ENGROSSED HOUSE
BILL NO. 2293

By: Leist of the House

and

Muegge of the Senate

(concentrated animal feeding operations - amending 2 O.S., Section 9-212 - amending 18 O.S., Sections 952 and 954 - Oklahoma Farming or Ranching Business Corporations Act - codification - effective date)

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-212, as last amended by Section 20, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-212), is amended to read as follows:

Section 9-212. A. Any person violating the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or any rule of the Board promulgated pursuant thereto shall, upon conviction, be deemed guilty of a misdemeanor and upon conviction thereof may be punished by a fine not exceeding Two Hundred Dollars ($200.00).

B. Any owner or operator who fails to take such action as may be reasonable and necessary to avoid pollution of any stream, lake, river or creek, except as otherwise provided by law, or who violates any rule of the Board adopted to prevent water pollution from animal feeding operations pursuant to this act shall, upon conviction, be deemed guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of Five Hundred Dollars ($500.00) to Ten Thousand

Dollars ($10,000.00) for each violation, by imprisonment in the county jail for not more than six (6) months for each violation, or by the assessment of ~~an administrative~~ a civil penalty up to Ten Thousand Dollars ($10,000.00) for each violation or by any of such fine, imprisonment, and ~~administrative~~ civil penalty.

C. 1. In addition to the criminal and civil penalties specified by this section, the Department of Agriculture may:

a. assess an administrative penalty of not more than Ten Thousand Dollars ($10,000.00) per day of noncompliance, or

b. bringan 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 a compliance with, any of the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or any rule promulgated thereunder or order, license or permit issued pursuant to the Oklahoma Concentrated Animal 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 civil or criminal penalties for violations of the Oklahoma Concentrated Animal Feeding Operations Act.

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

E. 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 Concentrated Animal Feeding Operations Act or any rule promulgated thereunder, or order, license or permit issued pursuant thereto.

F. 1. Any action for injunctive relief to redress or restrain a violation by any person of the Oklahoma Concentrated Animal Feeding Operations Act or for any rule promulgated thereunder, or order, license, or permit issued pursuant thereto or recovery of any administrative or civil penalty assessed pursuant to the Oklahoma Concentrated Animal 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 said 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.

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

H. In determining the amount of a civil penalty or administrative penalty, the court or the Department, as the case may be, shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the

defendant, the defendant's degree of culpability, and such other matters as justice may require.

I. For the purposes of this section, each day upon which a violation is committed or is permitted to continue shall be deemed a separate offense.

~~D.~~ J. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification in any water pollution form, notice or report, or who knowingly renders inaccurate any monitoring device or method required to be maintained by any water pollution ~~regulations adopted~~ rules 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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 950 of Title 18, unless there is created a duplication in numbering, reads as follows:

The provisions of Chapter 21 of Title 18 of the Oklahoma Statutes shall be known and may be cited as the "Oklahoma Farming or Ranching Business Corporations Act".

SECTION 3. AMENDATORY 18 O.S. 1991, Section 952, is amended to read as follows:

Section 952. A. 1. Any license issued after June 1, 1971, under the Oklahoma Business Corporation Act to a foreign corporation for the purpose of engaging in farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching shall be revoked within five (5) years of the effective date of this act.

~~B.~~ 2. The corporate franchise of any existing domestic corporation formed under the Oklahoma Business Corporation Act after June 1, 1971, for the purpose of engaging in farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching shall be vacated within five

(5) years of the effective date of this act unless its articles of incorporation comply with Section 951 of this title.

3. This section shall not require any foreign or domestic corporation to dispose of any property acquired on or before June 1, 1971.

B. 1. On and after November 1, 1998, no new certificate shall be issued pursuant to the Oklahoma Farming or Ranching Business Corporations Act to a domestic or foreign corporation for the purpose of engaging in the business of corporate poultry confinement and/or corporate swine production or for the purpose of owning or leasing any interest in land to be used in the business of corporate poultry confinement and/or corporate swine production.

2. On and after November 1, 1998, no domestic or foreign corporation operating or engaging in the business of corporate poultry confinement and/or corporate swine production on November 1, 1998, shall be authorized to purchase or lease any additional interest in realty to be used in the business of corporate poultry confinement and/or corporate swine production.

3. Production contracts entered into by a corporation, trust, limited liability company, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.

4. The provisions of this section shall not require any foreign or domestic corporation to dispose of any interest in realty or property acquired on or before November 1, 1998.

C. The corporate franchise of any domestic corporation governed by the Oklahoma General Corporation Act formed for the purpose of farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching and permitted to engage in such activity under this act shall be

vacated promptly in the manner prescribed by Section ~~104~~ 1104 of this ~~act~~ title, if the corporation has persistently violated the provisions of subsection A of Section 951 of this title.

D. The State Board of Agriculture shall initiate and prosecute civil or criminal actions and proceedings when deemed necessary to enforce or carry out any of the provisions of this code.

E. ~~This act shall not require any foreign or domestic corporation to dispose of any property acquired on or before June 1, 1971.~~

~~F.~~ Any farming or ranching corporation which violates the provisions of Section 951 of this title shall be fined an amount not to exceed Five Hundred Dollars ($500.00). Any other person, corporation or entity who knowingly violates such section shall be deemed guilty of a misdemeanor.

SECTION 4. 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. A. The provisions of ~~this act, Section 951 et seq. of this title,~~ the Oklahoma Farming or Ranching Business Corporations Act shall not apply ~~where~~ if 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 November 1, 1998, 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, provided such operations do not expand operations or increase the number of swine or poultry beyond the number of swine or poultry on the property on November 1, 1998; ~~or~~

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

5. ~~Whose~~ Has a corporate purpose which is charitable or eleemosynary; or

6. 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.

B. 1. Any corporation, either domestic or foreign, meeting the conditions and qualifications of paragraph 3 of subsection A of this section shall submit, by November 1, 1998, and July 15 of each year thereafter, a report containing a monthly accounting of the number of animal units, by species and weight, located on any land or at any facility owned or operated by the corporation on such date and such other information required by the State Board of Agriculture;

2. The report shall be signed by the board of directors of the corporation under penalty of perjury;

3. The report shall be filed with the Office of the Secretary of State and the Department of Agriculture, and shall be available to the public at such offices;

4. On and after November 15, 1998, no corporation, domestic or foreign, engaging in swine feeding operations shall increase the number of swine regardless of weight beyond that number specified in the report filed by November 15, 1998. Any increase in the number of swine beyond the specified or failure to file the required

reports shall be grounds for termination or suspension of any certificate authorizing such corporation to do business in this state.

C. For the purposes of the Oklahoma Farming or Ranching Business Corporations Act:

1. "Corporate poultry confinement" means the land, structures, facilities and related equipment used for housing, breeding, laying of eggs, hatching of poultry, feeding or processing of poultry in a restricted environment and the providing of supervisory, technical and other assistance to any persons performing such services on behalf of the corporation. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production or other authorized uses and for isolation of the facility to reasonably protect the confined poultry from exposure to disease;

2. "Poultry" means chickens, turkeys, ducks, geese or other fowl; and

3. "Corporate swine production" means the land, structures, facilities and related equipment used for housing, breeding, farrowing, feeding and processing of swine and the providing of supervisory, technical and other assistance to any persons performing such services on behalf of the corporation. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production or other authorized uses and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-204.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. On and after November 1, 1998, the Department of Agriculture shall not issue any license, permit, certificate or other authorization to any corporate poultry confinement operation or to any corporate swine production operation or for expansions to any existing corporate poultry confinement operation or to any existing corporate swine production operation unless such operation is operating in accordance with applicable state laws prior to November 1, 1998.

B. The provisions of subsection A of this section shall not apply to any renewal license, permit, certificate or other authorization.

C. For the purposes of the Oklahoma Concentrated Animal Feeding Operations Act:

1. "Corporate poultry confinement" means the land, structures, facilities and related equipment used for housing, breeding, laying of eggs, hatching of poultry, feeding or processing of poultry in a restricted environment and the providing of supervisory, technical and other assistance to any persons performing such services on behalf of the corporation. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production or other authorized uses and for isolation of the facility to reasonably protect the confined poultry from exposure to disease; and

2. "Corporate swine production" means the land, structures, facilities and related equipment used for housing, breeding, farrowing, feeding and processing of swine and the providing of supervisory, technical and other assistance to any persons performing such services on behalf of the corporation. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production or other

authorized uses and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-101 of Title 2, unless there is created a duplication in numbering, reads as follows:

Sections 6 through 11 of this act shall be known and may be cited as the "Oklahoma Poultry Waste Applicators Licensing Act".

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-102 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Poultry Waste Applicators Licensing Act:

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

2. "Certificate" means a written document issued to an individual by the certifying authority pursuant to Section 8 of this act which indicates that the individual has met the certification standards established by the Oklahoma Poultry Waste Applicators Licensing Act. A certificate does not allow a person to do work as a commercial, or private poultry waste applicator unless such person has a valid license issued by the Board;

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

4. "Certification standards" means the standards established by the Board with respect to poultry waste that a person must meet to assure competency as a certified poultry waste applicator pursuant to Section 8 of this act;

5. "Commercial poultry waste and application" means the advertising of services, the preparation for application and physical act of application of poultry waste;

6. "Commercial poultry waste applicator" means any person who engages in commercial land application of poultry waste from poultry

feeding operations. Any farmer while working for a neighbor in agricultural production on neighboring land, and not advertising, nor holding himself 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. "Department" means the Department of Agriculture;

8. "Dry litter poultry waste management system" means a combination of structures and nonstructural practices serving a poultry feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of dry litter poultry waste. A dry litter poultry waste management system may also include liquid poultry waste;

9. "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, hatcheries, processing sites, marketing lots, pens and poultry and dry litter waste management systems;

10. "Land application" means the removal of poultry waste from a waste facility and distribution to, or incorporation into, the soil mantle primarily for beneficial reuse purposes;

11. "License" means a written document issued to a person by the Board which shows that the person has met all of the licensing requirements established by the Oklahoma Poultry Waste Applicators Licensing Act and is authorized to apply poultry waste as a commercial or private poultry waste applicator;

12. "Person" means any individual, partnership, firm, corporation, company, association, organized group of persons whether incorporated or not, or other legal entity;

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

14. "Poultry feeding operation" means a lot 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 thirty (30) days or more in any twelve-month period,

b. crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility,

c. poultry are primarily housed in a roof-covered structure, and

d. producing over thirty (30) tons of poultry waste per year;

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

16. "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 employer of the applicator, or if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

17. "Waste facility" means any structure or combination of structures utilized to control poultry waste until it can be applied to land or disposed of in an authorized manner. Such structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing poultry, compositors, waste storage sites, or retention structures or appurtenances or additions thereto; and

18. "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.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-103 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful and a misdemeanor 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 license issued by the Board.

B. A license may be issued by the Board, provided the applicant qualifies under the provisions of the Oklahoma Poultry Waste Applicators Licensing Act.

C. Licenses 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 license shall be issued only after satisfactory completion of the certification standards by the particular person who will be the certified applicator under the license. A failure to show proper qualification under the rules prescribed by the Board, or violations of any of the provisions of the Oklahoma Poultry Waste Applicators Licensing Act, shall make it the duty of the Board to deny the issuance or renewal of a license.

E. 1. All licenses, except those of private applicators, 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.

2. All private applicator licenses are in effect for five (5) years and may be renewed by application after completion of a continuing education program approved by the Board.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-104 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 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 the time and place of each application of poultry waste, name and address of applicator, name and address of person for whom used, legal description of land where used, date used, soil test, and such other information as may be required by the Board.

B. Such records shall be kept intact at the principal business location in this state of the applicator for at least two (2) years after their date of expiration and copies shall be furnished to any authorized agent of the Board, upon request, at any time during the regular business hours of the applicator.

C. 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 Licensing Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-105 of Title 2, unless there is created a duplication in numbering, reads as follows:

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

B. The Board 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 Licensing Act.

C. The Board may take samples of poultry waste and soil at application sites in order to determine their concentration. If the Board finds that any sample is not within established standards, such finding shall be considered as prima facie evidence that a violation has occurred.

D. The Board may inspect any work of each applicator to determine whether or not the work is performed according to the provisions of the Oklahoma Poultry Waste Applicators Licensing Act.

E. 1. After November 1, 1998, an applicant for a license for land application of poultry waste, or renewal thereof, shall attend educational courses on poultry waste management and odor control as specified by rules promulgated by the State Board of Agriculture.

2. Appropriate curricula and course content shall be developed by or under the supervision of Oklahoma State University (OSU) through the Oklahoma Cooperative Extension Service (OCES). Specifically, poultry waste management and odor control training shall include the following topics:

a. environmental process relevant to protecting water quality in poultry production,

b. basic handling systems to manage poultry waste (litter/manure) 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 OSU in consultation with the Department.

3. At the completion of each course, the operator shall receive a certification verifying completion.

4. All current and any new applicators shall receive no less than ten (10) hours of training in the first year and no less than four (4) hours each year thereafter.

5. Failure to obtain the prerequisite and annual training and education as provided in this subsection shall be deemed a violation of the Oklahoma Poultry Waste Applicators Licensing Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-106 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Any license issued pursuant to the Oklahoma Poultry Waste Applicators Licensing Act may be suspended, canceled, or revoked by the State Board of Agriculture after a hearing and opportunity to be heard has been given to the holder of the license.

2. Notice thereof shall be given to the holder of the license by registered or certified mail at least ten (10) days prior to the date of the hearing.

B. Suspension, cancellation, or revocation of a license may be made if the Board finds the holder of the license:

1. Has used methods or 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 Board, upon request, true information regarding methods and safety measures used, work performed, or other information deemed essential by the Board, or has made any false statement or representation in such person's application for issuance or renewal of the license;

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

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

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

6. Has acted, operated, done business, or advertised as an applicator without having obtained a valid license issued by the Board;

7. Has been employed or represented himself as a certified applicator without having met the certification standards prescribed by the Board and without obtaining a valid certificate issued by the Board;

8. Has acted or operated as a private applicator without having obtained a valid private poultry waste applicator license issued by the Board;

9. Has been convicted in any court of a violation of the Oklahoma Poultry Waste Applicators Licensing Act; or

10. Has given the Board other proper cause.

C. Except as otherwise provided for by law any person, holder or nonholder of a valid license, convicted of violating any of the provisions of the Oklahoma Poultry Waste Applicators Licensing Act shall be guilty of a misdemeanor and shall be punishable by the imposition of a fine of not less than One Hundred Dollars ($100.00) and not more than Ten Thousand Dollars ($10,000.00).

D. If after public hearing in accordance with the Administrative Procedures Act, the Board finds any person to be in violation of any of the provisions of the Oklahoma Poultry Waste Applicators Licensing Act, the Board may assess an administrative penalty of not less than One Hundred Dollars ($100.00) and not more than One Thousand Dollars ($1,000.00) for each violation.

SECTION 12. This act shall become effective November 1, 1998.

Passed the House of Representatives the 24th day of February, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate