

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2764

By: Boyd (Laura)

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-202, as amended by Section 2, Chapter 331, O.S.L. 1997, 9-204, as last amended by Section 4, Chapter 331, O.S.L. 1997, Section 5, Chapter 331, O.S.L. 1997, 9-205, as amended by Section 6, Chapter 331, O.S.L. 1997, Section 7, Chapter 331, O.S.L. 1997, Section 8, Chapter 331, O.S.L. 1997, Section 9, Chapter 331, O.S.L. 1997, Section 10, Chapter 331, O.S.L. 1997, 9-209, as amended by Section 14, Chapter 331, O.S.L. 1997, 9-210, as last amended by Section 16, Chapter 331, O.S.L. 1997, Section 17, Chapter 331, O.S.L. 1997, and Section 18, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Sections 9-202, 9-204, 9-204.1, 9-205, 9-205.1, 9-205.2, 9-205.3, 9-205.4, 9-209, 9-210, 9-210.1 and 9-210.2), which relate to the Oklahoma Concentrated Animal Feeding Operations Act; modifying and adding to definitions; clarifying and updating certain language; providing for promulgation of rules; requiring submission of rules to the Oklahoma Concentrated Animal Feeding Operations Rule Advisory Council; creating Rule Advisory Council; providing for membership; providing qualifications and appointment; providing

for vacancies; providing for duties and responsibilities; providing term of office; requiring certain animal feeding operations to obtain a license; providing for exemptions; clarifying operators to be licensed; requiring consideration of certain factors; authorizing certain discharges; requiring certain inspections; requiring certain preconstruction and operation approval; providing for certain applications; providing procedures; specifying certain contents and information; requiring certain records; authorizing denying of licenses to certain persons; providing for additional denial specifications; specifying additional information for certain applications; requiring certain notice to certain persons; providing for hearing; providing procedures; specifying type of testimony accepted; providing for determination of certain property rights; requiring public notice; specifying contents; authorizing public meetings; requiring certain documentation; requiring certain odor abatement plans; modifying pollution prevention plans, best management practices and animal waste management plans; modifying contents; providing for analysis; requiring certain statements; requiring certain liners or proof of no hydrologic connection; providing for proof and documentation; requiring certain minimum separations; providing for certain measurements; requiring rules for the prevention of hydrologic connections between a liquid animal waste management system and the waters of this state; requiring certain

documentation; requiring establishment of standards in the design and construction of waste retention structures; requiring certain inspections and reports; providing for composition of wastewater; providing for sampling; providing for responsible party for certain conditions; requiring certain equipment; requiring certain inspections; requiring observation of certain facility standards; setting specific requirements and conditions for licensure; clarifying language; increasing certain fees; providing for deposits; establishing financial assurances; providing for additional information; prohibiting certain land applications of liquid animal waste; providing conditions and form; allowing for suspension, revocation or denial of licenses; providing for grandfathering of certain facilities; requiring certain compliance; specifying and authorizing certain specific denials of issuance or transfer of licenses to certain persons or facilities; providing for penalties and fines; providing for basinwide water quality management plans; providing for codification; providing an effective date; 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, as amended by Section 2, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-202), is amended to read as follows:

Section 9-202. A. Concentrated animal feeding operations are point sources subject to the license program established pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

B. As used in the Oklahoma Concentrated Animal Feeding Operations Act:

1. "Affected property owner" means a surface landowner within ~~one (1) mile~~ two (2) miles of the designated perimeter of an animal feeding operation or an expansion operation for which a license is being sought;

2. "Animal feeding operation" means a lot or facility where the following conditions are met:

- a. animals have been, are, or will be stabled or confined and fed or maintained for a total of ~~ninety (90)~~ forty-five (45) consecutive 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.

The term "animal feeding operation" shall not include a racetrack licensed by the Oklahoma Horse Racing Commission to hold pari-mutuel race meetings pursuant to the Oklahoma Horse Racing Act if such facility discharges to a publicly owned treatment works (POTW), or an aquatic animal production facility;

3. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by one (1) plus the number of mature dairy cattle multiplied by one and four-tenths (1.4), plus the number of swine weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds, multiplied by four-tenths (0.4), plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by ~~one-tenth (0.1)~~ two-tenths (0.2),

plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2) plus the number of chickens multiplied by thirty-three one-thousandths (0.033) plus the number of turkeys multiplied by five one-hundredths (0.05) plus five thousand (5,000) ducks;

4. "Animal waste" means animal excrement, animal carcasses, feed wastes, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation;

5. "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 prepared by an owner or operator of an animal feeding operation as required by the Department pursuant to the provisions of Section ~~9~~ 9-205.3 of this ~~act~~ title;

6. "Animal waste management system" means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste;

7. "Artificially constructed" means constructed by humans;

8. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state as established by the Department of Agriculture pursuant to Section ~~9~~ 9-205.3 of this ~~act~~ title;

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

10. "Common ownership" includes but is not limited to any corporation, partnership or individual where the same owner has power or authority to manage, direct, restrict, regulate or oversee the operation or has financial control of the facility;

11. "Concentrated animal feeding operation" or "CAFO" means:

a. a licensed managed feeding operation, ~~or~~

b. an intensive animal feeding operation ~~which meets the following criteria:~~

~~(1) more than the number of animals specified in any of the following categories are confined:~~

~~(a) 1,000 slaughter and feeder cattle,~~

~~(b) 700 mature dairy cattle, whether milk or dry cows,~~

~~(c) 2,500 swine each weighing over 25 kilograms or approximately 55 pounds,~~

~~(d) 10,000 weaned swine each weighing under 25 kilograms,~~

~~(e) 500 horses,~~

~~(f) 10,000 sheep or lambs,~~

~~(g) 55,000 turkeys,~~

~~(h) 100,000 laying hens or broilers, if the facility has continuous overflow watering,~~

~~(i) 30,000 laying hens or broilers, if the facility has a liquid manure system,~~

~~(j) 5,000 ducks, or~~

~~(k) 1,000 animal units, and~~

~~(2) pollutants are discharged into waters of the state. Provided, no animal feeding operation pursuant to this subparagraph shall be construed to be a concentrated animal feeding operation if such animal feeding operation discharges only in the event of a twenty-five-year, twenty-four-hour storm event, or~~

c. an animal feeding operation which meets the following criteria:

(1) less than the number of animals specified for an intensive animal feeding operation but more than

the number of animals specified in any of the following categories are confined:

- (a) 300 slaughter or feeder cattle,
  - (b) 200 mature dairy cattle, whether milk or dry cows,
  - (c) 750 swine each weighing over 25 kilograms or approximately 55 pounds,
  - (d) ~~3,000~~ 1,500 weaned swine each weighing under 25 kilograms,
  - (e) 150 horses,
  - (f) 3,000 sheep or lambs,
  - (g) ~~16,500~~ 6,000 turkeys,
  - (h) ~~30,000~~ 9,000 laying hens or broilers, ~~if the facility has continuous overflow watering,~~
  - (i) ~~9,000~~ laying hens or broilers, ~~if the facility has a liquid manure system,~~
  - ~~(j)~~ 1,500 ducks, or
  - ~~(k)~~ (j) 300 animal units, and
- (2) either one of the following conditions ~~are~~ is met:
- (a) pollutants are discharged into waters of the state through an artificially constructed ditch, flushing system or other similar artificially constructed device, or
  - (b) 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 pursuant to this subparagraph is a concentrated animal~~

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

- d. the Board determines that the operation is a significant contributor of pollution to waters of the state pursuant to Section 5 9-204.1 of this ~~act~~ title;

12. "Department" means the Oklahoma Department of Agriculture;

13. "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 include liquid poultry waste, but shall exclude those poultry feeding operations designed for poultry production using a continuous overflow watering system or a liquid manure system unless such operation also has a dry litter poultry waste management system;

14. "Expanding operation" means:

- a. a facility that either increases its animal unit capacity to a number that causes the facility to initially meet the definition of a license managed feeding operation or intensive animal feeding operation, or
- b. a licensed managed animal feeding operation or intensive animal feeding operation that seeks to increase its licensed capacity in excess of five percent (5%) of the original facility's licensed capacity;

~~14.~~ 15. "Facility" means any place, site or location or part thereof where animals are kept, handled, housed, or otherwise maintained and processed and includes but is not limited to buildings, lots, pens, and animal waste management systems;

~~15.~~ 16. "Integrator" means any person, partnership, corporation or other entity that utilizes independent contractors to breed, produce, feed or finish animals, or grow or produce animal products, including, but not limited to, meat, milk or eggs;

17. "Intensive animal feeding operation" or "IAFO" means an animal feeding operation in which less than the number of animals specified for a licensed managed feeding operation but more than the number of animals specified in any of the following categories are confined:

- a.—1,000 slaughter and feeder cattle,
- b.—700 mature dairy cattle, whether milk or dry cows,
- c.—2,500 swine each weighing over 25 kilograms or approximately 55 pounds,
- d.—5,000 weaned swine each weighing under 25 kilograms,
- e.—500 horses,
- f.—10,000 sheep or lambs,
- g.—20,000 turkeys,
- h.—30,000 laying hens or broilers,
- i.—5,000 ducks, or
- j.—1,000 animal units;

18. "Interested party" means an affected property owner who validly requests an individual hearing, in accordance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto regarding the issuance of an animal feeding operation license and asserts rights to relief in respect to or arising out of the same license;

~~16.~~ 19. "Land application" means the removal of animal waste from a waste retention facility and distribution to, or incorporation into, the soil mantle primarily for beneficial reuse purposes;

20. "Licensed managed feeding operations (LMFO)" means an animal feeding operation primarily using a liquid animal waste

management system, where animals are primarily housed in a roof-covered structure and which has more than the number of animals specified in any of the following categories confined:

- a. 2,000 slaughter and feeder cattle,
- b. 1,400 mature dairy cattle, whether milk or dry cows,
- c. 5,000 swine each weighing over 25 kilograms, approximately 55 pounds,
- d. ~~20,000~~ 10,000 weaned swine each weighing under 25 kilograms,
- e. 1,000 horses,
- f. 20,000 sheep or lambs,
- g. ~~110,000~~ 40,000 turkeys,
- h. ~~200,000 laying hens or broilers, if the facility has continuous overflow watering,~~
- ~~i.~~ 60,000 laying hens or broilers, ~~if the facility has a liquid manure system,~~
- ~~j.~~ i. 10,000 ducks, or
- ~~k.~~ j. 2,000 animal units;

~~17.~~ 21. "Liquid animal waste management system" means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure;

~~18.~~ 22. "Occupied residence" means a habitable structure designed and constructed for full-time occupancy in all weather conditions which:

- a. is not readily mobile,
- b. is connected to a public or permanent source of electricity and a permanent waste disposal system or public waste disposal system, and
- c. is occupied as a residence;

~~19.~~ 23. "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;

24. "Pollution Prevention Plan" or "PPP" means a written plan to control the discharge of pollutants which has been prepared in accordance with industry-acceptable engineering and management practices by the owner or operator of an animal feeding operation as required pursuant to Section § 9-205.2 of this ~~act~~ title;

~~20.~~ 25. "Poultry" includes chicken, turkeys, ducks, geese and any other domesticated bird used for human food and/or animal feed;

26. "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;

27. "Process wastewater" means any water utilized in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of animals and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact, swimming, washing or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste;

~~21.~~ 28. "Retention structures" includes but is not limited to all collection ditches, conduits and swales for the collection of runoff water and process wastewater, and basins, ponds and lagoons or other structures used to store animal wastes;

~~22.~~ 29. "Waste facility" means any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. Such structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing animals, compostors, waste storage sites, or retention structures or appurtenances or additions thereto; and

~~23.~~ 30. "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 2. AMENDATORY 2 O.S. 1991, Section 9-204, as last amended by Section 4, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-204), is amended to read as follows:

Section 9-204. 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 Concentrated Animal Feeding Operations Act.~~

B. ~~Six members shall be animal feeding operators; one member shall represent the field of geology; one member shall be a soil scientist; and one member shall represent the general public. Two shall serve for a one-year term; three shall serve for two-year terms; and four shall serve for three-year terms.~~

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

D. 1. ~~Except for emergency rules, the Department shall submit proposed rules to the rule advisory committee thirty (30) days prior to the rules being considered by the Board. The Board shall consider the comments of the rule advisory committee at least fifteen (15) days prior to any official action by the Board on the rules~~ As the rulemaking body for the Department of Agriculture, the

State Board of Agriculture is specifically charged with the duty of promulgating rules which will implement the duties and responsibilities of the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act. Rules shall be promulgated with the advice of the Oklahoma Concentrated Animal Feeding Operations Rule Advisory Council for the State Board of Agriculture. Proposed permanent rules shall not be considered by the Board for promulgation until receipt of the Council's recommendation on such promulgation; however, the Board may promulgate emergency rules without the advice of the Council when the time constraints of the emergency, as determined by the Board, do not permit the timely development of recommendations by the Council. All actions of the Council with regard to rulemaking shall be deemed actions of the Board for the purposes of complying with the Administrative Procedures Act.

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

B. There is hereby created the Oklahoma Concentrated Animal Feeding Operations Rule Advisory Council to the State Board of Agriculture which shall consist of two ex officio nonvoting members and nine members appointed by the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate as follows:

1. The ex officio members shall be:

- a. the Secretary of Environment or designated representative, and
- b. the Secretary of Agriculture or designated representative; and

2. The appointed members of the Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:

(1) one member representing the licensed managed feeding operations in this state,

(2) one member representing a statewide nonprofit environmental organization, and

(3) one member representing the general public,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

(1) one member representing the growers in this state,

(2) one member representing the animal feeding operations in this state other than concentrated animal feeding operations, and

(3) one member representing the field of geology, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

(1) one member shall be a soil scientist,

(2) one member shall be an engineer, and

(3) one member shall be a water quality scientist.

C. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through three (3) years so that only one term expires each calendar year; subsequent appointments shall be for three-year terms. Members shall continue to serve until their successors are appointed.

D. The initial term for all appointed members shall begin September 1, 1998.

E. Appointed members of the Council may be removed from office by the appointing authority.

F. The members of the Council shall serve without pay but may be reimbursed for actual expenses pursuant to the State Travel Reimbursement Act.

G. The Council shall elect from among its membership a chair, vice-chair and secretary to serve a term of not more than one (1)

year ending on July 1 of the year designated by the Council.

Members may be elected for more than one term. The chair or vice-chair shall preside at all meetings. The chair, vice-chair and secretary shall perform such duties as may be decided by the Council in order to effectively administer its duties pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

H. A majority of Council members at a meeting shall constitute a quorum to transact official business.

I. The Council shall meet within sixty (60) days after September 1, 1998, and shall meet thereafter at such times as the Council deems necessary to implement its duties pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

J. The Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or vice-chair, or by the concurrence of any eight members by delivery of written notice to each member of the Council.

K. 1. In addition to other powers and duties assigned to the Council by the Oklahoma Concentrated Animal Feeding Operations Act or by the State Board of Agriculture, the Council shall have authority to recommend proposed permanent rules to the Board.

2. Proposed permanent rules shall not be considered by the Board for promulgation until receipt of the Council's recommendation on such proposed rules; however, the Board may promulgate emergency rules without the advice of the Council when the time constraints of the emergency, as determined by the Board, do not permit the timely development of recommendations by the Council. All actions of the Council with regard to rulemaking shall be deemed actions of the Board for the purposes of complying with the Administrative Procedures Act.

3. The Council shall not recommend rules for promulgation by the Board unless all applicable requirements of the Administrative

Procedures Act have been followed, including, but not limited to, notice, rule impact statement and rulemaking hearings.

4. Before recommending any permanent rules to the Board, the Council shall give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act. The Council shall:

- a. have the authority to make written recommendations to the Board which have been concurred upon by at least a majority of the membership of the Council, and
- b. have the authority to provide a public forum for the discussion of issues it considers relevant to its areas of jurisdiction, and to:
  - (1) pass nonbinding resolutions expressing the sense of the Council, and
  - (2) make recommendations to the Board or Department concerning the need and the desirability of conducting meetings, workshops and seminars.

5. The Council shall cooperate with the public and the Commission in order to coordinate the rules to achieve maximum efficiency and effectiveness in furthering the objectives of the Oklahoma Concentrated Animal Feeding Operations Act.

L. The Council is authorized to utilize the staff of the Department of Agriculture and conference rooms of the Board and obtain administrative assistance from the Board, as required.

SECTION 3. 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. Such animal feeding operation shall be required to comply with applicable rules promulgated by the State Board of Agriculture pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

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.

4. Any animal feeding operation which has greater than two hundred fifty (250) animal units but fewer than one thousand (1,000) animal units and which has not been determined by the Board to be a significant contributor of pollution to waters of the state shall be required to file a notice of operations with the Department.

5. A licensed managed feeding operation shall be considered an industrial facility and shall not receive special incentives and tax benefits intended for bona fide independent and family farms. This includes, but is not limited to: agricultural vehicle tags, fuel tax exemptions, agricultural commodity subsidies, exemptions regarding protections and wages for workers.

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 or intensive animal 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 hundred-year flood rainfall events, ~~either chronic or catastrophic,~~ occur and 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~~ hundred-year flood 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~~ hundred-year flood storm event; provided the proper design, construction and operation of the retention structure shall include but not be limited to ~~one (1) foot~~ three (3) feet 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 July 1, 1998, no new concentrated animal feeding operation or expansion of a concentrated animal feeding operation pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall be constructed until a construction permit for such facility or expansion has been issued by the Department.

SECTION 4. AMENDATORY 2 O.S. 1991, Section 9-205, as amended by Section 6, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205), is amended to read as follows:

Section 9-205. A. 1. The State Board of Agriculture shall cause to be prepared and available, for any person desiring or required to apply for a license to operate a new or previously unlicensed animal feeding operation or expanding operation, the necessary forms and applications.

2. The Department shall prepare the forms necessary for any person desiring or required to file a notice of operations pursuant to this section.

B. The application for a license to operate a new or previously unlicensed animal feeding operation or expanding operation 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 animal feeding operation;

3. Capacity in animal units, and number and type of animals housed or confined;

4. ~~Diagram~~ 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, animal waste storage facilities and land application sites owned or leased by the applicant;

5. A copy of the Pollution Prevention Plan containing an Animal Waste Management Plan, Best Management Practices or such other plan authorized by the Oklahoma Concentrated Animal Feeding Operations Act and approved by the Department;

6. A copy of the written waiver by an adjacent property owner to the facility releasing specified setback requirements as provided by Section ~~17~~ 9-210.1 of this ~~act~~ title; and

7. Any other information deemed necessary by the Department to administer the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

C. 1. An application for renewal of a license to operate an animal feeding operation shall be considered to be properly filed when the Department has received a completed renewal application and payment of fees from the applicant.

2. If the application for renewal is denied, written notification of the denial and an opportunity for an administrative hearing on the denial shall be given to the applicant by the Department. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for issuance of the renewal license and the opportunity for the applicant to request an administrative hearing.

D. 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 until a construction permit for such facility or expansion has been issued by the Department.

E. For transfer of a license to a new owner or operator, the following conditions shall be met:

1. The new owner or operator shall submit to the Department a transfer application, attaching any change of conditions resulting from the transfer of ownership or operation;

2. After receipt of the information required, the Department shall review the information, and within ~~thirty (30)~~ sixty (60) days, issue approval or denial of the transfer. Transfer of a license shall be denied only if:

a. the new owner or operator cannot comply with the requirements of transfer,

- b. the Department finds a material or substantial change in conditions since the issuance of the original license to operate the animal feeding operation,
- c. failure of the new owner or operator to meet any other conditions or requirements for compliance established by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, or
- d. the new owner or operator has failed to meet the requirements of Section ~~19~~ 9-211 of this ~~act~~ title;  
and

3. If a transfer is denied, written notification of such denial and an opportunity for an administrative hearing on the denial shall be given to the applicant for a transfer license by the Department. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for a transfer license and the opportunity for the applicant to request an administrative hearing.

~~E.~~ F. Any suspension or revocation or nonrenewal of a license issued pursuant to the Oklahoma Concentrated Animal Feeding Operations Act by the Board shall be made in accordance with Section ~~19~~ 9-211 of this ~~act~~ title.

