

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1170

By: Muegge of the Senate

and

Leist and Liotta of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to agriculture; creating the Oklahoma Registered Poultry Feeding Operations Act; providing short title; providing definitions; appointing rule advisory committee; requiring submission of rules to the rule advisory committee; providing for membership; setting terms of membership; requiring certain poultry feeding operations to register; providing for exemptions; providing for procedures; setting time frame for registration; requiring promulgation of rules; specifying certain criteria for registration of poultry operation; setting minimum numbers for registration; requiring reregistration for expansion; providing for application for registration; specifying certain contents and information; requiring certain records; requiring written notification for change of integrators; requiring certain management practice plans and animal waste management plans; requiring environmental history; requiring certain records; providing for other information; requiring education and training in waste handling; providing for curricula; requiring certification of education or training; providing for recordkeeping; providing for certain violation and fines; prohibiting certain contracts; creating the Poultry Waste Education Revolving Fund; providing for composition; providing for contracting for educational courses; providing for expenditures; requiring utilization of Best Management Practices; providing certain criteria; requiring promulgation of rules; requiring certain standards for discharges to waters of the state; requiring certain standards for waste handling, treatment, management and removal; requiring animal waste management plans; providing for certain criteria; requiring calculations for land application rates; providing for waste handling procedures; requiring certain nutrient analysis data; requiring certain legal descriptions; providing for procedures; stating poultry waste storage be consistent with rules promulgated; specifying certain applications of poultry waste; providing certain practices; providing for recordkeeping; requiring certain records; providing for nutrient analysis; providing for notification; providing for analysis; requiring promulgation of rules; requiring certain soil analysis; requiring certain operations to perform tests prior to application; providing for retesting; providing for disposal of

carcasses; providing for procedure during certain emergency; providing for registration fee; allowing for suspension, revocation or denial of licenses; providing for reinstatement of licenses; authorizing requirements for a concentrated animal feeding operation license; providing for promulgation of rules; providing for removal of the concentrated animal feeding operation designation; requiring certain inspections; providing for construing section of law; requiring the establishment of certain precautions for prevention of communicable diseases; requiring observation of certain facility standards; setting penalties and fines for certain violations; providing for separate offenses; providing for administrative hearing and due process; providing for notification; setting penalties for persons making false statements; specifying certain information; requiring promulgation of rules; establishing a violation point system; specifying criteria for points; providing for revocation of registration; establishing violations; providing for time period; providing for certain conditions; authorizing Board to employ certain persons; creating the Oklahoma Poultry Waste Transfer Act; providing short title; stating purpose; creating the Poultry Waste Transfer Fund; providing for composition; requiring development of a plan to implement; specifying criteria for reimbursement; requiring report; creating the Oklahoma Poultry Waste Applicators Certification Act; providing short title; specifying penalties; providing for applicator's certificates; requiring applications for poultry waste applicators; providing for certain information; setting certain criteria for issuance of license; providing for renewal; requiring annual report; specifying certain information; providing for application for renewal of certificate; requiring the State Department of Agriculture to provide annual reports to the Oklahoma Conservation Commission; requiring certain information in reports be submitted; requiring soil and poultry waste testing; requiring certain specifications for land application; allowing the State Department of Agriculture to make certain determination on land application; specifying criteria for recordkeeping; providing for audits; providing for promulgation rules; providing for reciprocal agreements; providing for inspections; providing for suspension, cancellation or revocation of certification; requiring notice; specifying criteria for suspension, cancellation or revocation of a certificate; stating policy; providing for educational training programs for poultry feeding operations and land applicators of poultry waste; providing for funding; providing for contract; requiring integrators to provide funding; specifying amounts; providing for change of regulations; requiring reports of educational activities of certain persons; specifying certain information; providing for evaluation; creating Agriculture Regulation Revolving Fund; requiring the Secretary of the Environment to monitor lakes and identify those determined to be eutrophic; prohibiting certain discharges; requiring monitoring; providing for violations; authorizing Attorney General to prosecute certain violations; setting penalties and fines; providing for court orders for suspensions for certain corporations discharging into eutrophic lakes; providing for liability; providing for severability; providing for

codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 12 of this act shall be known and may be cited as the "Oklahoma Registered Poultry Feeding Operations Act".

B. As used in Sections 1 through 23 of this act:

1. "Animal Waste Management Plan" or "AWMP" means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state as required by the State Department of Agriculture pursuant to the provisions of Section 7 of this act;

2. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices which prevent or reduce the pollution of waters of the state as established by the State Department of Agriculture pursuant to Section 7 of this act;

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

4. "Certificate" means a written document issued to an individual by the Board pursuant to Section 17 of this act which indicates that the individual is authorized to land apply poultry waste by the Oklahoma Poultry Waste Applicators Certification Act;

5. "Certified poultry waste applicator" means a person who has been certified by the Board to land apply poultry waste and includes a commercial poultry waste applicator and a private poultry waste applicator;

6. "Commercial poultry waste applicator" means any person who engages in commercial land application of poultry waste. Any farmer while working for a neighbor in agricultural production, and not advertising, nor holding himself or herself out to be in the business of land applying poultry waste, shall not be

classified as a commercial poultry waste applicator, but as a private poultry waste applicator;

7. "Contract growing arrangement" means any growout contract, marketing agreement, or other arrangement under which a contract poultry grower cares for or raises poultry;

8. "Contract poultry grower" means any person engaged in the business of caring for or raising poultry, under a contract growing arrangement;

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

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

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

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

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

14. "Land application" means the spreading on, or incorporation into, the soil mantle primarily for beneficial purposes;

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

16. "Person" means an individual, association, partnership, firm, company, public trust, corporation, joint stock company,

trust estate, any other legal entity, or any agent, employee, representative assignor or successor thereof;

17. "Nutrient-limited watershed" means a watershed of a water body which is designated as "nutrient-limited" in the most recent Oklahoma's Water Quality Standards;

18. "Nutrient-vulnerable groundwater" means groundwater which is designated "nutrient-vulnerable" in the most recent Oklahoma's Water Quality Standards;

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

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

- a. poultry have been, are or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period,
- b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the property or facility, and
- c. producing over ten (10) tons of poultry waste per year;

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

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

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

24. "Private poultry waste applicator" means any person who is not a commercial poultry waste applicator but engages in the land application of poultry waste for purposes including, but not

limited to, producing any agricultural commodity on property owned or rented by the person or such person's employer, or if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

25. "Waste facility" means any structure or combination of structures utilized to control poultry waste until it can be utilized in an authorized manner; and

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

A. The State Board of Agriculture shall appoint a rule advisory committee who, without compensation, shall act as advisors to the Board in the formulation of the rules promulgated pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

1. One member shall represent the integrators;
2. Three members shall represent the contract growers;
3. One member shall represent the field of hydrogeology;
4. One member shall be a soil scientist;
5. One member of a local conservation district;
6. One member employed by the Oklahoma Water Resources Board;
7. One member shall represent the field of water quality science; and

8. Three members shall represent the general public, one of which shall represent the water department of a municipality. Of the initial members, four shall serve for one-year terms; four shall serve for two-year terms; and four shall serve for three-year terms.

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

B. Except for emergency rules, the State Department of Agriculture shall submit proposed rules to the rule advisory committee at the same time as the Department causes notice to be published in "The Oklahoma Register" pursuant to subsection B of Section 303 of Title 75 of the Oklahoma Statutes. Comments of the rule advisory committee shall be submitted to the members of the Board at least fifteen (15) days prior to any official action by the Board on the rules.

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

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

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

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

B. Every poultry feeding operation in operation on the effective date of this act shall register within six (6) months of the effective date of this act.

C. Any poultry feeding operation that has a valid license pursuant to the Oklahoma Concentrated Animal Feeding Operations

Act shall not be required to register pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

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

A. Every poultry feeding operation shall be required to register annually to operate pursuant to the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

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

2. Once the cumulative amount of poultry waste produced by all facilities owned or managed by a person meets or exceeds the amount specified by paragraph 20 of Section 1 of this act, all poultry feeding operations owned by the person shall be required to become registered.

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

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

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

B. The application to register to operate a new or previously unregistered poultry operation or expanding operation shall be under oath and shall contain, as a minimum, the following information:

1. Name and address of the owner and operator of the facility;

2. Name and address of the poultry operation;

3. Number and type of poultry housed or confined;
4. Name and address of the integrator whose poultry will be raised by the poultry feeding operation;
5. A diagram or map and legal description showing geographical location of the facility on which the perimeters of the facility are designated, location of waters of the state, including, but not limited to, drainage from the facility, poultry waste storage facilities and land application sites owned or leased by the applicant or which the applicant has contracted with for the application of poultry waste;
6. A copy of the Animal Waste Management Plan, or proof of application for such plan, Best Management Practices or any other plans authorized by the State Department of Agriculture; and
7. A statement of ownership.
 - a. If the applicant is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation shall be included in the application.
 - b. If the applicant is a partnership or other legal entity, the name and address of each partner and stockholder with an ownership interest of ten percent (10%) or more shall be included in the statement.
 - c. The information contained in the statement of ownership shall be public information and shall be available upon request from the Board;
8. The name and address of the person having day to day control of the operation, if such person is not the applicant and is acting as agent for the applicant;
9. a. An environmental history from the past three (3) years of any poultry feeding operation established and operated by the applicant or any other operation with common ownership in this state or any other state. Such environmental history shall include but not be limited to all citations, administrative orders or penalties, civil injunctions or other

civil actions, criminal actions, past, current and ongoing, taken by any person, agency or court relating to noncompliance with any environmental law, rule, agency order, or court action relating to the operation of a poultry feeding operation.

- b. A copy of all records relating to the environmental history required by this paragraph shall accompany the application.
- c. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this subsection;

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

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

C. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation, or certification in, omits material data from, or tampers with any application for registration shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine of not more than Ten Thousand Dollars (\$10,000.00) for each such violation.

D. The owner of a poultry feeding operation shall be responsible for sending written notification to the State Department of Agriculture upon changing integrators.

E. For a transfer of registration to a new owner, the new owner must register the operation pursuant to the rules of the Department.

F. 1. After the effective date of this act, all operators of poultry feeding operations shall attend educational courses on

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

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

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

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

G. On and after March 1, 1999, no integrator shall enter into any contract with an operator of a poultry feeding operation who is not in compliance with the requirements of subsection E of this section.

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

A. There is hereby created in the State Treasury a revolving fund for the State Department of Agriculture to be designated the "Poultry Waste Education Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies donated to the fund, and any other monies deposited in the fund pursuant to law.

B. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Department of Agriculture to contract with Oklahoma State University to provide the educational courses required by the Oklahoma Poultry Waste Applicators Certification Act.

C. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

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

A. All poultry feeding operations shall utilize Best Management Practices and shall meet the conditions and requirements established by subsection B of this section and by rules promulgated by the State Board of Agriculture pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

B. The criteria for Best Management Practices shall be promulgated by rules by the Board and shall include, but not be limited to, the following:

1. There shall be no discharge of poultry waste to waters of the state;

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

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

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

- a. not create an environmental or a public health hazard,
- b. not result in the contamination of waters of the state, and
- c. conform to such other handling, treatment and management and removal requirements deemed necessary by the State Department of Agriculture to implement the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

The rules promulgated by the Board pursuant to this section shall provide for exceptions to the storage requirements for poultry waste in emergency situations. Such exceptions shall include but not be limited to allowing a contract poultry grower to take such actions as are necessary to meet requirements imposed on a grower by an integrator. In such situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.

C. Every poultry feeding operation shall have an Animal Waste Management Plan which shall include at a minimum:

1. A description of poultry waste handling procedures and availability of equipment and type of equipment to be used;
2. The calculations and assumptions used for determining land application rates;
3. All nutrient analysis data, for soil and poultry waste testing;
4. Legal description of lands to be used by an operation for land application;
5. Land application rates of poultry waste shall be based on the available nitrogen and phosphorous content of the poultry waste and shall provide controls for runoff and erosion as appropriate for site conditions;
6. The procedures documented in the Animal Waste Management Plan must ensure that the handling and utilization of poultry waste complies with the following requirements:

- a. adequate poultry waste storage shall be provided consistent with rules promulgated by the State Department of Agriculture pursuant to subsection B of this section,
- b. poultry waste shall not be applied to land when the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen except in conformance with the Animal Waste Management Plan,
- c. poultry waste shall only be applied to suitable land at appropriate times and rates. Discharge or runoff of waste from the application site is prohibited. Timing and rate of applications shall be based on assimilation capacity of the soil profile, assuming usual nutrient losses, expected precipitation, and soil conditions, and
- d. poultry waste application shall be prohibited on land subject to excessive erosion;

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

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

8. Any analysis required by the provisions of the Oklahoma Registered Poultry Feeding Operations Act or rules promulgated thereto shall be performed by a qualified environmental testing

laboratory certified by the Department of Environmental Quality and approved by the State Department of Agriculture; and

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

D. Every poultry feeding operation located in a non-nutrient-limited watershed and non-nutrient-vulnerable groundwaters shall perform soil testing on each land application and poultry waste testing at least once every three (3) years to determine:

1. Soil pH and plant available nutrients including, at a minimum, nitrogen, phosphorous and potassium;

2. Poultry waste nutrient concentrations and moisture; and

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

E. 1. Every poultry feeding operation located in a nutrient-limited watershed and nutrient-vulnerable groundwater shall perform an annual soil test on each land application area prior to the first application of the calendar year. Poultry waste testing shall be performed annually prior to the first application of the calendar year. Soil and poultry waste testing shall be performed to determine:

a. soil pH and plant available nutrients including at least nitrogen, phosphorous and potassium,

b. poultry waste nutrient concentrations and moisture, and

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

2. Soil and poultry waste analysis data shall be retained by the poultry feeding operation for as long as the site is in operation.

F. 1. Poultry feeding operations shall develop a plan for the disposal of carcasses associated with normal mortality.

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

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

Every application shall be accompanied by an annual registration fee of Ten Dollars (\$10.00), which is nonrefundable. All such fees shall be deposited in the Agriculture Regulation Revolving Fund created in Section 24 of this act to be used for the purpose of implementing the provisions of the Oklahoma Registered Poultry Feeding Operations Act and the Oklahoma Poultry Waste Applicators Certification Act.

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

A. In addition to the authority of the State Board of Agriculture to make designations of a concentrated animal feeding operation pursuant to Section 9-204.1 of Title 2 of the Oklahoma Statutes, the Board shall have the power to designate a poultry feeding operation as a concentrated animal feeding operation as defined by Section 9-202 of Title 2 of the Oklahoma Statutes subject to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act after an administrative determination that an operation has violated or is unwilling to comply with any of the provisions of the Oklahoma Registered Poultry Feeding Operations Act, or any rule promulgated pursuant thereto whether or not the State Department of Agriculture determines the registered poultry feeding operation to be a significant contributor of pollution to waters of this state.

B. In order to protect the public health and safety and the environment of this state, the Board, pursuant to the Oklahoma Req. No. 3162Page 16

Registered Poultry Feeding Operations Act, may require application for a concentrated animal feeding operation license to establish and operate a poultry feeding operation on and after the effective date of this act to any person or other legal entity which:

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

2. Has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of noncompliance with environmental laws and rules resulting in endangerment of human health or the environment.

