

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 559

By: Laughlin and Kerr of the
Senate

and

Davis of the House

COMMITTEE SUBSTITUTE

An Act relating to agriculture; creating the Citizens
Advisory Task Force; providing for membership,
vacancies, duties, and quorum; providing for
meetings and travel reimbursement; requiring
certain contracts; amending 2 O.S. 1991, Sections
9-202, 9-208, as last amended by Section 29,
Chapter 140, O.S.L. 1994 and Section 9-210, as
amended by Section 1, Chapter 315, O.S.L. 1993 (2
O.S. Supp. 1996, Sections 9-208 and 9-210), which
relate to the Oklahoma Feed Yards Act; modifying
and adding definitions; adding criteria for
licensed concentrated animal feeding operations;
adding requirements for locations of certain
facilities; requiring certain set-backs; providing
exception; providing for determination of set-
backs; providing by waivers; making certain
requirements; setting certain measurement criteria;
requiring certain monitoring; requiring best

management practices in certain situations;
requiring certain confined animal feeding
operations and licensed managed feeding operations
to comply with certain provisions; providing
exceptions; providing for noncodification;
providing for codification; and declaring an
emergency.

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

SECTION 1. A. There is hereby created the Citizens Advisory Task Force on the Swine Industry.

B. 1. The Task Force shall consist of fifteen (15) members, five members shall be appointed by the Governor. Five members shall be appointed by the Speaker of the House of Representatives, all of whom shall be legislative members of the House of Representatives. Five members shall be appointed by the President Pro Tempore of the Senate, all of whom shall be legislative members of the State Senate. Task Force members shall be appointed within two weeks of the effective date of this act. Any vacancy on the Task Force shall be filled by the appointing authority.

2. The Chair of the Task Force shall be elected by the members of the Task Force at the first meeting of the Task Force.

C. 1. The Task Force shall meet at such times and places as it deems necessary to perform its duties as specified in this section. Meetings shall be held at the call of the chair, and shall be conducted in accordance with the Oklahoma Open Meeting Act.

2. A majority of the members serving on the Task Force shall constitute a quorum.

3. The Speaker of the House of Representatives or the President Pro Tempore of the Senate shall call the first meeting of the Task Force within two weeks of the appointment of the members of the Task Force.

D. Members of the Task Force shall receive no salary; however, all members of the Task Force shall be reimbursed for their actual and necessary travel expenses as follows:

1. Legislative members of the Task Force shall receive reimbursement from the house in which they serve as provided in Section 456.3 of Title 74 of the Oklahoma Statutes;

2. Any nonlegislative Task Force members employed by the state shall be reimbursed by their respective employing agency pursuant to the State Travel Reimbursement Act; and

3. Any other Task Force member shall receive reimbursement pursuant to the State Travel Reimbursement Act from their appointing authority.

E. The Task Force shall contract with the Oklahoma State Regents for Higher Education for implementation of the study specified by the provisions of this subsection. The study shall be conducted using best scientific data available. The Task Force shall establish procedures, policies and goals for the development and implementation of the study and shall call meetings and require any information deemed necessary by the Task Force from the Board of Regents in order to provide proper oversight and review of the work of the Board regarding the study. The study shall include:

1. Reviewing the constitutional provisions, laws, rules and procedures applicable to a concentrated animal feeding operation housing swine;

2. Reviewing whether those constitutional provisions, laws, rules and procedures are adequate to protect the ground and surface water of the state and public health and safety;

3. Reviewing the cost of current and proposed constitutional provisions, laws, rules and procedures applicable to a concentrated animal feeding operation housing swine;

4. Reviewing the constitutional, statutory, and regulatory system in this state and systems in other states;

5. Evaluating the economic impact of the swine industry on this state;

6. Evaluating the changes in technology, economic structure, market access, and other recent developments in the swine industry;

7. Evaluating the impact of the swine industry on its neighbors and local community;

8. Evaluating the proper allocation of public and private resources to the swine industry;

9. Evaluating current and proposed waste management systems in the swine industry, including but not limited to lagoons, pits, composting, field application, and odor management; and

10. Evaluating the concentration of facilities in a geographic area.

F. The Task Force and the Oklahoma State Regents for Higher Education are authorized to use the services of the Oklahoma Department of Agriculture, Oklahoma Water Resources Board, Oklahoma Conservation Commission, state universities, any other state agencies and outside experts it deems necessary.

G. The Oklahoma State Regents for Higher Education shall present a proposed report to the Task Force containing its findings, and if applicable, specific recommendations for changes in the constitutional provisions, laws, rules, and procedures governing the swine industry. The report as approved or amended and approved by the Task Force shall be submitted to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and appropriate state agencies by January 1, 1998.

H. The Task Force shall terminate as of June 31, 1998.

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

Section 9-202. A. Concentrated animal feeding operations are point sources subject to the permit or license program.

