

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1175

By: Muegge of the Senate

and

Leist of the House

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-202, 9-203, 9-205, 9-209 and 9-211, as amended by Sections 2, 3, 6, 14 and 19, Chapter 331, O.S.L. 1997, Sections 9-204, 9-208 and 9-210, as last amended by Sections 4, 13 and 16, Chapter 331, O.S.L. 1997 and Sections 5, 7, 8, 9, 10, 17 and 18, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Sections 9-202, 9-203, 9-204, 9-204.1, 9-205, 9-205.1, 9-205.2, 9-205.3, 9-205.4, 9-208, 9-209, 9-210, 9-210.1, 9-210.2 and 9-211), which relate to the Oklahoma Concentrated Animal Feeding Operations Act; modifying and adding to definitions; requiring promulgation of rules; requiring establishment of violation points system; specifying certain criteria; providing for procedures; requiring designation of certain watersheds; modifying and adding to membership of the rule advisory committee; setting procedures; providing for authority to make certain recommendations to the Department; requiring cooperation with the public;

providing for public hearing, publications and impact statements; providing for reimbursement of expenses for members; deleting obsolete language; requiring licensing for new facility or expansion; requiring odor abatement plan; modifying certain limitation; requiring licensing prior to construction for new facility or expansion; clarifying language; modifying time period for certain Department action; requiring education or training in waste management and odor control; providing for curricula; requiring certification of education or training; providing for violation; clarifying language; increasing fines; authorizing time limit to review application; modifying class of persons to which certain notice be given; providing for denial; specifying certain standards for location; providing consideration for vulnerable aquifers; clarifying language; modifying recordkeeping procedures; requiring compliance with the odor abatement plan; requiring certain information from certain persons on animal waste to be land applied or disposed of; providing for promulgation of rules; requiring notification; requiring initial soil samples from certain sites; providing for retesting; providing for odor abatement plan; providing for contents; authorizing substitutions in certain cases; providing for changes; requiring certain records; providing for analysis; providing for presite approval; requiring establishment of standards in the design and construction of the facility; clarifying language; deleting certain persons; establishing requirement

for liners; requiring retention structures to be designed for odor abatement; providing for recordkeeping; modifying certain fees; requiring certain licensees to submit required information to the Department of Agriculture to assure adequate financial assurance; providing for establishment of the Oklahoma Concentrated Animal Feeding Operations Indemnity Fund; authorizing collection of fees from owners of certain animal feeding operations; setting conditions; providing for certain powers and duties; requiring certain restrictions on funds; authorizing certain investments; stating limit of fund; providing for expenditure of fund; providing for certain closure activities; limiting and restricting uses; providing for exceptions; clarifying language; providing for additional distances between facility and occupied residence; clarifying language regarding drinking water wells; clarifying language; providing for determination of distances for setbacks for certain camps, recreational sites, scenic river areas or water reservoirs; clarifying language; providing for exceptions; requiring certain minimum separations; clarifying language; providing for exceptions; requiring compliance schedule to retrofit liners; providing for denial of licensure; amending 50 O.S. 1991, Section 1.1, which relates to nuisances; repealing Section 15, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-209.1), which relates to evidence of financial surety; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-202, as amended by Section 2, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-202), is amended to read as follows:

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

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

1. "Affected property owner" means a surface landowner within ~~one (1) mile~~ two (2) miles 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 where the following conditions are met:

- a. animals have been, are, or will be stabled or confined and fed or maintained for a total of ~~ninety (90)~~ forty-five (45) 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.

The term "animal feeding operation" shall not include a racetrack 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-;

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)~~ two-tenths (0.2), 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~~ 9-205.3 of this ~~act~~ title;

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 State Department of Agriculture pursuant to Section ~~9~~ 9-205.3 of this ~~act~~ title;

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 operation" or "CAFO" means:

- a. a licensed managed feeding operation, or
- b. an animal feeding operation which meets the following criteria:

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

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

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

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

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

(e)—500 horses,

(f)—10,000 sheep or lambs,

(g)—55,000 turkeys,

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

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

(j)—5,000 ducks, or

(k)—1,000 animal units, 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~~

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

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

(a) 300 slaughter or feeder cattle,

(b) 200 mature dairy cattle, whether milk or dry cows,

(c) 750 swine each weighing over 25 kilograms or approximately 55 pounds,

(d) ~~3,000~~ 1,500 weaned swine each weighing under 25 kilograms,

(e) 150 horses,

(f) 3,000 sheep or lambs,

(g) 16,500 turkeys,

(h) 30,000 laying hens or broilers, if the facility has continuous overflow watering,

(i) 9,000 laying hens or broilers, if the facility has a liquid manure system,

(j) 1,500 ducks, or

(k) 300 animal units, and

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

(a) pollutants are discharged into waters of the state through an artificially constructed ditch, flushing system or other similar artificially constructed device, or

(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 if such animal feeding operation discharges only in the event of a twenty-five-year, twenty-four-hour storm event, or~~

d. any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act,
or

e. the Board determines that the operation is a significant contributor of pollution to waters of the state pursuant to Section ~~5~~ 9-204.1 of this ~~act~~ title;

12. "Department" means the ~~Oklahoma~~ Oklahoma State 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~~ licensed 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. "Land application" means the removal of animal waste from a waste retention facility and distribution to, or incorporation into, the soil mantle primarily for beneficial reuse purposes;

17. "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~~ 1,000 slaughter and feeder cattle,
- b. ~~1,400~~ 700 mature dairy cattle, whether milk or dry cows,
- c. ~~5,000~~ 2,500 swine each weighing over 25 kilograms, approximately 55 pounds,
- d. ~~20,000~~ 5,000 weaned swine each weighing under 25 kilograms,
- e. ~~1,000~~ 500 horses,
- f. ~~20,000~~ 10,000 sheep or lambs,
- g. ~~110,000~~ 55,000 turkeys,
- h. ~~200,000~~ 100,000 laying hens or broilers, if the facility has continuous overflow watering,
- i. ~~60,000~~ 30,000 laying hens or broilers, if the facility has a liquid manure system,
- j. ~~10,000~~ 5,000 ducks, or
- k. ~~2,000~~ 1,000 animal units;

~~17.~~ 18. "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.~~ 19. "Managing operator" means the owner or one who is responsible for the management of each facility of a concentrated animal feeding operation or animal feeding operation;

20. "Odor Abatement Plan" or "OAP" means schedule of activities, prohibitions of practices, maintenance procedures and

other management practices to prevent or reduce odor as established by the State Department of Agriculture pursuant to Section 10 of this act;

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

- a. ~~is not readily mobile~~ has been affixed to a permanent foundation,
- 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.~~ 22. "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 ~~§~~ 9-205.2 of this ~~act~~ title;

~~20.~~ 23. "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.~~ 24. "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.~~ 25. "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.~~ 26. "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. AMENDATORY 2 O.S. 1991, Section 9-203, as amended by Section 3, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-203), is amended to read as follows:

Section 9-203. A. The State Board of Agriculture ~~is authorized to~~ shall promulgate rules for the administration, and implementation and enforcement of the Oklahoma Concentrated Animal Feeding Operations Act.

B. 1. The State Board of Agriculture shall promulgate a violation points system for persons violating the Oklahoma Concentrated Animal 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 revocation of a license, and
- e. the commission of one willful violation that results in serious harm may result in the revocation of a license.

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 revocation of a license,
- 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 revocation of the license. 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 Concentrated Animal 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-203.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

The State Department of Agriculture in cooperation with the Oklahoma Water Resources Board shall designate those watersheds that are phosphorous-threatened or otherwise vulnerable to operations subject to the Oklahoma Concentrated Animal Feeding Operations Act.

SECTION 4. AMENDATORY 2 O.S. 1991, Section 9-204, as last amended by Section 4, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, 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 Concentrated Animal Feeding Operations Act.

~~B.~~ ~~Six~~ 1. Three members shall be animal feeding operators; one member shall represent the field of ~~geology~~ hydrogeology; one member shall be a soil scientist; one member shall represent the Department of Environmental Quality; one member shall represent the Oklahoma Water Resources Board; one member shall represent the field of water quality science; one member shall represent the field of ecology; and ~~one member~~ three members shall represent the general public. ~~Two~~ Four shall serve for a one-year ~~term~~ terms; ~~three~~ four shall serve for two-year terms; and four shall serve for three-year terms.

~~C.~~ 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.

~~D.~~ ~~1.~~ B. Except for emergency rules, the ~~Department~~ 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.

~~2.~~ 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 5. AMENDATORY Section 5, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-204.1), is amended to read as follows:

Section 9-204.1 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 on-site inspection of the operation and a determination by the State Department of Agriculture 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) feet~~ three (3) feet 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~~ 9-205.2 of this title have been approved by the Department.

F. After the effective date of this act, 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 until a license for such facility or expansion has been issued by the Department.

SECTION 6. AMENDATORY 2 O.S. 1991, Section 9-205, as amended by Section 6, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, 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 any person desiring or required to apply for a license to operate a new or previously unlicensed animal feeding operation or expanding operation, the necessary forms and applications.

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~~ 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, 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, Odor Abatement Plan or such other plan authorized by the Oklahoma Concentrated Animal Feeding Operations Act and approved by the Department;
6. A copy of the written waiver by an adjacent property owner to the facility releasing specified setback requirements as provided by Section ~~47~~ 9-210.1 of this ~~act~~ title; 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 pursuant 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. 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 until a license for such facility or expansion has been issued by the Department.

E. 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)~~ sixty (60) days, issue approval or denial of the transfer. Transfer of a license shall be denied only if:

- a. the new owner or operator cannot 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 pursuant thereto, or

- d. the new owner or operator has failed to meet the requirements of Section ~~19~~ 9-211 of this ~~act~~ title;
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.

~~F.~~ F. 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~~ 9-211 of this ~~act~~ title.

~~F.~~ G. 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.

- a. 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 pursuant thereto.

G. H. 1. After September 1, 1998, managing owners and managing operators of a proposed concentrated animal feeding operation shall provide certification of satisfactory completion of formal education or training in the areas of waste management and odor control as specified by rules promulgated by the Board. Proof of certification of a minimum of ten (10) hours of training and education must be submitted with the license application or within one (1) year of the effective date of the issued license. Appropriate curricula and course content shall be developed under the supervision of the Oklahoma State University Agricultural Extension Service, which shall provide certification to the Department.

2. Commencing one (1) year from the effective date of this act, all managing owners and managing operators of all concentrated animal feeding operations licensed on or before July 1, 1998, shall provide certification of satisfactory completion of formal education or training in the areas of waste management and odor control. Proof of certification of a minimum of ten (10) hours of training and education must be submitted with the license application or within one (1) year of the effective date of the issued license.

3. The Department shall require a minimum of four (4) hours of annual refresher training for managing owners and managing operators of licensed concentrated animal feeding operations.

4. Appropriate curricula and course content must be developed under the supervision of Oklahoma State University Cooperative Extension Service, which shall provide certification to the Department.

5. Failure to obtain the prerequisite and annual training and education as required in this subsection shall be deemed a violation of the Oklahoma Concentrated Animal Feeding Operations Act.

I. 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, or tampers with 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)~~ Ten Thousand Dollars (\$10,000.00) 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. AMENDATORY Section 7, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205.1), is amended to read as follows:

Section 9-205.1 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 pursuant thereto, the Department shall have sixty (60) days to 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, and 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 the office of the State 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~~ two (2) miles 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.

F. A determination that significant harm may occur to the use and enjoyment of adjacent property may be grounds for denial of the application, or a specific site selected for a facility or waste facility.

G. In determining whether the proposed concentrated animal feeding operation site is appropriate, the Department shall consider the currently delineated phosphorous-threatened or otherwise vulnerable aquifers.

SECTION 8. AMENDATORY Section 8, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205.2), is amended to read as follows:

Section 9-205.2 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 recordkeeping 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~~ 9-205.3 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~~ title.

C. 1. The Pollution Prevention Plan shall be signed by the owner or as otherwise authorized by the State 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~~ 9-205.4 of this ~~act~~ title; and

9. Requirements that all irrigation systems into which any animal waste will be injected shall be equipped as specified by Section ~~11~~ 9-205.5 of this ~~act~~ title.

G. The following records shall be maintained at the site ~~for at least three (3) years~~ as long as the facility is in operation:

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~~ preventive 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.~~ 9. 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.~~ 10. The notarized statement signed by the applicant accepting full responsibility for properly closing all waste retention structures pursuant to subsection ~~F~~ I of this section.

~~F.~~ H. Any analyses required by the ~~provision~~ provisions of the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated pursuant thereto shall be performed by a qualified

independent testing laboratory certified by the Department of Environmental Quality and approved by the Department.

~~J.~~ I. 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. AMENDATORY Section 9, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205.3), is amended to read as follows:

Section 9-205.3 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. comply with the Odor Abatement Plan and shall not otherwise 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~~ violate any state or federal laws relating to 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 State Department of Agriculture 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; and

5. 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. 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. 1. If the animal waste is sold or given to other persons for land application or other disposal, the animal feeding operation shall maintain a log of: date of removal from the animal feeding operation; name of hauler; and amount, in wet tons, dry tons or cubic yards, of animal waste removed from the animal feeding operation;

2. If the animal wastes are to be land applied by the hauler, the animal feeding operation shall make available to the hauler any nutrient sample analysis from that year; and

3. In addition, the animal feeding operation shall notify, in writing, the hauler of the animal waste of the land application and disposal requirements for animal waste as specified by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

E. All licensed managed feeding operations shall remain liable and responsible for compliance with all rules promulgated by the Board regarding proper handling and disposing of animal waste regardless of whether or not the land application site is owned or operated by the owner or operator of the animal feeding operation.

F. 1. Soils in areas in which animal waste is applied shall be analyzed, annually, for phosphates and nitrates and soil acidity. 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~~ as long as the facility is in operation.

2. For any land application sites in phosphorous-threatened watersheds, an initial soil sample of all sites to receive animal waste shall be conducted by the owner or operator of the concentrated animal feeding operation or owner of land.

- a. 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.
- b. 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.

~~E. G.~~ 1. ~~The~~ Every 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 9-205.3a of Title 2, unless there is created a duplication in numbering, reads as follows:

A. An Odor Abatement Plan shall be developed by each concentrated animal 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 Odor Abatement Plan shall include, but not be limited to, provisions for documentation of structural controls, documentation of Best Management Practices, odor abatement and recordkeeping provisions.

B. 1. The Odor Abatement Plan shall be signed by the owner or as otherwise authorized by the State Department of Agriculture and a copy shall be retained on site.

2. The animal feeding operation shall amend the Odor Abatement 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 increase of odor.

C. If, after reviewing the Odor Abatement 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.

SECTION 11. AMENDATORY Section 10, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205.4), is amended to read as follows:

Section 9-205.4 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~~ 9-210.2 of this ~~act~~ title, 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~~ and

2. ~~Documentation~~ Provide 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~~ 9-210.2 of this ~~act~~ title, all retention structures shall maintain a minimum