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

D. The Board shall promulgate rules which will provide a procedure whereby any poultry operation which has been designated a concentrated animal feeding operation pursuant to this section may have such designation removed. The rules shall require satisfactory evidence that such designation is no longer necessary in order to ensure that the operation will comply with all provisions of the Oklahoma Registered Poultry Feeding Operations Act and will not contribute to pollution of the waters of this state.

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

A. 1. a. The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of any poultry feeding operation for the purpose of investigating complaints as to the operation or to determine whether there are any violations of the Oklahoma Registered Poultry Feeding Operations Act.

b. This section shall not be construed to authorize the Board or its agents to violate any provision of the

United States Constitution or the Oklahoma Constitution relating to unlawful search or seizure.

2. a. Registration of a poultry feeding operation pursuant to the Oklahoma Registered Poultry Feeding Operations Act shall be deemed to constitute consent for entry upon the premises of such operation by the Board or its agents for the purpose of implementing the provisions of this subsection.
- b. The State Department of Agriculture shall make at least one inspection per calendar year of every poultry feeding operation registered pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

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

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

C. The Board shall maintain necessary records and undertake such studies, investigations and surveys for the proper administration of the Oklahoma Registered Poultry Feeding Operations Act.

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

A. 1. Any person violating the provisions of the Oklahoma Registered Poultry Feeding Operations Act shall, upon conviction, be guilty of a misdemeanor and may be punished by a fine not to exceed Two Hundred Dollars (\$200.00).

2. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of the Oklahoma Registered Poultry Feeding Operations Act or any rule promulgated thereunder.

B. 1. In addition to the criminal penalties specified by this section, the State Department of Agriculture may:

a. assess an administrative penalty of not more than Two Hundred Dollars (\$200.00) per day of noncompliance, or

b. bring an action for injunctive relief granted by a district court.

2. A district court may grant injunctive relief to prevent a violation of, or to compel compliance with, any of the provisions of the Oklahoma Registered Poultry Feeding Operations Act or any rule promulgated thereunder or order, registrations and certificates issued pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

3. Nothing in this section shall preclude the Department from seeking penalties in district court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum criminal penalties for violations of the Oklahoma Registered Poultry Feeding Operations Act.

4. Any person assessed an administrative penalty may be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.

C. 1. Any action for injunctive relief to redress or restrain a violation by any person of the Oklahoma Registered Poultry Feeding Operations Act, or for any rule promulgated thereunder, or order issued pursuant thereto, or recovery of any administrative penalty assessed pursuant to the Oklahoma Registered Poultry Feeding Operations Act may be brought by:

a. the district attorney of the appropriate district court of the State of Oklahoma,

b. the Attorney General on behalf of the State of Oklahoma, or

c. the Department on behalf of the State of Oklahoma.

2. The court shall have jurisdiction to determine the action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

3. It shall be the duty of the Attorney General and district attorney if requested by the Commissioner of Agriculture to bring such actions.

D. Except as otherwise provided by law, administrative and civil penalties shall be paid into the State Department of Agriculture Regulation Revolving Fund.

E. For the purposes of the Oklahoma Registered Poultry Feeding Operations Act, each day upon which a violation is committed or is permitted to continue shall be deemed a separate offense.

F. Any contract poultry grower determined after notice and opportunity for a hearing by the Department as flagrantly disregarding Best Management Practices shall result in the Department notifying the integrator in writing.

G. The Department shall notify all integrators of any violations assessed against an operator who is under a contract growing arrangement with that integrator and, upon the written request of the integrator, notify that integrator of all violations assessed an operator with whom the integrator contemplates entering into a contract.

H. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification form, notice or report, or who knowingly renders inaccurate any monitoring device or method required to be maintained by any rule promulgated by the Board, shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each such violation.

