

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 1149

By: Price

COMMITTEE SUBSTITUTE

[ Water quality - licenses for concentrated animal feeding operations; prohibiting issuance of license for expansion of operation unless certain conditions are met -

emergency ]

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

SECTION 1. AMENDATORY 82 O.S. 1991, Section 1085.30, as renumbered by Section 361, Chapter 145, O.S.L. 1993 and as last amended by Section 1, Chapter 209, O.S.L. 1994 (82 O.S. Supp. 1997, Section 1085.30), is amended to read as follows:

Section 1085.30 A. In order to effectuate a comprehensive program to assist in the prevention, control and abatement of pollution and denigration of the waters of this state, and in order to establish state standards which comply with the Federal Water Pollution Control Act as amended, the Oklahoma Water Resources Board is authorized to adopt, amend and otherwise promulgate rules to be known as "Oklahoma Water Quality Standards" which establish classifications of uses of waters of the state, criteria to maintain and protect such classifications, and other standards or policies pertaining to the quality of such waters. Such Oklahoma Water

Quality Standards shall, at a minimum, be designed to maintain and protect the quality of the waters of the state from all point source and nonpoint source discharges. Wherever the Board finds it is practical and in the public interest to do so, such rules may be amended to upgrade and improve progressively the quality of waters of the state. The Board may ~~also amend Oklahoma Water Quality Standards to downgrade a designated use of any waters of this state which is not an existing use,~~ may establish subcategories of a use of any waters of this state or may provide for less stringent criteria or other provisions thereof only in those limited circumstances permissible under the Federal Water Pollution Control Act as amended or federal rules which implement said act.

The Board may amend the Oklahoma Water Quality Standards to ~~downgrade a designated use,~~ establish subcategories of a use or may provide for less stringent criteria or other provisions thereof only to the extent as will maintain or improve the existing uses and the water quality of the water affected; provided, however, the Board shall not modify the Oklahoma Water Quality Standards applicable to scenic river areas as such areas are described by Section 1452 of this title, to downgrade a designated use, establish a subcategory of a use or provide for less stringent criteria or other provisions thereof.

B. Prior to adopting such standards or any amendment thereof, the Board shall conduct public hearings thereon. Notice of such hearing shall be published in accordance with the Administrative Procedures Act and shall be mailed at least ~~twenty (20)~~ thirty (30) days before such public hearing to the chief executive of each municipality and county in the area affected and shall be mailed to all affected holders of permits obtained under Section 926.4 of this title and such other persons that have requested notice of hearings on such standard modifications.

C. If adoption or amendment of a classification to a lower or downgraded classification is proposed because treatment controls required of the current or a higher or upgraded classification would result in substantial and widespread social and economic impact, the Board shall, in addition to any hearing required by subsection B of this section, conduct a public meeting within a central location within the area to be affected. The Board shall cause notice of such additional public meeting to be published for at least ~~two (2)~~ four (4) consecutive weeks in a newspaper of general circulation published in the county or counties in the area affected.

D. The Oklahoma Water Quality Standards, implementation documents or any modification or change thereof shall be adopted by the Board in compliance with the Administrative Procedures Act and shall be enforced by all state environmental agencies within the scope of their jurisdiction.

In promulgating Oklahoma Water Quality Standards or making any modification or change thereof, the Board shall announce a reasonable time for persons discharging waste into the waters of the state to comply with such new or modified standards unless such discharges create an actual or potential hazard to public health.

Any discharge in accord with such standards of the Board and in compliance with rules, requirements and wasteload allocations established by the Department of Environmental Quality and with rules promulgated by other state environmental agencies shall not be deemed to be pollution.

SECTION 2. 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 Department that the operation is a concentrated animal feeding operation. Should the Department determine that the operation is a concentrated animal feeding operation, the Department shall notify the operation of such determination and of an opportunity for the owner or operator of the facility to request an administrative hearing on the issue.

3. Process wastewater in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or

catastrophic, cause an overflow of process wastewater from a retention structure properly designed, constructed and operated to contain all process wastewaters plus the runoff from a twenty-five-year, twenty-four-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from a waste facility constructed and properly maintained to contain the twenty-five-year, twenty-four-hour storm event; provided the proper design, construction and operation of the retention structure shall include but not be limited to one (1) foot of free board.

E. After September 1, 1997, no new concentrated animal feeding operation or expansion of a concentrated animal feeding operation requiring a license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall be constructed or placed in operation unless final design plans, specifications and a Pollution Prevention Plan developed pursuant to Section § 9-205.2 of this ~~act~~ title have been approved by the Department.

F. After the effective date of this act, no license for the expansion of an existing concentrated animal feeding operation shall be granted to any corporation which does not meet the conditions set forth in paragraphs 1, 2, 4, 5, 6 or 7 of Section 954 of Title 18 of the Oklahoma Statutes except for domestic corporations which meet the requirements set forth in Section 951 of Title 18 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 18 O.S. 1991, Section 954, as amended by Section 2, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1997, Section 954), is amended to read as follows:

Section 954. The provisions of ~~this act~~, Section 951 et seq. of this title, shall not apply where a corporation, either domestic or foreign:

1. Engages in research and/or feeding arrangements or operations concerned with the feeding of livestock or poultry, but

only to the extent of such research and/or feeding arrangements or such livestock or poultry operations; or

2. Engages in operations concerned with the production and raising of livestock or poultry for sale or use as breeding stock and including only directly related operations, such as breeding or feeding livestock or poultry which are not selected or sold as breeding stock; or

3. ~~Engages~~ Prior to the effective date of this act engages in poultry and/or swine operations, including only directly related operations, such as operating hatcheries, facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation; or

4. On or after the effective date of this act engages in poultry and/or swine operations, including only directly related operations, such as operating hatcheries, facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation; and

a. (i) more than seventy-five percent (75%) of the poultry or swine owned by such corporation is either purchased from an entity other than a corporation or purchased from a corporation which meets the criteria set out in subsection A of Section 951 of this title,

(ii) more than seventy-five percent (75%) of the swine or poultry owned by the corporation are the subjects of production contracts with entities other than corporations or with corporations which meet the criteria set out in subsection A of Section 951 of this title, or

(iii) sells more than seventy-five percent (75%) of the swine or poultry produced for use as breeding stock, and

b. the corporation offers a basic health benefits plan to the individuals it employs which consists of the following elements or elements substantially equivalent thereto:

(i) not less than fifty percent (50%) of the premium is paid by the corporation,

(ii) coverage for basic hospital care,

(iii) coverage for physician care,

(iv) coverage for mental health care,

(v) coverage for substance abuse treatment,

(vi) coverage for prescription drugs, and

(vii) coverage for prenatal care; or

5. Engages in forestry as defined by Section 1-4 of Title 2 of the Oklahoma Statutes; or

~~5.~~ 6. Whose corporate purpose is charitable or eleemosynary; or

~~6.~~ 7. Presently engages in fluid milk processing within the State of Oklahoma or leases to a fluid milk processor so engaged; provided, this exception is limited to such dairy operations as are necessary to meet such processor's needs.

SECTION 4. 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.

46-2-2772

MJM

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