~~F.~~ G. In addition to other information required for issuance of a new or transfer license, an application for a new or transfer license for a concentrated animal feeding operation shall be under oath and shall contain the following information:

- 1. a. A statement of ownership.
  - (1) If the applicant is a firm or partnership, the name and address of each member thereof shall be included in the application.
  - (2) 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.

(3) 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.

b. 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. a. An environmental history from the past three (3) years of any concentrated animal 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 an animal 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;

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

5. Any other information or records required by the Department for purposes of implementing the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated pursuant thereto.

~~G.~~ H. The notice of operations for an animal feeding operation which has greater than two hundred fifty (250) animal units but fewer than one thousand (1,000) animal units and has not been determined by the Board to be a significant contributor to pollution of the waters of the state shall contain, at a minimum, the following information:

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

2. Name and address of the animal feeding operation;

3. Capacity in animal units, and number and type of animals housed or confined;

4. 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, animal waste storage facilities and land application sites owned or leased by the applicant;

5. Description of management practices to dispose of animal waste and to prevent pollution; and

6. Any other information deemed necessary by the Department to administer the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

I. 1. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation, or certification in, ~~or~~ omits material data from, or tampers with any application for a license, or notice relating to the determination of affected property owners, shall, upon conviction

thereof, be guilty of a misdemeanor and may be subject to a fine of not more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) for each such violation. In addition, the Department shall deny licensure to the applicant or may require submission of a new application.

2. The responsibility for ensuring that all affected property owners are notified pursuant to the provisions of this section shall be upon the applicant.

SECTION 5. AMENDATORY Section 7, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205.1), is amended to read as follows:

Section 9-205.1 A. 1. Any person applying for a license or a construction permit for an animal feeding operation shall comply with the notice and hearing requirements as specified by this section and rules promulgated pursuant thereto.

2. Notice requirements shall include notice to affected property owners by certified mail return receipt requested pursuant to subsection C of this section and public notice pursuant to subsection D of this section.

B. After submission of a completed application as provided by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, the Department shall have sixty (60) days to review the application for a new or expanding operation for physical and technical suitability. In evaluating the application for physical and technical suitability, the Department shall examine existing conditions, impacts and mitigating practices presented by the applicant concerning affected environments and impacts, including, but not limited to:

1. Climate and air quality;
2. Surface water and hundred-year floodplains;
3. Geology and groundwater;
4. Soils and prime farmlands;

5. Vegetation, wildlife and wetlands;
6. Threatened and endangered species;
7. Historical and archaeological resources;
8. Socioeconomics;
9. Noise;
10. Odor;
11. Public health; and
12. Land value.

C. 1. After such review, the Department shall require the applicant to notify all affected property owners of the proposed facility or expanding operations. Such notice shall be sent by certified mail, return receipt requested. The notice shall identify that an application for an animal feeding operation has been submitted to the Department, the location where the facility is to be located, that a hearing may be requested pursuant to this subsection, and the date the application will be available for public review, which shall begin no earlier than the day following the certified mailing of all the required notices and such other information required by the Department.

2. Each affected property owner requesting a hearing shall submit, in writing, the following information:

- a. the name and address of the interested party and proof of standing by showing that the interested party is an affected property owner,
- b. a statement of specific allegations showing that the proposed facility or expanding operation may have a direct, substantial and immediate effect upon a legally protected interest of the interested party, and
- c. the relief sought by the interested party.

3. If any of the affected property owners request an administrative hearing, such hearing shall be held by the Department

within not less than thirty (30) days nor more than sixty (60) days of receiving the request. All interested parties may be joined as parties to the hearing pursuant to rules promulgated by the State Board of Agriculture.

4. In addition to any other information deemed necessary by the Department, at the hearing the Department shall hear testimony and accept evidence pertaining to the physical and technical suitability of the proposed facility or expanding operations. ~~In addition, any interested party may present specific allegations based on scientific and technical findings of fact showing that the proposed facility or expanding operations may have a direct, substantial and immediate effect upon a legally protected interest of the affected property owner.~~

5. Any administrative hearing held pursuant to the provisions of this subsection shall comply with Article II of the Administrative Procedures Act and rules promulgated pursuant thereto by the Department.

6. Establishment of property usage which is the date the animal feeding operation application was made available, pursuant to this section, for public review versus date of ~~initial construction or~~ placement of occupied residence, shall be given consideration when determining a contested matter between an applicant and an interested party on issues other than pollution of the waters of the state.

D. 1. In addition to the individual notice required by subsection C of this section, the Department shall require the applicant to give public notice of the opportunity to comment on the granting of the license or construction permit.

2. The public notice for a new or expanding operation shall be published as a legal notice prior to the date the application is available for public viewing, in at least one newspaper of general

circulation in the county where the proposed facility or expanding operation is to be located.

3. The notice shall identify locations where the application shall be available for viewing. Such locations shall include the office of the Department of Agriculture and a specific public location in the county where the proposed facility or expanding operation is to be located.

4. The application shall be available for public review during normal business hours. The copies of the application posted for public viewing shall be complete except for proprietary provisions otherwise protected by law and must remain posted during normal business hours for at least ~~twenty (20)~~ thirty (30) working days after notice is published. Tampering with the application by the applicant once it is posted for public view is a violation of this act. Any person found violating this provision shall have the license application denied with prejudice, and the violator shall be sanctioned through an administrative penalty of not less than Ten Thousand Dollars (\$10,000.00).

5. The Department, as necessary, may hold public meetings at a location convenient to the population center nearest the proposed facility or expanding operation to address public comments on the proposed facility or expanding operation.

E. Prior to the issuance of any construction permit or license for an animal feeding operation, or expanding operation, the Department shall require the applicant to submit:

1. Documentation certifying notice has been issued to all affected property owners. A map of all landowners within ~~one (1)~~ mile two (2) miles and the corresponding mailing list shall be submitted with each application; and

2. Proof of publication notice of a new or expanding application for a ~~concentrated~~ an animal feeding license or construction permit required by this section.

F. In determining whether to issue the construction permit or the license for the animal feeding operation, the Department shall consider the property interests of the proposed animal feeding operation and the property interests of affected property owners. Significant harm to an adjacent landowner's use and enjoyment of the property shall be grounds for denial of the site selection. In addition, the Department shall afford equal consideration to issues of interested parties who present specific allegations showing that the proposed facility or expanding operations may have a direct and substantial effect upon the legally protected interest of the affected property owner.

SECTION 6. AMENDATORY Section 8, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205.2), is amended to read as follows:

Section 9-205.2 A. A Pollution Prevention Plan shall be developed by each licensed managed feeding operation prior to the submission of an application pursuant to the provisions of this section and rules promulgated by the State Board of Agriculture pursuant thereto. The Pollution Prevention Plan shall include, but not be limited to, provisions for documentation of structural controls, documentation of Best Management Practices, an approved plan for the disposal of animal waste and recordkeeping provisions.

B. An animal feeding operation licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act, other than a licensed managed feeding operation, shall develop a Pollution Prevention Plan or may substitute equivalent measures contained in a site-specific Animal Waste Management Plan prepared pursuant to Section ~~9~~ 9-205.3 of this ~~act~~ title. Design and construction criteria developed by the United States Department of Agriculture, Natural Resources Conservation Service, may be substituted for the documentation of design capacity and construction requirements.

C. 1. The Pollution Prevention Plan shall be signed by the owner or as otherwise authorized by the Department of Agriculture and a copy shall be retained on site.

2. The animal feeding operation shall amend the Pollution Prevention Plan and obtain approval of the Department prior to any change in design, construction, operation or maintenance, which has significant effect on the potential for the discharge of pollutants to the waters of the state.

D. If, after reviewing ~~of~~ the Pollution Prevention Plan, the Department determines that the Plan does not meet one or more of the minimum requirements, the animal feeding operation shall make and implement appropriate changes to the Plan as required by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

E. The Pollution Prevention Plan shall provide and require presite approval by Departmental personnel prior to construction. During construction, the Department shall monitor the construction process as deemed necessary by the Department in an attempt to verify the construction of the facility is done according to plans and acceptable engineering standards to reduce or eliminate the potential of pollution.

F. In addition to other requirements specified by this section, the Pollution Prevention Plan shall include but not be limited to:

1. A description of potential sources, activities and materials which may reasonably be expected to or could potentially add pollutants to runoff from the facility;

2. A map, indicating an outline of the drainage area of the facility, and each existing structural control measure designed to reduce pollutants in wastewater and precipitation runoff in all surface waters of the state;

3. A spill contingency plan for potential pollutants;

4. All existing sampling data of groundwater, nitrate and coliform bacteria levels, soil tests from land application sites and animal waste nutrient sampling;

5. A description of management controls appropriate for the facility. The management controls shall include, but not be limited to:

- a. the location and a description of existing structural and nonstructural controls,
- b. documentation of retention structure capacity and the assumptions and calculations used in determining the appropriate volume capacity, and
- c. a description of the design standards for the retention facility embankments;

6. A description of the design standards for any retention facilities;

7. Training requirements for employees;

8. Documentation relating to any hydrologic connection between the contained wastewater and waters of the state which complies with Section ~~10~~ 9-205.4 of this ~~act~~ title; and

9. Requirements that all irrigation systems into which any animal waste will be injected shall be equipped as specified by Section ~~11~~ 9-205.5 of this ~~act~~ title.

G. The following records shall be maintained at the site ~~for at least three (3) years~~ as long as the facility is in operation:

1. Water level in the retention structure;
2. Daily precipitation records from on-site rain gauge;
3. Incident reports such as spills and other discharges;
4. Inspection and maintenance reports;
5. Findings from annual inspections of the entire facility;
6. Log of ~~preventative~~ preventive maintenance and employee training that was completed;

7. Log of removal of animal waste sold or given to other persons for disposal; ~~and~~

8. Affidavit testifying that employees have complied with applicable safety and health standards set by the United States Occupational Safety and Health Administration (OSHA), including but not limited to OSHA Hazard Communication standard, provided that the operator, whether a natural person, partnership, corporation, or other legal entity, has more than ten employees at any time of the year; and

9. Other specific information deemed necessary by the Department to implement the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

H. The following records shall be maintained at the site as long as the site is in operation:

1. Copy of general permit issued by the federal Environmental Protection Agency if applicable, a copy of the completed Pollution Prevention Plan, and other specific records deemed necessary by the Department to implement the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto; and

2. The notarized statement signed by the applicant accepting full responsibility for properly closing all waste retention structures pursuant to subsection J of this section.

I. Any analyses required by the ~~provision~~ provisions of the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated pursuant thereto shall be performed by a qualified independent testing laboratory certified by the Department of Environmental Quality.

J. The applicant shall sign a notarized statement accepting full responsibility for properly closing all waste retention structures if the facility ceases to function or is ordered to close

by action of the Department. When a license is transferred, the new owner or lessee shall submit a signed notarized statement accepting full responsibility for properly closing all waste retention structures if the facility ceases to function or is ordered to close by action of the Department.

SECTION 7. AMENDATORY Section 9, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205.3), is amended to read as follows:

Section 9-205.3 A. 1. All licensed managed feeding operations shall utilize Best Management Practices meeting 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 Concentrated Animal Feeding Operations Act.

2. Animal feeding operations licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act other than licensed managed feeding operations shall utilize Best Management Practices, or may substitute for best management practice equivalent measures contained in a site-specific Animal Waste Management Plan meeting the conditions and requirements established by subsection C of this section and by rules promulgated by the Board pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

B. The criteria for Best Management Practices shall be promulgated by rule by the Board, based upon existing physical and economic conditions, opportunities and constraints and shall include, but not be limited to, the following:

1. There shall be no discharge of process wastewater to waters of the state except in accordance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act;

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

for a ~~twenty-five-year, twenty-four-hour~~ hundred-year flood rainfall event;

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

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

- a. not create an environmental or a public health hazard,
- b. not result in the contamination of public or private drinking water supplies,
- c. conform with Oklahoma Water Quality Standards,
- d. comply with the Odor Abatement Plan and shall not otherwise create unnecessary and unreasonable odors. Odors are unnecessary and unreasonable if such odors may be reduced by more efficient management practices at a reasonable expense. Operators are to submit odor abatement plans to control gases, dusts and other causes of odor at all sources, including, but not limited to, buildings, waste storage structures and land application sites,
- e. not unreasonably result in the destruction of endangered or threatened species or contribute to the taking of any federally endangered or threatened species of plant, fish or wildlife, or interfere with or cause harm to migratory birds, and
- f. conform to such other handling, treatment and management and removal requirements deemed necessary by the Department to implement the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto; and

5. If, for any reason, there is a discharge, the licensee is required to make immediate notification to the Department. This notification shall include:

- a. a description and cause of the discharge, including a description of the flow path to the receiving water body,
- b. an estimation of the flow rate and volume discharged,
- c. the period of discharge, including exact dates and times, and if not already corrected, the anticipated time the discharge is expected to continue,
- d. steps taken to reduce, eliminate and prevent recurrence of the discharge, and
- e. test results for fecal coliform bacteria, five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), ammonia nitrogen, total Kjeldahl nitrogen (TKN), any pesticides which the operator has reason to believe could be in the discharge, or such other parameters as required by the Department which the Department has reason to believe could be in the discharge.

C. The Animal Waste Management Plan (AWMP) shall include at a minimum:

1. Animal waste removal procedures;
2. Records of inspections of retention structures, including, but not limited to, specific measurement of wastewater level;
3. All calculations in determining land application rates, acreage and crops for the land application rate of both solid and liquid animal wastes on land owned or controlled by the licensee;
4. Requirements including that:
  - a. (1) land application of animal waste shall not exceed the nitrogen uptake or phosphorus uptake, whichever is less, of the crop coverage or planned crop planting with any land application of wastewater or manure. The pollutants listed in Table 2-1 of the Environmental Protection

Agency guide to CFR Part 503, Rule 29, as amended, shall not exceed the annual pollutant loading rate. Any soils where the ceiling concentration for pollutants has been met as provided for in Table 2-1 of the EPA guide to CFR Part 503, Rule 29 shall not receive any further waste containing the pollutants listed in Table 2-1. Where local water quality is threatened by phosphorous phosphorus, in no case shall the applicant or licensee land application of wastewater or manure exceed one-third (1/3) of the application rates in the most current Natural Resources Conservation publication titled Waste Utilization Standard in order for remediation to take place. Where soils contain phosphorus in excess of one hundred fifty (150) pounds per acre, land application of wastewater or manure shall be prohibited for a period of three (3) years or until such time as phosphorus load is corrected such that phosphorus may be applied without a buildup to more than one hundred fifty (150) pounds per acre, and

(2) timing and rate of applications shall be in response to crop needs, expected precipitation and soil conditions,

b. land application practices shall be managed so as to reduce or minimize:

- (1) the discharge of process water or animal waste to waters of the state,
- (2) contamination of waters of the state, and
- (3) odor,

- c. facilities including waste retention structures, waste storage sites, ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to ensure ability to fully comply with the terms of the Oklahoma Concentrated Animal Feeding Operations Act, and
- d. adequate equipment and land application area shall be available for removal of such waste and wastewater as required to maintain the proper operating volume of the retention structure;

5. Records shall be maintained of all animal wastes applied on land owned or controlled by the licensee, and sold or given to other persons for disposal.

- a. If the animal waste is sold or given to other persons for land application or other disposal, the animal feeding operation shall maintain a log of: date of removal from the animal feeding operation; name of hauler; and amount, in wet tons, dry tons or cubic yards, of animal waste removed from the animal feeding operation.
- b. If the animal wastes are to be land applied by the hauler, the animal feeding operation shall make available to the hauler any nutrient sample analysis from that year.
- c. In addition, the animal feeding operation shall notify, in writing, the hauler of the animal waste of the land application and disposal requirements for animal waste as specified by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto; and

6. Such other information deemed necessary by the Department to administer the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

D. Soils in areas in which animal waste is applied shall be analyzed, annually, for phosphates and nitrates. A copy of the results of the analysis shall be submitted to the Department upon request by the Department. Such analysis shall be retained by the animal feeding operation ~~for at least three (3) years~~ as long as the facility is in operation.

E. 1. The animal feeding operation licensed pursuant to the provisions of Oklahoma Concentrated Animal Feeding Operations Act shall develop a plan for the disposal of carcasses associated with normal mortality.

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

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-205.3a of Title 2, unless there is created a duplication in numbering, reads as follows:

A. An Odor Abatement Plan shall be developed by each licensed managed feeding operation and intensive animal feeding operation prior to the submission of an application pursuant to the provisions of this section and rules promulgated by the State Board of Agriculture pursuant thereto. The Odor Abatement Plan shall include, but not be limited to, provisions for documentation of structural controls, documentation of Best Management Practices, odor abatement and recordkeeping provisions.

B. An animal feeding operation licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act, other than a licensed managed feeding operation or intensive animal feeding operation, shall develop an Odor Abatement Plan or may substitute equivalent measures contained in a site-specific Animal Waste Management Plan prepared pursuant to Section 9-205.3 of Title 2 of the Oklahoma Statutes.

C. 1. The Odor Abatement Plan shall be signed by the owner or as otherwise authorized by the Oklahoma Department of Agriculture, and a copy shall be retained on site.

2. The animal feeding operation shall amend the Odor Abatement Plan and obtain approval of the Department prior to any change in design, construction, operation or maintenance, which has significant effect on the potential for the increase of odor.

D. If, after reviewing the Odor Abatement Plan, the Department determines that the Plan does not meet one or more of the minimum requirements, the animal feeding operation shall make and implement appropriate changes to the Plan as required by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

E. The Odor Abatement Plan shall provide and require presite approval by Departmental personnel prior to construction of the facility or waste retention structure. During construction, the Department shall monitor the construction process as deemed necessary by the Department in an attempt to verify the construction of the facility or structure is done according to plans and acceptable engineering standards to reduce or eliminate potential of odor.

SECTION 9. AMENDATORY Section 10, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-205.4), is amended to read as follows:

Section 9-205.4 A. Any hydrologic connection between wastewater and groundwater outside that authorized by the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto shall constitute a discharge to waters of the state.

B. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, to prevent hydrologic connections between a retention structure and waters of the state, all animal feeding operations in

this state operating a liquid animal waste management system whether or not such waste facilities are licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall:

1. Utilize, as required by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, a natural or geomembrane liner or other liner constructed of synthetic materials in any retention structure containing liquid animal waste; or

2. Documentation that there is no hydrologic connection between the waters of the state and the retention structure.

C. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, all retention structures shall maintain a minimum separation of ~~four (4)~~ ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation which is measured from the bottom of the retention structure and the highest point of the seasonal groundwater table.

D. 1. An animal feeding operation can document lack of hydrologic connection by either:

a. documenting that there will be no leakage from the retention structure outside that authorized pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated pursuant thereto, or

b. documenting that any leakage from the retention structure will not migrate to waters of the state.

2. This documentation shall be certified by a professional engineer ~~or qualified groundwater scientist~~ and shall be verified by a professional engineer or groundwater scientist contracted or employed by the Department and shall include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the maximum operating level.

E. The Department of Agriculture shall establish standards for retention structures pursuant to the provisions of this section.

F. If the Department determines that the documentation of barriers to hydrologic connections between the retention structure and waters of the state is not sufficient to establish by clear and convincing evidence that the retention structure does not constitute a threat to contamination of the waters of the state, the Department may require the applicant or licensee to install a natural or geomembrane liner or other liner constructed of synthetic material. All facilities shall be subject to random retention structure leakage checks.

G. If the Department determines that evidence shows a likelihood exists for the contamination of public or private ~~drinking~~ water, the Department shall require the licensee to install a leak detection system or monitoring wells.

H. Site-specific conditions shall be considered in the design and construction of liners. Liners for retention structures shall be designed to meet the minimum permeability required by the Board without assuming the sealing properties of animal manure and be certified by an independent third party and otherwise be constructed in accordance with the provisions of this section and generally accepted engineering practices pursuant to Technical Note 716 of the Natural Resources Conservation Service established by rules of the Board or as otherwise required by the federal Environmental Protection Agency. Animal feeding operations under one thousand (1,000) animal units may construct retention structures in accordance with National Resources Conservation Service standards if a National Resources Conservation Service engineer designs the retention structure. If the postconstruction liner testing results do not meet the minimum design standards of the professional engineer that designed the liner, and/or substituted National Resources Conservation Service standards, the retention structure

shall not be allowed to be used until the problems are satisfactorily corrected and certified by a professional engineer.

I. 1. When a liner is installed to prevent hydrologic connection, the licensee must maintain the liner to inhibit infiltration of wastewaters. Documentation of liner maintenance shall be maintained with the Pollution Prevention Plan.

2. A professional engineer, ~~or qualified groundwater scientist~~ shall conduct a site evaluation every five (5) years on the retention structure to ensure liner integrity. If the owner or operator suspects that a retention structure is leaking, the owner or operator shall report such suspected leakage to the Department.

J. All substances entering the retention structures shall be composed entirely of wastewaters from the proper operation and maintenance of an animal feeding operation and the runoff from the animal feeding operation area. The disposal of any materials, other than substances associated with proper operation and maintenance of the facility into the containment structures, including but not limited to human waste, is prohibited.

K. All retention structures shall be designed for odor abatement.

L. Retention structures and building flushing systems shall be designed such that stored wastewater shall not exceed the Biological Oxygen Demand and the Total Dissolved Solids parameters required for municipal sewage treatment lagoons by the Department of Environmental Quality.

M. Documentation, sampling data, and any other records required by this section shall be maintained on site for ~~three (3) years~~ as long as the facility is in operation. Samples collected during the first year of the retention structure shall be considered the baseline data and must be retained ~~on-site for the life of the retention structure~~ on site as long as the facility is in operation.

SECTION 10. AMENDATORY 2 O.S. 1991, Section 9-209, as amended by Section 14, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-209), is amended to read as follows:

Section 9-209. A. Licenses issued pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall expire on June 30 of each year and may be renewed upon payment of the annual license fee and continued compliance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and the rules of the Board.

B. An original license issued after January 1 of a license year shall require only fifty percent (50%) of the annual fee.

C. The fees for an animal feeding operations license and annual renewal thereof shall be:

<del>Animal feeding</del>	<del>Amount</del>
<del>operations capacity</del>	<del>of Fee</del>
<del>Under two hundred fifty animal units</del>	<del>\$15.00</del>
<del>Two hundred fifty to five hundred animal units</del>	<del>37.50</del>
<del>Five hundred to three thousand animal units</del>	<del>75.00</del>
<del>Three thousand to ten thousand animal units</del>	<del>150.00</del>
<del>Over ten thousand animal units</del>	<del>225.00</del>

determined by the Board and shall be adequate to cover costs of processing applications, maintaining records pertaining to licenses and inspections of licensed facilities. Application fees shall be nonrefundable. Fees are to be paid by the parties who own the animals producing the waste.

D. All fees received by the Board for licensure of animal feeding operations shall be deposited in the Department of Agriculture Revolving Fund for the purpose of implementing and enforcing the Oklahoma Concentrated Animal Feeding Operations Act, including, but not limited to, groundwater monitoring.

SECTION 11. AMENDATORY 2 O.S. 1991, Section 9-210, as last amended by Section 16, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-210), is amended to read as follows:

Section 9-210. A. In addition to any other requirement of the Oklahoma Concentrated Animal Feeding Operations Act, animal feeding operations owners and operators who are granted an animal feeding operations license shall:

1. Provide adequate veterinarian services for detection, control, and elimination of livestock diseases;
2. Have available for use at all necessary times mechanical means of scraping, cleaning, and grading feed yards premises; and
3. Provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks, and feeding devices.

B. 1. Any preexisting animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with the rules promulgated by the Board, shall be deemed to be prima facie evidence that a nuisance does not exist; provided, no animal feeding operation shall be located or operated in violation of any zoning regulations.

2. ~~Any~~ Except as otherwise provided by Section 9-210.1 of this title, any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with rules promulgated by the Board, that is located on land more than three (3) miles outside the incorporated limits of any municipality and which is not located within one (1) mile of ten or more occupied residences shall not be deemed a nuisance unless it is shown by a preponderance of the evidence that the operation endangers the health or safety of others or of the environment.

SECTION 12. AMENDATORY Section 17, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-210.1), is amended to read as follows:

Section 9-210.1 A. Based upon Oklahoma's variety and varying topography, climatological conditions, and geographic and stratigraphic boundaries, the state shall be divided east and west based on the Indian Meridian for the purpose of determining setback requirements for animal feeding operations from occupied residences pursuant to the provisions of this section.

B. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, no new or expanding licensed managed feeding operation with a capacity of two thousand (2,000) or more animal units:

1. Located in the eastern half of the state shall be constructed where its closest waste facility is within a distance of one-half (1/2) mile of any occupied residence not owned or leased by the owner or operator of the licensed managed feeding operation; or

2. Located in the western half of the state shall be constructed where its closest waste facility is within a distance of three-fourths (3/4) mile of any occupied residence not owned or leased by the owner or operator of the licensed managed feeding operation.

C. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, no new or expanding animal feeding operation with a capacity of less than two thousand (2,000) animal units but more than one thousand (1,000) animal units which primarily uses a liquid animal waste management system and where animals are primarily housed in a roof-covered structure:

1. Located in the eastern half of the state shall be constructed where its closest waste facility is located within a distance of one-fourth (1/4) mile of any dwelling not owned or leased by the owner of the animal feeding operation; or

2. Located in the western half of the state shall be constructed where its closest waste facility is located within a distance of one-half (1/2) mile of any dwelling not owned or leased by the owner of the animal feeding operation.

D. Except as otherwise provided by Section ~~18~~ 9-210.2 of this act title, no new or expanding animal feeding operation with a capacity of more than three hundred (300) animal units but having one thousand (1,000) animal units or less which primarily uses a liquid animal waste management system and where animals are primarily housed in a roof-covered structure shall be constructed where its closest waste facility is located within a distance of one-fourth (1/4) mile of any occupied residence not owned or leased by the owner of the animal feeding operation.

E. Except as otherwise authorized by this subsection, no liquid animal waste shall be land applied within five hundred (500) feet of the nearest corner of an occupied residence not owned or leased by the owner of the animal feeding operation.

F. Except as otherwise provided by Section ~~18~~ 9-210.2 of this act title, no concentrated animal feeding operation shall be established after ~~the effective date of this act~~ September 1, 1997, which is within one (1) mile of ten or more residences which are occupied residences at the time of the establishment of the concentrated animal feeding operation.

G. The proscription contained in subsections B, C, D, E and F of this section shall not apply if the adjacent property owner executes a written waiver with the owner or operator of the animal feeding operation, under such terms and conditions that the parties negotiate. The written waiver becomes effective upon recording of the waiver in the offices of the recorder of deeds in the county in which the adjacent property is located. The filed waiver shall preclude enforcement of the setback requirements contained in subsections B, C, D, E and F of this section. A change in ownership

of the adjacent property or change in the ownership of the property on which the animal feeding operation is located shall not affect the validity of the waiver.

H. No liquid animal waste shall be land applied within three hundred (300) feet of an existing public or private ~~drinking~~ water well regardless of ownership of the well.

I. Except as otherwise provided by Section ~~18~~ 9-210.2 of this ~~act~~ title, no concentrated animal feeding operation shall be established after ~~the effective date of this act~~ September 1, 1997, which is located:

1. Within three (3) miles of a state park or resort;

2. ~~Located on~~ On land more than three (3) miles within the incorporated limits of any municipality; or

3. Within three (3) miles of the high water mark of a public water supply if the concentrated animal feeding operation is located within the drainage basin for the public water supply.

J. Except as otherwise provided by Section 9-210 of this title, no licensed managed feeding operation shall be established:

1. Within three (3) miles of sensitive resource areas, including, but not limited to, those listed in Appendix B of the Oklahoma Water Resources Board Water Quality Standards;

2. Within three (3) miles of residential areas consisting of three or more homes per one (1) square mile;

3. In phosphorus-threatened watersheds, if the facility has more than six hundred (600) animal units;

4. Within three (3) miles of the outside boundary of any area or facility owned or operated as a camp or recreational site by a for-profit or nonprofit organization; and

5. Within three (3) miles of any designated scenic river area as specified by the Scenic Rivers Act.

K. All distances between occupied residences and animal feeding operations shall be measured from the closest corner of the walls of

the occupied residence to the closest point of the nearest waste facility, as determined by the Department of Agriculture. The property boundary line of the real property is not used unless it coincides with the closest point of the waste facility or occupied residence.

SECTION 13. AMENDATORY Section 18, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-210.2), is amended to read as follows:

Section 9-210.2 A. 1. Any concentrated animal feeding operation which is licensed by or which has submitted a substantially completed application to the Department of Agriculture on or before September 1, 1997, shall be required to comply with all applicable provisions within one (1) year of such date or may enter into a compliance schedule with the Department to come into compliance.

2. The provisions of Section ~~17~~ 9-210.1 of this ~~act~~ title relating to setback requirements and the provisions of ~~subsections B and subsection~~ C of Section ~~10~~ 9-205.4 of this ~~act~~ title relating to ~~utilization of liners in retention structures or documentation of no hydrologic connection and to~~ a minimum separation of ~~four (4)~~ ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to the waste retention facilities constructed prior to the effective date of this act except as otherwise provided by subsection F of this section or specified by this subsection.

B. The provisions of Section 9-205.4 of this title relating to the minimum separation of ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to waste retention structures licensed after September 1, 1997, and before the effective date of this act except as otherwise provided by subsection F of this section.

C. 1. Any animal feeding operation, other than a concentrated animal feeding operation, which is licensed by or which has submitted a substantially completed application to the Department of Agriculture on or before September 1, 1997, and desiring to retain such licensure, shall be required to comply with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act within one (1) year of such date or may enter into a compliance schedule with the Department to come into compliance.

2. The provisions of Section ~~17~~ 9-210.1 of this ~~act~~ title relating to setback requirements and the provisions of ~~subsections B and subsection~~ C of Section ~~10~~ 9-205.4 of this ~~act~~ title relating to ~~utilization of liners in retention structures or documentation of no hydrologic connection and to~~ a minimum separation of ~~four (4)~~ ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to the waste retention facilities constructed prior to the effective date of this act except as otherwise provided by subsection F of this section or specified by this subsection.

~~C.~~ D. 1. Animal feeding operations, other than a concentrated animal feeding operation, not licensed pursuant to the provisions of the Oklahoma Feed Yards Act in operation on ~~the effective date of this act~~ September 1, 1997, shall not be subject to any setback requirements not in effect on the date of past construction.

2. Provided, that the provisions of ~~subsections B and subsection~~ C of Section ~~10~~ 9-205.4 of this ~~act~~ title relating to ~~utilization of liners in retention structures or documentation of no hydrologic connection and to~~ a minimum separation of ~~four (4)~~ ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to waste retention facilities constructed prior to the effective date of this act except as otherwise provided by subsection F of this section or specified by this subsection except as a condition to the issuance

of a license pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

~~D.~~ E. On or after September 1, 1997, any expanding operations shall be in accordance with the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

F. 1. Except for licensed managed feeding operations, and concentrated animal feeding operations whose waste retention structures are not required to be lined on the effective date of this act, the Department shall establish a compliance schedule for the retrofitting of liners required by subsection B of Section 9-205.4 of this title. Such retention structures shall be retrofitted within six (6) months of the effective date of this act.

2. a. Licensed managed feeding operations shall phase out the use of earthen retention structures, whether or not the structure uses a synthetic liner, within three (3) years of the effective date of this act.

b. All licensed managed feeding operations constructed following the effective date of this act and all licensed managed feeding operations after three (3) years following the effective date of this act shall use above-ground storage structures which are lined and constructed upon a sealed, reinforced foundation of concrete or better material.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1-207 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Water Resources Board, the Department of Agriculture, the Department of Environmental Quality, the Department of Wildlife Conservation and the Conservation Commission shall work together to develop and implement basinwide water quality management plans for each major river basin in the state.

B. In developing and implementing each plan, the agencies shall consider the cumulative impacts of all activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition and animal operations.

C. Each basinwide water quality management plan shall:

1. Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the pollutants in the state's waters in a fair, reasonable and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development;

2. Be devised to manage the annual mass load of nutrients and dissolved solids that are delivered to surface waters within each river basin from point and nonpoint sources such that improvement will occur in nutrient-threatened waters and unimpaired waters will not be degraded;

3. Define goals to be achieved within the next five (5) years;

4. Require that incremental progress toward achieving the goal be demonstrated each year; and

5. Be reviewed at least every five (5) years to reflect changes in water quality, improvements in modeling methods, improvements in wastewater treatment technology, and advances in scientific knowledge.

D. The agencies shall submit a report on or before November 1 of each year on an annual basis to the Office of the Secretary of the Environment on its progress in developing and implementing the basinwide water quality management plans and on increasing public

involvement and public education in connection with basinwide water quality management planning.

E. The agencies may implement strategies, including, but not limited to, additional water and soil monitoring, effluent limitations, supplemental standards or classifications, best management practices, protective buffers, riparian zones, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups.

F. Upon determination of state standards for total maximum daily loads of pollutants and the state regulation thereof, the agencies shall ask the Oklahoma Attorney General and the United States Environmental Protection Agency to enforce water quality standards at the state's borders.

SECTION 15. This act shall become effective July 1, 1998.

SECTION 16. 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.

46-2-8413

KSM