and sold or given to other persons for disposal:

- a. if the poultry waste is sold or given to other persons for land application or other disposal, the poultry feeding operation shall maintain a log of: date of removal from the poultry feeding operation; name of hauler; and amount in wet tons, dry tons or cubic yards of poultry waste removed from the poultry feeding operation, and
- b. if the poultry wastes are to be land applied by the hauler, the poultry feeding operation shall make available to the hauler any nutrient sample analysis from that year;

9. Any analysis required by the provisions of the Oklahoma Registered Poultry Feeding Operations Act or rules promulgated thereto shall be performed by a qualified environmental testing laboratory certified by the Department of Environmental Quality and approved by the State Department of Agriculture; and

10. Such other information deemed necessary by the Department to administer the provisions of the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

D. Any registered poultry feeding operation located in a non-phosphorus-threatened watershed shall perform soil and litter testing at least once every three (3) years to determine:

1. Soil pH and plant available nutrients (N.P.K.);

2. Litter nutrient concentrations and moisture; and

3. Application rate based upon current United States Department of Agriculture Natural Resources Conservation Service (NRCS) Waste Utilization Standards, unless the Department approves other standards.

E. 1. Any registered poultry feeding operation located in a phosphorus-threatened watershed shall perform an initial soil test on each land application area prior to application. Litter testing shall be performed annually prior to application. Soil and litter testing shall be performed to determine:

a. soil pH and plant available nutrients (N.P.K.),

b. litter nutrient concentrations and moisture, and

c. application rate based upon current United States Department of Agriculture Natural Resources Conservation Service (NRCS) Waste Utilization Standards, unless the Department approves other standards.

2. If the results of the initial soil test indicate the site contains an average of over one hundred fifty (150) pounds of phosphorous per acre, the site shall be retested annually.

3. If the results of the initial soil test indicate that the site contains an average of under one hundred fifty (150) pounds of phosphorous per acre, the site shall be retested every three (3) years.

4. Soil and litter analysis data shall be retained by the poultry operation for as long as the site is in operation.

F. Soil type shall be determined prior to soil and litter tests. G. 1. The poultry feeding operation registered pursuant to the provisions of Oklahoma Registered Poultry Feeding Operations Act shall develop a plan for the disposal of carcasses associated with normal mortality.

2. In the event there is an outbreak of a major disease 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

Every application shall be accompanied by a registration fee of Ten Dollars (\$10.00), which is nonrefundable.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. In addition to the authority of the State Board of Agriculture to make designations of a concentrated animal feeding operation pursuant to Section 9-204.1 of Title 2 of the Oklahoma Statutes, the State Board of Agriculture shall have the power to designate the RPF0 as a concentrated animal feeding operation as defined by Section 9-202 of Title 2 of the Oklahoma Statutes subject to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act after an administrative determination that an

operation has violated or is unwilling to comply with any of the provisions of the Oklahoma Registered Poultry Feeding Operations Act, or any rule promulgated pursuant thereto whether or not the Department determines the RPF0 to be a significant contributor of pollution to waters of this state.

2. The Board shall have the power to revoke a CAFO license for poultry feeding operations in the manner provided by the Oklahoma Concentrated Animal Feeding Operations Act.

3. The Board may reinstate any such suspended or revoked licenses, or renew such licenses, pursuant to the procedures set forth in the Oklahoma Concentrated Animal Feeding Operations Act.

B. In order to protect the public health and safety and the environment of this state, the Board, pursuant to the Oklahoma Registered Poultry Feeding Operations Act, may require application for a CAFO license to establish and operate a registered poultry feeding operation on and after the effective date of this act 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 poultry 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 with the Administrative Procedures Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.9 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of any registered poultry feeding operation for the purpose of investigating complaints as to the operation or to determine whether there are any violations of the Oklahoma Registered Poultry Feeding Operations Act. The Department shall make at least one unannounced inspection per year of every poultry feeding operation registered pursuant to the Oklahoma Registered Poultry 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 State Department of Agriculture when inspecting poultry feeding operations pursuant to their official duties specified by the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

2. Except for emergency situations or when enforcement of the provisions of the Oklahoma Registered Poultry 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 the Oklahoma Registered Poultry Feeding Operations Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any person violating the provisions of the Oklahoma Registered Poultry Feeding Operations Act or any rule of the Board promulgated pursuant thereto shall, upon conviction, be deemed guilty of a misdemeanor and may be punished by a fine not exceeding

Two Hundred Dollars (\$200.00) or be assessed an administrative penalty of not more than Two Hundred Dollars (\$200.00).

B. Any poultry producer identified by complaint to the Department as flagrantly disregarding BMPs shall result in the Department contacting the integrator associated with the violator. After a full administrative hearing and due process, the Department shall notify in writing the integrator.

C. The Department shall notify all integrators of all violations assessed against operators who are under contract for the production of poultry with that integrator and, upon the written request of the integrator, notify that integrator of all violations assessed an operator with whom the integrator contemplates entering into a contract.

D. Any owner or operator designated a concentrated animal feeding operation, as defined by Section 9-202 of Title 2 of the Oklahoma Statutes, pursuant to subsection A of this section, shall be subject to the fines and penalties of the Oklahoma Concentrated Animal Feeding Operations Act, if such operator 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 of the Board adopted to prevent water pollution from poultry feeding operations pursuant to this act.

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

F. 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 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 deemed 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 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.11 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Agriculture after consideration of comments by the Rule Advisory Committee shall promulgate rules for the administration, implementation and enforcement of the Oklahoma Registered Poultry Feeding Operations Act.

B. 1. The State Board of Agriculture shall promulgate a violation points system for persons violating the Oklahoma Registered Poultry Feeding Operations Act which provides that:

- a. violations involving the greatest harm to the natural resources of the state, ground or surface water quantity or quality, public health or the environment shall receive the most points and shall be considered significant violations,
- b. violations that are committed willfully or intentionally shall be considered significant violations,
- c. the number of points received shall be directly related to the degree of negligence or willfulness,
- d. the commission of three significant violations, or the commission of lesser violations that result in a predetermined cumulative number of points, within a limited period of time of not less than two (2) years shall result in the mandatory designation of the RPFO as a CAFO subject to the Oklahoma Concentrated Animal Feeding Operations Act, and
- e. the commission of one willful violation that results in serious harm may result in the designation of the

RPFO as a CAFO subject to the Oklahoma Concentrated Animal Feeding Operations Act.

2. In developing the violation points system pursuant to this subsection, the Board shall determine the:

- a. number of points that lesser violations must cumulatively total to result in the designation of the RPFO as a CAFO subject to the Oklahoma Concentrated Animal Feeding Operations Act,
- b. limited period of time during which the commission of three significant violations, or the commission of a greater number of lesser violations, will result in the administrative action. The limited period of time shall not be less than two (2) years,
- c. duration of the license revocation, and
- d. conditions under which the person whose license is revoked may reapply for another license pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

C. 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 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.12 of Title 2, unless there is created a duplication in numbering, reads as follows:

Sections 12 through 21 of this act shall be known and may be cited as the "Oklahoma Poultry Waste Transfer Act". The purpose of this act shall be to encourage the transfer of poultry waste out of designated environmentally sensitive watersheds as determined by the Oklahoma Conservation Commission.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.13 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Poultry Waste Transfer Act:

1. "Board" means the State Board of Agriculture;
2. "Contract growing arrangement" means any growout contract, marketing agreement, or other arrangement under which a contract poultry grower cares for or raises poultry, in accord with another's instructions;
3. "Contract poultry grower" means any person engaged in the business of caring for or raising poultry, under a contract growing arrangement, if the poultry is owned by such person or by an integrator;
4. "Department" means the State Department of Agriculture;
5. "Integrator" means an entity which unites the elements associated with the poultry industry including, but not limited to, hatching, feeding, processing and marketing. It includes situations when growing is contracted out to others and when the integrator operates its own growing facilities or farms;
6. "Poultry" means chickens, turkeys, ducks, geese and any other domesticated birds used for human food and/or animal feed;
7. "Poultry animal feeding operation" means a lot or facility used for the housing, breeding, laying of eggs or feeding of poultry in a restricted environment where the following conditions are met:
  - a. poultry have been, are, or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and
  - b. crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing seasons over any portion of the lot or facility;
8. "Poultry processing facility" means a facility which slaughters, cans, stuffs, renders, bones, cuts up or otherwise manufactures or processes poultry carcasses in whole or in part;

9. "Poultry waste" means poultry excrement, poultry carcasses, feed waste or any other waste associated with the confinement of poultry from a poultry feeding operation; and

10. "Poultry waste utilization business" means a business at which poultry waste is collected, recycled, processed or recovered into reusable products including, but not limited to, fertilizer and animal feed.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.14 of Title 2, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the State Department of Agriculture to be designated as the Poultry Waste Transfer Fund. The fund shall be a continuing fund not subject to fiscal year limitations and shall consist of:

1. All monies appropriated to the Department for administering the provisions of this act;

2. Interest attributable to investment of money in the Poultry Waste Transfer Fund; and

3. Money received by the Department in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the provisions of the Poultry Waste Transfer Fund.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.15 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All monies accruing to the credit of the Poultry Waste Transfer Fund are hereby appropriated and may be expended as follows:

1. No more than eight percent (8%) of the monies expended from the Poultry Waste Transfer Fund may be expended by the State Department of Agriculture for the purpose of administering the requirements of the Oklahoma Poultry Waste Transfer Act.

2. An amount not to exceed Fifty Thousand Dollars (\$50,000.00) per required audit may be expended by the State Auditor and Inspector for the purpose of conducting audits of the Poultry Waste Transfer Act pursuant to Section 21 of this act.

B. Remaining monies in the Fund shall be expended for payments to persons or other legal entities authorized by the provisions of the Oklahoma Poultry Waste Transfer Act to receive reimbursement for the hauling of poultry waste or to designated regions as specified by Section 21 of this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.16 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any poultry waste hauler shall be eligible for compensation at a rate to be determined by the Department of Agriculture pursuant to Section 19 of this act for each ton of poultry waste collected and transported and delivered to a poultry waste utilization business or transported to designated regions of the state determined by the Oklahoma Conservation Commission to have soil conditions which would derive benefit from land application of poultry waste.

B. Compensation pursuant to this section shall be payable only for the poultry waste collected, transported and delivered to a poultry waste utilization business, for the waste transported to designated regions of the state for land application and for the poultry waste actually processed by the poultry waste utilization business in accordance with the purposes of the Oklahoma Poultry Waste Transfer Act and as authorized by the Department pursuant thereto.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.17 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. A poultry waste hauler, or a person or other legal entity authorized to receive reimbursement pursuant to Section 16 of this act, from the Poultry Waste Transfer Fund shall first make application to the Department on forms prescribed by the Department containing documentation as required by the Oklahoma Poultry Waste Transfer Act and such other information as the Department determines is needed to comply with the Oklahoma Poultry Waste Transfer Act.

2. On at least a monthly basis, the Department shall evaluate and process applications.

B. 1. Poultry growers requesting reimbursement from the Transfer Fund shall report and certify the amount of sold poultry waste in terms of weight. Each grower shall, by sworn affidavit, provide sufficient information to verify that the poultry waste in accordance with the purposes of the Oklahoma Poultry Waste Transfer Act has been utilized outside a designated environmentally sensitive watershed.

2. Persons and other legal entities authorized to receive reimbursement for hauling poultry waste pursuant to Section 16 of this act shall report and certify the tons of poultry waste collected, transported and delivered to designated regions of the state for land application. Such persons or other legal entities shall by sworn affidavit provide sufficient information to verify that such person or legal entity has collected, transported and delivered the poultry waste in accordance with Section 16 of this act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.18 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon receiving completed applications from either growers or haulers and upon determining that there are sufficient monies in the Poultry Waste Transfer Fund, the Department shall compensate such

persons or other legal entities authorized to receive reimbursement pursuant to Section 16 of this act as applicable for:

1. Processing the tons documented in the application; or
2. The collection, transportation and delivery of poultry waste documented in the application.

B. If the Transfer Fund contains insufficient funds in any month, then the Department shall apportion the payments among all the qualifying applicants according to the percentage of poultry waste collected, transported, or delivered.

C. The Department shall evaluate each poultry waste hauling business and legal entity authorized to receive reimbursement pursuant to Section 16 of this act every three (3) years.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.19 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. By November 1, 1998, the State Department of Agriculture shall determine the rate for collection, transportation and delivery of the poultry waste based on the amount of poultry waste collected and transported to persons or entities using poultry waste on a monthly basis and an estimated amount of poultry waste produced each year. The rates for reimbursement shall be sufficient to encourage the collection and transportation of waste to regions of the state determined by the Oklahoma Conservation Commission to have soil conditions which would derive benefit from land application of the poultry waste.

B. The State Board of Agriculture shall promulgate rules to carry out the provisions of the Oklahoma Poultry Waste Transfer Act which pertain to the allocation of monies deposited in the Poultry Waste Transfer Fund.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.20 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department of Agriculture shall file a report with the Legislature and Governor detailing the administration of the Oklahoma Poultry Waste Transfer Act and its effectiveness in bringing about the prevention of water pollution in this state. The first report shall be filed by no later than December 31, 1999. Subsequent reports shall be filed every three (3) years thereafter.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.21 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. By August 1, 2000, and every even year thereafter, the State Auditor and Inspector shall conduct or shall contract with an auditor or auditing company to conduct an independent audit of the books, records, files and other such documents of the State Department of Agriculture pertaining to and which relate to the administration of the Poultry Waste Transfer Fund. The audit shall include, but shall not be limited to, a review of agency and claimant compliance with state statutes regarding the Fund, internal control procedures, adequacy of claim process expenditures from and debits of the Fund regarding reimbursements, administration, personnel and operating and other expenses charged by the Department; the duties performed in detail by agency personnel and Fund personnel for which payment is made from the Fund, and recommendations for improving claim processing, equipment needed for claim processing, internal control or structure for administering the Fund; and such other areas deemed necessary by the State Auditor and Inspector.

B. The cost of the audit shall be borne by the Poultry Waste Transfer Fund, pursuant to the limits and provisions of Section 15 of this act.

C. Copies of the audit shall be submitted to the State Auditor and Inspector, the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the

Chairs of the Appropriations Committee of both the Oklahoma House of Representatives and the State Senate.

SECTION 22. On and after the effective date of this act, any expanding operations shall be in accordance with the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-502 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Department of Environmental Quality shall monitor lakes in the State of Oklahoma and identify those lakes which it determines to be eutrophic. For purposes of this section a "eutrophic lake" means a lake that has reached an accelerated stage in its life cycle where excessive nutrient and sediment loading have resulted in abundant algae and plant growth, decreased water clarity and depleted dissolved oxygen concentrations such as those conditions found in Lake Wister in 1996.

B. No person may discharge wastewaters within or outside of this state which will foreseeably enter a lake in this state which has been identified as eutrophic by the Department of Environmental Quality without subjecting such wastewaters to the best available technology as identified in the federal Clean Water Act for nitrogen and phosphorous. The Department shall monitor all lakes it identifies as eutrophic and notify by certified mail return receipt requested any person who discharges wastewater which enters such lakes in violation of this section of the provisions of this section and shall order such person to immediately cease and desist from any further violation of this section.

C. Any person who violates the provisions of subsection B of this section shall be guilty of a misdemeanor punishable by a penalty of not more than One Hundred Dollars (\$100.00) per day for each day on which a violation occurs. The Attorney General is

authorized to prosecute violations of this section. Venue and jurisdiction shall be proper in a county which contains all or part of a eutrophic lake which is the subject of a discharge in violation of this section.

D. In addition to the penalty provided in subsection C of this section if a person continues to violate subsection B of this section after having received notification from the Department of Environmental Quality to cease and desist, such person shall be guilty of a misdemeanor punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) per day.

If the owner of a facility which discharges wastewater in violation of this subsection is a corporation authorized to do business in this state, the court may enter an order directing the suspension of any authorization to do business in this state and of the charter or other instrument of organization, under which the corporation may be organized and the forfeiture of all corporate or other rights inuring thereunder. The order of suspension and forfeiture shall have the same effect on the rights, privileges and liabilities of the corporation and its officers and directors as a suspension and forfeiture ordered pursuant to Section 1212 of Title 68 of the Oklahoma Statutes for failure to pay franchise tax. Additionally, all officers and directors of a corporation found to be in violation of this subsection shall be personally liable for any fine imposed pursuant to this subsection.

SECTION 24. NONCODIFICATION The provisions of Section 22 of this act shall not be codified in the Oklahoma Statutes.

SECTION 25. This act shall become effective July 1, 1998.

46-2-11073 KSM