separation of ~~four (4)~~ ten (10) 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 environmental, agricultural or other Department-approved professional engineer licensed pursuant to Section 475.12 of Title 59 of the Oklahoma Statutes 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 State 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~~ Any licensee who receives a license for a concentrated animal feeding operation on or after the effective date of this act shall require the licensee to install a leak detection system or monitoring wells around the perimeter of each retention structure prior to using the retention structure for storage of liquid waste. By September 1, 1999, licensees who were licensed concentrated animal feeding operations prior to the effective date of this act shall install and maintain in working order a leak detection system or monitoring wells around the perimeter of each retention structure in operation prior to the effective date of this act. Samples of water shall be collected by the Department of Agriculture and submitted for testing at least twice annually. The analysis of the soil and water samples shall be performed by a qualified environmental laboratory certified by the Department of Environmental Quality and approved by the Department of Agriculture and the cost shall be the responsibility of the owner of the concentrated animal feeding operation. Documentation, sampling data and any other records required by this section shall be maintained on site for three (3) years with the Pollution Prevention Plan. Analysis from the sampling taken prior to the operation of the facility shall be considered the baseline data and must be retained on site for the life of the facility. If the sampling is taken after the facility has been in operation, the samples taken during the first year shall be considered the baseline data and shall be retained on site for the life of the facility.

~~H.~~ G. 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 established by rules of the Board or as otherwise required by the

federal Environmental Protection Agency. Liners for lagoons owned or operated by an animal feeding operation with less than one thousand (1,000) animal units may be designed and constructed pursuant to Technical Note 716 of the Natural Resources Conservation Service or by the federal Environmental Protection Agency so long as the facility is designed by an NRCS engineer.

~~I.~~ H. 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 environmental, agricultural or other Department-approved professional engineer, or qualified groundwater scientist licensed pursuant to Section 475.12 of Title 59 of the Oklahoma Statutes, shall conduct a site evaluation ~~every five (5) years~~ annually 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.~~ I. 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.

J. All retention structures shall be designed for odor abatement.

K. Documentation, sampling data, and any other records required by this section shall be maintained on site for ~~three (3) years~~ as long as the facility is in operation. 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~~ on site as long as the facility is in operation.

SECTION 12. AMENDATORY 2 O.S. 1991, Section 9-208, as last amended by Section 13, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-208), is amended to read as follows:

Section 9-208. A. 1. It shall be unlawful for any person to operate a concentrated animal feeding operation, without having first obtained a license from the State Board of Agriculture.

2. The owner or operator of an animal feeding operation not 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 Concentrated Animal Feeding Operations Act and the rules of the Board.

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

- 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,
- b. slaughterhouses, but not including feedlots at such facilities, and
- 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.

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.

3. Any point source and nonpoint source discharges related to agriculture, as specified in paragraph 1 of subsection D of Section ~~6~~ 1-3-101 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems individual 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 State Department of Agriculture.

SECTION 13. AMENDATORY 2 O.S. 1991, Section 9-209, as amended by Section 14, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-209), is amended to read as follows:

Section 9-209. 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 the Oklahoma Concentrated Animal Feeding Operations Act and the rules 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 an animal feeding operations license and annual renewal thereof shall be:

Animal feeding operations capacity	Amount of Fee
Under two hundred fifty animal units	\$15.00
Two hundred fifty to five hundred <u>four hundred ninety-nine</u> animal units	<u>\$37.50</u>
Five hundred to three thousand <u>nine hundred ninety-nine</u> animal units	75.00 <u>\$50.00</u>

~~Three thousand~~ One thousand to ten thousand animal units

~~150.00~~

\$500.00

Over ten thousand animal units

~~225.00~~

\$1,000.00

D. All fees received by the Board for licensure of animal feeding operations shall be deposited in the State Department of Agriculture Revolving Fund for the purpose of implementing and enforcing the Oklahoma Concentrated Animal Feeding Operations Act, including but not limited to groundwater monitoring.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-209.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All owners of an animal feeding operation with a liquid animal waste management system shall provide a closure plan to the Department of Agriculture for approval which defines operational phases and includes cost estimates, and plans and specifications for final closure of its waste facility. A site may be closed in phases according to a closure plan approved by the Department.

B. The Department shall require that financial assurances be provided in an amount sufficient to cover the estimated cost of closure and any postclosure. An increase in financial assurance shall be required when any licensee deviates from the approved closure plan or when the cost of closure or postclosure is found to have increased. Owners of an animal feeding operation with a liquid animal waste management system shall increase financial assurance if corrective action is required.

C. 1. Owners of an animal feeding operation with a liquid animal waste management system shall provide financial assurance to guarantee the performance of final closure and for any required postclosure. The state shall be the sole beneficiary of any such

assurance solely for the cost of performance of closure and postclosure and shall have a security interest therein.

2. Financial assurance required by this section may be satisfied by making an annual payment of ten cents (\$0.10) per animal unit to the indemnity fund created pursuant to subsection D of this section.

D. There is hereby created in the State Treasury a revolving fund for the State Department of Agriculture to be designated the "Concentrated Animal Feeding Operation Indemnity Fund". This fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies collected or paid pursuant to paragraph 2 of subsection C of this section and any other monies appropriated to the fund by the Legislature. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Department of Agriculture for closure of animal waste facilities.

E. The money in this fund shall be used to close waste facilities utilizing liquid waste management systems that have been determined by the Department to be an environmental hazard. Any portion of this fund not immediately needed for the purposes authorized shall be invested by the State Treasurer as provided by law. All income from such investments shall be deposited in the fund.

F. The fund administrators shall expend no more than One Hundred Thousand Dollars (\$100,000.00) per waste facility for animal waste facilities closure activities. The fund administrators shall only expend those monies necessary to achieve a minimum level of closure and still protect human health and the environment. Closure activities shall include waste facility dewatering and removal of animal waste sludge, if any, both of which shall be land applied at a nutrient management application rate as determined by the Department of Environmental Quality. After dewatering, animal waste

facilities which are located in a drainage basin and are capable of meeting all applicable pond requirements of the Natural Resources Conservation Service (NRCS) with minimal additional expense should be maintained as a pond. Otherwise, animal waste facility berms should be breached and graded in such a manner to reasonably conform to the surrounding land contours.

SECTION 15. AMENDATORY Section 17, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-210.1), is amended to read as follows:

Section 9-210.1 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 9-210.2 of this title, no new or expanding licensed managed feeding operation with a capacity of more than four thousand (4,000) animal units shall be located where its closest waste facility is within a distance of two (2) miles 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~~ 9-210.2 of this act title, 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)~~ three-fourths (3/4) 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)~~ one and one-fourth (1 1/4) mile of any occupied

residence not owned or leased by the owner or operator of the licensed managed feeding operation.

~~C.~~ D. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, no new or expanding ~~animal~~ licensed managed 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)~~ one-half (1/2) mile of any ~~dwelling~~ occupied residence 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)~~ one (1) mile of any ~~dwelling~~ occupied residence not owned or leased by the owner of the animal feeding operation.

~~D.~~ E. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, 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.~~ F. Except as otherwise authorized by this ~~subsection~~ section, 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.~~ G. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, no concentrated animal feeding operation shall be established after ~~the effective date of this act~~ September 1, 1997, 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.~~ H. The proscription contained in subsections ~~B,~~ C, D, E, ~~F~~ G and ~~F~~ G 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, ~~F~~ G and ~~F~~ G 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.~~ I. No liquid animal waste shall be land applied within three hundred (300) feet of an existing public or private drinking water well not owned or operated by the owner of an animal feeding operation.

~~I.~~ J. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, no concentrated animal feeding operation shall be established after ~~the effective date of this act~~ September 1, 1997, which is located:

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

located within the drainage basin for the public water supply, or after the effective date of this act;

4. Within three (3) miles of the outside boundary of any area or facility owned or operated as a camp or recreational site by a nonprofit organization established prior to December 1, 1997;

5. Within three (3) miles of any designated scenic river area as specified by the Scenic Rivers Act; or

6. Within one (1) mile of any water reservoir that has recreational or ecological significance as outlined by the most current Water Quality Standards published by the Oklahoma Water Resources Board.

~~J.~~ K. 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 State 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 16. AMENDATORY Section 18, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-210.2), is amended to read as follows:

Section 9-210.2 A. 1. Any concentrated animal feeding operation which is licensed by or which has submitted a substantially completed application to the State 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~~ 9-210.1 of this ~~act~~ title relating to setback requirements and the provisions of ~~subsections B and subsection~~ C of Section ~~10~~ 9-205.4 of this ~~act~~ title relating to ~~utilization of liners in retention structures or documentation of no~~

~~hydrologic connection and to~~ a minimum separation of ~~four (4) ten~~ (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to the facilities constructed prior to the effective date of this act except as otherwise provided by subsection E of this section or specified by this subsection.