B. As used in ~~this act~~ the Oklahoma Feed Yards Act:

1. "Animal feeding operation" means a lot or facility ~~+~~ other than an aquatic animal production facility~~+~~, and other than a facility used primarily as a public livestock auction, where the following conditions are met:

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

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

2. "Concentrated animal feeding operations (CAFO)" or "feed yards" means an animal feeding operation which meets the criteria set forth as follows:

- a. more than the number of animals specified in any of the following categories are confined:
 - (1) 1,000 slaughter and feeder cattle,
 - (2) 700 mature dairy cattle (whether milk or dry cows),
 - (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
 - (4) 500 horses,
 - (5) 10,000 sheep or lambs,

- (6) 55,000 turkeys,
- (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 30,000 laying hens or broilers (if the facility has a liquid manure system),
- (9) 5,000 ducks, or
- (10) 1,000 animal units~~+~~± or

b. more than the following number and types of animals are confined:

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

and either one of the following conditions are met: Pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; or 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 is a concentrated animal feeding operation as defined above if such

animal feeding operation discharges only in the event of a twenty-five year, twenty-four-hour storm event~~;~~,

- c. the Board determines that the operation is a significant contributor of pollution to waters of the United States~~;~~;

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-tenths (0.1), plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2)~~;~~;

4. "Licensed managed feeding operations (LMFO)" means an animal feeding operation primarily using a liquid waste management system and where animals are primarily housed in a roof-covered structure licensed pursuant to the provisions of the Oklahoma Feed Yards Act and which meets the criteria set forth as follows:

- a. more than the number of animals specified in any of the following categories are confined:
 - (1) 2,000 slaughter and feeder cattle,
 - (2) 1,400 mature dairy cattle, whether milk or dry cows,
 - (3) 5,000 swine each weighing over 25 kilograms, approximately 55 pounds,
 - (4) 1,000 horses,
 - (5) 20,000 sheep or lambs,
 - (6) 110,000 turkeys,
 - (7) 200,000 laying hens or broilers, if the facility has continuous overflow watering,

(8) 60,000 laying hens or broilers, if the facility has a liquid manure system,

(9) 10,000 ducks, or

(10) 2,000 animal units, or

b. more than the following number and types of animals are confined:

(1) 600 slaughter or feeder cattle,

(2) 400 mature dairy cattle, whether milk or dry cows,

(3) 1,500 swine each weighing over 25 kilograms, approximately 55 pounds,

(4) 300 horses,

(5) 60,000 sheep or lambs,

(6) 33,000 turkeys,

(7) 60,000 laying hens or broilers, if the facility has continuous overflow watering,

(8) 18,000 laying hens or broilers, if the facility has a liquid manure system,

(9) 3,000 ducks, or

(10) 600 animal units,

and either one of the following conditions are met: Pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; or 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, or

c. the Board determines that the operation is a significant contributor of pollution to waters of the United States;

5. "Confined swine feeding operation" means any lot or facility where swine are or will be confined or housed and fed or maintained,

and which meets or exceeds the number of swine specified in paragraph 4 of this subsection and primarily uses a liquid waste management system;

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

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

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

- (a) the size of the animal feeding operation and the amount of wastes reaching waters of the United States~~†~~1
- (b) the location of the animal feeding operation relative to waters of the United States;
- (c) the means of conveyance of animal wastes and process wastewater into waters of the United States~~†~~1
- (d) the slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the United States~~†~~1 and
- (e) other such factors relative to the significance of the pollution problem sought to be regulated.

- (2) No animal feeding operation with less than the number of animals set forth in subparagraphs a and b of paragraph 2, ~~subparagraphs (a) and (b)~~ of this subsection designated as a concentrated animal feeding operation unless:
- (a) pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device~~+~~, or
 - (b) pollutants are discharged directly into waters of the United States which originate outside the facility and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.
- (3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this division until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program:
- (a) subject to the provisions of subdivision (b) of this division ~~(3) of paragraph (2) of subparagraph (b) of this subsection~~, the following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this section, which may be discharged by a point source subject to the provisions of this subsection after application of the best conventional pollutant control technology. There shall

be no discharge of process wastewater pollutants to navigable waters~~;~~

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

~~(4)~~ 7. "Board" means the Oklahoma State Board of Agriculture;

8. "Dwelling" means a habitable structure designed and constructed for full-time occupancy in all weather conditions which is not readily mobile, is connected to a public source of electricity and a permanent septic waste disposal or public waste disposal system, and is occupied as a primary residence. In the absence of evidence to the contrary, a building that has not been occupied by humans on a full-time basis for more than six (6) months during the last two (2) years is presumed not to be a dwelling. The dwelling must exist at its current location at the time an applicant initially submits an application for any permit sought pursuant to establishing an animal feeding operation, including but not limited to a water permit or feed yard license, or at the time construction of the animal feeding operation begins if a CAFO license is not required for operation; and

9. "Facility" means any structure or combination of structures utilized to control livestock waste until it can be disposed of in an authorized manner. Such structures shall include, but is not limited to, buildings, lots, pens, pits, burial sites, composters,

waste storage sites, waste storage structures, lagoons and ponds or any structure and appurtenances thereto.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-205.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Board of Agriculture is hereby directed to conduct a monitoring program using the best reasonable available technology to monitor lagoon integrity of confined swine feeding operations.