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

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

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

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

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

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

C. For the performance of its duties and responsibilities, the Board is authorized to employ such personnel and agents as may be required within the funds available.

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

A. Sections 13 through 15 of this act shall be known and may be cited as the "Oklahoma Poultry Waste Transfer Act". The purpose of this act shall be to encourage the transfer of poultry waste out of designated nutrient-limited watersheds and nutrient-vulnerable groundwater as designated in the most recent Oklahoma's Water Quality Standards.

B. The State Department of Agriculture shall develop a plan to encourage the transfer of poultry waste out of designated nutrient-limited watersheds and nutrient-vulnerable groundwater as designated by the most recent Oklahoma's Water Quality Standards.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.14 of Title 2,

unless there is created a duplication in numbering, reads as follows:

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

1. All monies received by the Department for implementing the purpose of the provisions of the Oklahoma Poultry Waste Transfer Act;

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

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

B. The monies deposited in the Poultry Waste Transfer Fund shall at no time become monies of the state and shall not become part of the general budget of the Department or any other state agency. Except as provided for in this section, no monies from the Poultry Waste Transfer Fund shall be transferred for any purpose to any other state agency or any account of the Department or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

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

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

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.16 of Title 2, Req. No. 3162Page 23

unless there is created a duplication in numbering, reads as follows:

Sections 16 through 21 of this act shall be known and may cited as the "Oklahoma Poultry Waste Applicators Certification Act".

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

A. It shall be unlawful and a misdemeanor punishable by a fine of not more than Five Thousand Dollars (\$5,000.00) for any person to act, operate, or do business or advertise as a commercial poultry waste applicator or to land apply poultry waste as a private poultry waste applicator unless such person has obtained a valid applicator's certificate issued by the State Board of Agriculture.

B. Applicator's certificates shall be issued by the Board, to applicants who qualify under the provisions of the Oklahoma Poultry Waste Applicators Certification Act.

C. Certificates shall be issued only upon application therefor to the Board on a form of application prescribed by the Board. The application shall contain information regarding the applicant's qualifications and proposed operations and such other information as may be specified by the Board.

D. A certificate shall be issued only after satisfactory completion of such certification standards as determined by the Board.

E. 1. All commercial applicator certificates shall expire on the thirty-first day of December following their issuance or renewal, and may be renewed for the ensuing calendar year, without penalty, if a properly completed application is filed with the Board not later than the first day of January of each year. A registration fee of Fifteen Dollars (\$15.00) shall accompany every initial application for certification. A renewal fee of Fifteen Dollars (\$15.00) shall accompany every renewal application.

2. All private applicator certificates shall be in effect for five (5) years and may be renewed by application. A registration fee of Fifteen Dollars (\$15.00) shall accompany every initial application for certification. A renewal fee of Fifteen Dollars (\$15.00) shall accompany every renewal application.

3. All such fees shall be deposited in the Agriculture Regulation Revolving Fund to be used for the purpose of implementing the provisions of the Oklahoma Registered Poultry Feeding Operations Act and the Oklahoma Poultry Waste Applicators Certification Act.

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

A. Every certified poultry waste applicator shall file by December 31 of each year an annual report with the State Department of Agriculture regarding all poultry waste land-applied by such applicator for the period from July 1 of the previous year through June 30 of that year. Such report shall contain the following information:

1. The legal description and conservation district where the poultry waste was produced;
2. The legal description and conservation district where the poultry waste was land applied;
3. Date of each application;
4. Total and per acre amount of each application;
5. Name and address of the person for whom poultry waste was applied;
6. The most recent soil test results obtained; and
7. Such other information as may be required by the State Board of Agriculture.

B. The Department shall promulgate and make available forms to be used in making such report.

C. Applicators who seek to obtain a renewal certificate shall submit the report with their application for renewal. No renewal certificate may be issued without submission of this report.

D. The State Department of Agriculture shall provide such reports to the Oklahoma Conservation Commission. The Commission shall publish an annual report containing the following information:

1. The total amount of poultry waste produced in each conservation district; and

2. The total amount of poultry waste land applied by a certified applicator when land applied in each conservation district.

E. The Commission shall submit copies of the report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives by March 1 of each year. Copies of such reports shall be made available to all federal, state and local cooperating agencies and to the general public.

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

A. 1. Prior to any land application of poultry waste by a certified poultry waste applicator, the applicator shall obtain the most recent soil and poultry waste tests as required by Section 7 of this act.

2. Land application of poultry waste in a non-nutrient-limited watershed and non-nutrient-vulnerable groundwaters shall not be made at any rate which exceeds the most recently published United States Department of Agriculture Natural Resources Conservation Service Waste Utilization Standards.

3. The State Department of Agriculture may promulgate rules pursuant to the Administrative Procedures Act which will prohibit the land application of poultry waste in nutrient-limited watersheds and nutrient-vulnerable groundwaters based upon lower soil phosphorous levels than are allowed in this section for non-nutrient-limited watersheds and non-nutrient-vulnerable groundwaters.

B. 1. Every commercial and private poultry waste applicator shall keep an accurate record pertaining to land application of poultry waste, which, as a minimum, shall show:

- a. the time and place of each application of poultry waste,
- b. name and address of poultry waste applicator,
- c. name and address of person for whom used,
- d. legal description of land where used,
- e. date applied,
- f. soil test, and
- g. such other information as may be required by the State Board of Agriculture.

2. Such records shall be kept intact at the principal business location in this state of the poultry waste applicator for at least five (5) years and copies shall be furnished to any authorized agent of the Board, upon request, within a reasonable time.

C. Every person who authorizes or allows poultry waste to be land applied to property owned by or rented to such person shall keep all the records required of poultry waste applicators by subsection B of this section. Such records shall be kept for at least five (5) years.

D. It shall be the duty of the Board to audit the maintenance of such records as it deems necessary to carry out the provisions of the Oklahoma Poultry Waste Applicators Certification Act.

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

A. The State Department of Agriculture shall administer and enforce the provisions of the Oklahoma Poultry Waste Applicators Certification Act and shall promulgate rules and standards for the application of poultry waste, work performance, the certification of applicators of poultry waste, recertification of applicators, procedures and best management practices.

B. The State Board of Agriculture shall have the authority to negotiate reciprocal agreements with the federal government or any state, or any department or agency of either for the purpose of fulfilling the intent of the Oklahoma Poultry Waste Applicators Certification Act.

C. The Department may take samples of poultry waste and soil at application sites in order to determine their concentration. The work of each applicator may be inspected at the application site of each applicator to determine whether or not the work is performed according to the provisions of the Oklahoma Poultry Waste Applicators Certification Act.

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

A. Any certificate issued pursuant to the Oklahoma Poultry Waste Applicators Certification Act may be suspended, canceled, denied, or revoked by the State Department of Agriculture after notice and an opportunity to be heard has been given to the holder of the certificate.

B. Suspension, cancellation, denial or revocation of a certificate may be made if the Department finds the holder of the certificate:

1. Has used methods of poultry waste not suitable or safe for the land application site for which they shall have been employed;

2. Has failed or refused to furnish the Department, upon request, true information regarding methods and safety measures used, work performed, or other information deemed essential by the Department, or has made any false statement or representation in such person's application for issuance or renewal of a certificate;

3. Has violated any state law, rule, or standard prescribed or order issued by the State Board of Agriculture;

4. Has failed or refused to maintain records as specified in the Oklahoma Poultry Waste Applicators Certification Act;

5. Has failed to perform work according to minimum standards authorized by the Oklahoma Poultry Waste Applicators Certification Act;

6. Has acted, operated, done business, or advertised as a commercial applicator without having obtained a valid certificate issued by the Department;

7. Has acted or operated as a private applicator without having obtained a valid private poultry waste applicator certificate issued by the Department; or

8. Has been convicted in any court of a violation of the Oklahoma Poultry Waste Applicators Certification Act.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.22 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. The Oklahoma Legislature hereby establishes that it is the public policy to maintain and protect the high quality of the surface and groundwater of this state for present and future uses.

2. Because of the potential threat of water contamination it is imperative for the protection of the public health and safety of the citizens of this state, that educational training programs on poultry waste management consistent with this act be made available and provided to operators of poultry feeding operations and land applicators of poultry waste. To ensure that the educational programs are fully and adequately funded, integrators doing business in this state shall contract with the Oklahoma State University through the Oklahoma Cooperative Extension Service to provide educational training courses and certification of operators of poultry feeding operations and land applicators of poultry waste. The contract shall require that integrators shall provide One Hundred Fifty Thousand Dollars (\$150,000.00) during fiscal year ending June 30, 1999 and funds up to, but not exceeding Fifty Thousand Dollars (\$50,000.00) for each of the three subsequent fiscal years. In the event of federal mandates, regulations or requirements concerning poultry feeding operations

which duplicate any or all state regulations the federal mandates, regulations or requirements would supersede such regulations.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.23 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Cooperative Extension Service shall provide to the Secretary of the Environment no later than January 31, 1999, and January 31 of each following year, a written report of their educational activities involving poultry operators and waste applicators pursuant to this act. This report shall include, but not be limited to:

1. The number of operators and applicators enrolled in courses required in the first year listed by conservation district;

2. The number of operators successfully completing such courses listed by conservation district;

3. The number of operators and applicators enrolled in courses required in subsequent years listed by conservation district; and

4. The number of operators successfully completing such courses listed by conservation district.

The Secretary of the Environment shall use the data provided in this report along with water quality monitoring and other environmental data to evaluate the effectiveness of the curriculum offered. The Secretary shall work in conjunction with the Oklahoma Cooperative Extension Service to correct any course deficiencies identified in the evaluation.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.24 of Title 2, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the State Department of Agriculture to be designated the "Agriculture Regulation Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall

consist of fees and fines assessed on concentrated animal feeding operations, registered poultry feeding operations, and any other monies deposited in this fund pursuant to law. 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 the regulation, enforcement, and administration of the State Department of Agriculture Water Quality Division. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2-102 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Office of the Secretary of the Environment shall coordinate monitoring lakes in the State of Oklahoma and identify those lakes which it determines to be eutrophic as defined by Oklahoma's Water Quality Standards.

B. No person may discharge wastewaters from a point source within or outside of this state which will foreseeably enter a lake in this state which has been identified as eutrophic by the Oklahoma's Water Quality Standards without subjecting such wastewaters to the best available technology as identified in the federal Clean Water Act for nitrogen and phosphorous. The Office of the Secretary of the Environment shall coordinate the monitoring of all lakes it identifies as eutrophic and notify by certified mail any person who discharges wastewater which enters such lakes in violation of this section of the provisions of this section and shall order such person to immediately cease and desist from any further violation of this section.

C. Any person who violates the provisions of subsection B of this section shall be guilty of a misdemeanor punishable by a penalty of not more than One Hundred Dollars (\$100.00) per day for each day on which a violation occurs. The Attorney General is authorized to prosecute violations of this section. Venue and jurisdiction shall be proper in a county which contains all or

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part of a eutrophic lake which is the subject of a discharge in violation of this section.

D. 1. In addition to the penalty provided in subsection C of this section if a person continues to violate subsection B of this section after having received notification from the Secretary of the Environment to cease and desist, such person shall be guilty of a misdemeanor punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) per day.

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

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.25 of Title 2, unless there is created a duplication in numbering, reads as follows:

The provisions of this act are severable and if any part or provision shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 27. This act shall become effective July 1, 1998.

SECTION 28. 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.

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