B. The provisions of Section 9-205.4 of this title relating to the minimum separation of ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to waste retention structures licensed after September 1, 1997, and before the effective date of this act.

C. 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~~ 9-210.1 of this ~~act~~ title relating to setback requirements and the provisions of ~~subsections B and subsection~~ C of Section ~~10~~ 9-205.4 of this ~~act~~ title relating to ~~utilization of liners in retention structures or documentation of no~~ hydrologic connection and to a minimum separation of ~~four (4) ten~~ (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to the waste retention facilities constructed prior to the effective date of this act except as otherwise provided by subsection E of this section or specified by this subsection.

~~C.~~ D. 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~~ September 1, 1997, 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~~ subsection C of Section ~~10~~ 9-205.4 of this ~~act~~ title relating to ~~utilization of liners in retention structures or documentation of no hydrologic connection and to~~ a minimum separation of ~~four (4)~~ ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to waste retention facilities constructed prior to the effective date of this act except as otherwise provided by subsection E of this section or 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.~~ E. 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.

F. For those waste retention structures located in vulnerable aquifer areas for which a liner is not utilized or for which a liner does not meet the specifications established in Section 9-205.4 of this title, on the effective date of this act, the Department shall establish a compliance schedule for the retrofitting of liners required by Section 9-205.4 of this title.

SECTION 17. AMENDATORY 2 O.S. 1991, Section 9-211, as amended by Section 19, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-211), is amended to read as follows:

Section 9-211. A. 1. The State Board of Agriculture shall have the power and the duty to suspend, revoke or not renew the license of any animal feeding operation after a hearing, and after an administrative determination that such animal feeding operation has violated or has failed to comply with any of the provisions of the Oklahoma Concentrated Animal Feeding Operations Act, or any rule promulgated pursuant thereto.

2. 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 animal feeding operation conducted animal feeding operations in conformity with, and in compliance with, the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and 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 Administrative Procedures Act.

D. Pursuant to subsection F of Section 9-205.1 of this title, the State Department of Agriculture may deny a license for a concentrated animal feeding operation based on the property interests of property owners within two (2) miles of a proposed facility.

SECTION 18. AMENDATORY 2 O.S. 1991, Section 9-210, as last amended by Section 16, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-210), is amended to read as follows:

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

1. Provide adequate veterinarian services for detection, control, and elimination of livestock diseases;
2. Have available for use at all necessary times mechanical means of scraping, cleaning, and grading feed yards premises; and
3. Provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks, and feeding devices.

B. 1. Any Except for odors, water contamination, flies or other pestilence from an animal feeding operation utilizing a liquid animal waste management system, any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with the 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.

2. Any Except for odors, water contamination, flies or other pestilence from an animal feeding operation utilizing a liquid animal waste management system, any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with 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 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 19. AMENDATORY 50 O.S. 1991, Section 1.1, is amended to read as follows:

Section 1.1 A. As defined in this act:

1. "Agricultural activities" shall include, but not be limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products; and

2. "Farmland" shall include, but not be limited to, land devoted primarily to production of livestock or agricultural commodities.

B. ~~Agricultural~~ Except for odors, water contamination, flies or other pestilence from an animal feeding operation utilizing a liquid animal waste management system, activities conducted on farm or ranch land, if consistent with good agricultural practices and established prior to nearby nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse affect on the public health and safety.

~~If that~~ Except for odors, water contamination, flies or other pestilence from an animal feeding operation utilizing a liquid animal waste management system, if agricultural activity is undertaken in conformity with federal, state and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

SECTION 20. REPEALER Section 15, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-209.1), is hereby repealed.

SECTION 21. This act shall become effective July 1, 1998.

SECTION 22. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-11074 KSM