SECTION 4. AMENDATORY 2 O.S. 1991, Section 9-208, as last amended by Section 29, Chapter 140, O.S.L. 1994 (2 O.S. Supp. 1996, Section 9-208), is amended to read as follows:

Section 9-208. A. It shall be unlawful for any person to operate a feed yard, or a concentrated animal feeding operation (CAFO) which meets the criteria set forth in subparagraphs a, b or c of paragraph 2 of subsection B of Section 9-202 of this title, or a licensed managed feeding operation (LMFO) which meets the criteria set forth in subparagraphs a, b or c of paragraph 4 of subsection B of Section 9-202 of this title, without having first ~~obtained~~ applied for a permit or license from the Board. The owner or operator of livestock feed yards not meeting these criteria may apply for a license if such owner or operator elects to come under the provision of the Oklahoma Feed Yards Act and the rules of the Board.

B. ~~1.~~ No LMFO or expansion with a capacity of 4000 or more animal units and which primarily uses a liquid waste management system shall be located where its closest liquid waste retention structure is within a distance of three-quarters (3/4) of a mile of any dwelling not owned or leased by the owner or operator of the LMFO, nor shall a CAFO with a capacity of less than 4000 animal units be located where its closest liquid waste retention structure is located within a distance of one-quarter (1/4) miles of any dwelling not owned or leased by the owner of the CAFO.

C. The proscription contained in subsection B of this section shall not apply if the title holder of the land benefitting from the distance separation requirement executes a written waiver with the title holder of the land where the structure is located, 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 benefitted land is located. The filed wavier shall preclude enforcement of the set-back requirements contained in subsection B of this section. A change in ownership of the land benefitting from the separation distance requirement or change in the ownership of the land on which the feed yard is located shall not affect the validity of the waiver.

In addition, the proscription contained in subsection B of this section shall be waived by the Department of Agriculture if no objection is received by the Department during the twenty (20) day notice period allowed for adjoining landowners to submit written comments or protests during the application process.

D. All distances between dwellings and LMFOs or CAFOs shall be measured from the closest corner of the dwelling walls to the closest side of the nearest liquid waste retention structure, as provided by the Department of Agriculture. The property boundary line of the land is not used unless it coincides with the closest point of the waste retention structure or dwelling.

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

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,

- (2) slaughterhouses, but not including feedlots at such facilities, and
 - (3) animal aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and
- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

2. Any point source and nonpoint source discharges related to agriculture, as specified in paragraph 1 of subsection D of Section ~~€~~ 1-3-101 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 1 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

SECTION 5. AMENDATORY 2 O.S. 1991, Section 9-210, as amended by Section 1, Chapter 315, O.S.L. 1993 (2 O.S. Supp. 1996, Section 9-210) is amended to read as follows:

Section 9-210. A. Owners and operators who are granted a feed yards license shall: ~~(1) provide~~

1. Provide reasonable methods for the disposal of animal excrement; ~~(2) provide~~

2. Provide chemical and scientific control procedure for prevention and eradication of pests; ~~(3) provide~~

3. Provide adequate drainage from feed yards premises of surface waters falling upon the area occupied by such feed yards, ~~and~~ take such action as may be necessary to avoid pollution of any stream, lake, river or creek; ~~(4) provide~~

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

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

6. Provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks, and feeding devices; ~~(7) conduct~~

7. Conduct feed yards operations in conformity with established practices in the feed yards industry as approved by regulations made and promulgated by the Board and in accordance with the standards set forth in ~~this act~~ the Oklahoma Feed Yards Act; and

8. Use best management practices promulgated by the Board to abate odor from the licensed managed feeding operation if valid written complaints relating to odor from the licensed managed feeding operation are made to the Department.

B. Any animal feeding operation licensed pursuant to the Oklahoma Feed Yards Act, ~~Section 9-201 of this title,~~ operated in compliance with such standards, and in compliance with the regulations made and promulgated by the Board, shall be deemed to be prima facie evidence that a nuisance does not exist; provided, no animal feeding operation shall be located or operated in violation of any zoning regulations.

C. No animal feeding operation licensed pursuant to the Oklahoma Feed Yards Act, ~~Section 9-201 of this title,~~ operated in compliance with such standards, and in compliance with regulations made and promulgated by the Board, that is located on land more than

three (3) miles outside the incorporated limits of any municipality and which is not located within one (1) mile of ten (10) or more occupied residences shall 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 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-208.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

Any confined annual feeding operation (CAFO) or licensed managed funding operation (LMFO) in operation prior to the effective date of this act shall be required to comply with all applicable provisions within one (1) year of the effective date; provided, however, that any CAFO or LMFO in operation prior to the effective date of this act shall be exempt from any construction set-back requirements contained herein.

SECTION 7. The provisions of Section 1 of this act shall not be codified in the Oklahoma Statutes.

SECTION 8. 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.

46-1-7324

KSM