ENGROSSED HOUSE
BILL NO. 1522 By: Begley

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-202 and 9-205, which relate to the Oklahoma Feed Yards Act; adding to definition of concentrated animal feeding operations; providing for certain new operations; requiring certain feeding operations to obtain a license; providing exemptions; providing for applications; specifying certain contents and information; requiring certain background histories; requiring certain records; authorizing denying licensure to certain persons; providing for denial specifications and conditions; authorizing conditional permitting program by the Oklahoma State Board of Agriculture for certain facilities; providing for specific requirements and conditions for licensure; providing for construction of certain orders or judgments; providing for promulgation of rules; providing exception; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-202, 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) 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" 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~~.~~, or

d. any animal feeding operation meeting the number and categories of animals specified by subparagraph b of this paragraph established and operated on and after the effective date of this act. 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. The provisions of this subparagraph shall not apply to:

(1) any animal feeding operations as defined in paragraph 1 of this subsection established and operated prior to the effective date of this act. Such facilities shall not be required to obtain a permit except as otherwise specified by the Oklahoma Feed Yards Act for such operations, or

(2) any person, partnership or other legal entity which prior to the effective date of this act had established one or more concentrated animal feeding operations with respect to which it holds a permit pursuant to the Oklahoma Feed Yards Act, or has such permit pending. Such person, partnership or other legal entity shall not be required to obtain a permit except as otherwise specified by the Oklahoma Feed Yards Act for the operations, or

(3) any animal feeding operation seeking to expand operations pursuant to the Oklahoma Feed Yards Act or seeking renewal of a permit issued prior

to the effective date of this act and pursuant to the Oklahoma Feed Yards Act;

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

4. "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)~~ a. 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)~~ (1) size of the animal feeding operation and the amount of wastes reaching waters of the United States~~;~~,

~~(b)~~ (2) the location of the animal feeding operation relative to waters of the United States~~;~~,

~~(c)~~ (3) the means of conveyance of animal wastes and process wastewater into waters of the United States~~;~~,

~~(d)~~ (4) 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~~;~~, and

~~(c)~~ (5) other such factors relative to the significance of the pollution problem sought to be regulated~~.~~,

~~(2)~~ b. no animal feeding operation with less than the number of animals set forth in ~~paragraph 2,~~ subparagraphs ~~(a)~~ a and ~~(b)~~ b of paragraph 2 of this subsection designated as a concentrated animal feeding operation unless:

~~(a)~~ (1) pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device~~;~~, or

~~(b)~~ (2) 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)~~ c. in no case shall a permit application be required from a concentrated animal feeding operation designated under this ~~division~~ subparagraph 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)~~ (1) subject to the provisions of ~~division (3) of paragraph (2) of subparagraph (b)~~ division (2) of this ~~subsection~~ subparagraph, 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~~.~~, and

~~(b)~~ (2) 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~~.~~; and

~~(4)~~ 5. "Board" means the Oklahoma State Board of Agriculture.

SECTION 2. AMENDATORY 2 O.S. 1991, Section 9-205, is amended to read as follows:

Section 9-205. A. The Oklahoma State Board of Agriculture shall cause to be prepared and available, for persons desiring to apply for feed yards license, necessary forms and applications. Such forms shall provide for the disclosure of necessary information to determine the capability of the person applying for a license to comply with rules ~~and regulations~~ of the Board and the standards for operation set forth.

B. Any person, partnership or other legal entity, subject to subparagraph d of paragraph 2 of subsection B of Section 9-202 of this title, intending to establish and operate a concentrated animal feeding operation on or after the effective date of this act shall apply to the Oklahoma State Board of Agriculture for a license to establish and operate such operation pursuant to the provisions of this section and the Oklahoma Feed Yards Act. The application shall be under oath and shall contain the following information:

1. The name and address of the applicant for the concentrated animal feeding operation. If the applicant is a firm or partnership, the name and address of each member thereof shall be

included in the application. 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. The application for a license shall be accompanied by a statement which shall include the following:

a. the name, address, telephone number, occupation or business activity, business address, and business telephone number of the applicant. 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, and

b. a statement by the applicant that the applicant will notify the Board if there is any change in the information required to be included in the statement of ownership within sixty (60) days of such change. The information contained in the statement of ownership shall be public information and shall be available upon request from the Board;

2. The name and address of the management if the management is not the applicant and is acting as agent for the applicant;

3. The name and location of the concentrated animal feeding operation for which a license is sought;

4. An environmental history from the past three (3) years of any concentrated animal feeding operation, established and operated by the applicant in this state or any other state. Such environmental history shall include but not be limited to:

a. citations, complaints, administrative orders, administrative penalties and civil actions in which the applicant was held liable or was enjoined by final action, and any convictions for criminal violations relating to the operation of an animal feeding

operation, a feed yard or a concentrated animal feeding operation, and

b. any administrative action, civil injunctions or other civil actions or criminal actions or other current and ongoing actions taken by any person, agency or court relating to noncompliance, or noncompliance with any environmental law, rule or regulation, agency order, or court action relating to an animal feeding operation, concentrated animal feeding operation or feed yard.

A copy of all records relating to the environmental history required by this paragraph shall accompany the application;

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

6. Any other information or records required by the Board.

C. 1. In order to protect the public health and safety and the environment of this state, the Board, pursuant to the Oklahoma Feed Yards Act, may deny issuance of a license to establish and operate a concentrated animal feeding operation on and after the effective date of this act to any person or other legal entity which:

a. is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any state or federal agency relating to animal feeding operations, concentrated animal feeding operations or feed yards, or

b. 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.

2. The Board is authorized to develop and implement a conditional permitting program for those applicants described by paragraph 1 of this subsection proposing to establish and operate concentrated animal feeding operations on and after the effective date of this act. The Board shall set specific requirements and conditions for such licenses which will ensure the protection of the public health and the environment and full compliance with the Oklahoma Feed Yards Act.

3. 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.

D. The Board shall promulgate rules pursuant to the Administrative Procedures Act as may be necessary and appropriate to implement the provisions of this section.

SECTION 3. 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.

Passed the House of Representatives the 3rd day of March, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate