

SHORT TITLE: Agriculture; deleting exceptions; removing restrictions; adding requirements; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 559

By: Laughlin

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-202, 9-208, as last amended by Section 29, Chapter 140, O.S.L. 1994 and Section 9-210, as amended by Section 1, Chapter 315, O.S.L. 1993 (2 O.S. Supp. 1996, Sections 9-208 and 9-210), which relate to the Oklahoma Feed Yards Act; deleting exceptions for certain storm related discharges; removing restrictions or declaring certain operations to be a nuisance; adding criteria for concentrated animal feeding operations; requiring certain permits or license for certain swine operations; adding requirements for locations of animal confinement structures, waste storage, retention structures and land application of wastes; requiring certain groundwater monitoring wells; providing for testing of wells; establishing fees; deleting certain provisions relating to animal feeding operations; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-202, is amended to read as follows:

Section 9-202. A. Concentrated animal feeding operations are point sources subject to the permit or license program.

B. As used in ~~this act~~ the Oklahoma Feed Yards Act:

1. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- a. animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and
- b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are considered, for the purposes of this law, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

2. "Concentrated animal feeding operations" or "feed yards" means an animal feeding operation which meets the criteria set forth as follows:

- a. more than the number of animals specified in any of the following categories are confined:
  - (1) 1,000 slaughter and feeder cattle,
  - (2) 700 mature dairy cattle (whether milk or dry cows),
  - (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
  - (4) 500 horses,
  - (5) 10,000 sheep or lambs,
  - (6) 55,000 turkeys,
  - (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),

- (8) 30,000 laying hens or broilers (if the facility has a liquid manure system),
- (9) 5,000 ducks, or
- (10) 1,000 animal units; or

b. more than the following number and types of animals are confined:

- (1) 300 slaughter or feeder cattle,
- (2) 200 mature dairy cattle (whether milk or dry cows),
- (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),
- (4) 150 horses,
- (5) 3,000 sheep or lambs,
- (6) 16,500 turkeys,
- (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 9,000 laying hens or broilers (if the facility has a liquid manure system),
- (9) 1,500 ducks, or
- (10) 300 animal units;

and either one of the following conditions are met: Pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation. ~~Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a twenty-five year, twenty-four-hour storm event.; or~~

c. any animal feeding operation that houses swine and incorporates or uses a liquid waste retention structure; or

d. the Board determines that the operation is a significant contributor of pollution to waters of the United States.

3. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by one (1) plus the number of mature dairy cattle multiplied by one and four-tenths (1.4), plus the number of swine weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), multiplied by four-tenths (0.4), plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2).

4. "Man-made" means constructed by man and used for the purpose of transporting wastes:

a. Case-by-case designation of concentrated animal feeding operations:

(1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the United States. In making this designation the Board shall consider the following factors:

- (a) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;
- (b) The location of the animal feeding operation relative to waters of the United States;

- (c) The means of conveyance of animal wastes and process wastewater into waters of the United States;
  - (d) The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the United States; and
  - (e) Other such factors relative to the significance of the pollution problem sought to be regulated.
- (2) No animal feeding operation with less than the number of animals set forth in ~~paragraph 2,~~ subparagraphs ~~(a)~~ and ~~(b)~~ of paragraph 2 of this subsection shall be designated as a concentrated animal feeding operation unless:
- (a) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; ~~or~~
  - (b) Pollutants are discharged directly into waters of the United States which originate outside the facility and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation;
  - (c) such animal feeding operation that houses swine and incorporates or uses a liquid waste retention structure; or
  - (d) the Board determines that the operation is a significant contributor of pollution to waters of the United States.

(3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this division until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program:

(a) Subject to the provisions of subdivision (b) of this division ~~(3) of paragraph (2) of subparagraph (b) of this subsection~~, the following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this section, which may be discharged by a point source subject to the provisions of this subsection after application of the best conventional pollutant control technology. There shall be no discharge of process wastewater pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed and operated to contain all process generated wastewaters plus the runoff from a twenty-five year, twenty-four-hour rainfall event for the location of the point source.

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

SECTION 2. AMENDATORY 2 O.S. 1991, Section 9-208, as last amended by Section 29, Chapter 140, O.S.L. 1994 (2 O.S. Supp. 1996, Section 9-208), is amended to read as follows:

Section 9-208. A. It shall be unlawful for any person to operate a feed yard or a concentrated animal feeding operation which meets the criteria set forth in subparagraphs a, b, ~~or c~~ or d of paragraph 2 of subsection B of Section 9-202 of this title, without having first obtained a permit or license from the ~~Board~~ Oklahoma State Board of Agriculture. The owner or operator of livestock feed yards not meeting these criteria may apply for a license if such owner or operator elects to come under the provision of the Oklahoma Feed Yards Act and the rules of the Board.

B. 1. The Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
- (2) slaughterhouses, but not including feedlots at such facilities, and
- (3) animal agriculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and
- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

2. Any point source and nonpoint source discharges related to agriculture, as specified in paragraph 1 of subsection D of Section

~~6~~ 1-3-101 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 1 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality ~~or the Department of Agriculture.~~

SECTION 3. AMENDATORY 2 O.S. 1991, Section 9-210, as amended by Section 1, Chapter 315, O.S.L. 1993 (2 O.S. Supp. 1996, Section 9-210), is amended to read as follows:

Section 9-210. A. Owners and operators who are granted a feed yards license shall: (1) provide reasonable methods for the disposal of animal excrement; (2) provide chemical and scientific control procedure for prevention and eradication of pests; (3) provide adequate drainage from feed yards premises of surface waters falling upon the area occupied by such feed yards; take such action as may be necessary to avoid pollution of any stream, lake, river or creek; (4) provide adequate veterinarian services for detection, control, and elimination of livestock diseases; (5) have available for use at all necessary times mechanical means of scraping, cleaning, and grading feed yards premises; (6) provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks, and feeding devices; (7) conduct feed yards operations in conformity with established practices in the feed yards industry as approved by regulations made and promulgated by the Board and in accordance with the standards set forth in this act.

~~B. Any animal feeding operation licensed pursuant to the Oklahoma Feed Yards Act, Section 9-201 of this title, operated in compliance with such standards, and in compliance with the regulations made and 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~~ Any animal feeding operation which meets the criteria set forth in subparagraph c of paragraph 2 of subsection B of Section 9-202 of this title shall, in addition to all other requirements established by the Board under the authority of this act, meet the following requirements:

1. All animal confinement structures shall be located at least five thousand two hundred eighty (5,280) feet from an occupied dwelling;

2. All waste storage and/or retention structures shall be located at least five thousand two hundred eighty (5,280) feet from an occupied dwelling;

3. All land application of liquid and solid wastes shall be at least fifty (50) feet from adjoining property lines and one hundred (100) feet from wells, sinkholes, surface waterways and other hydrologically sensitive areas; and

4. Groundwater monitoring wells shall be established upgradient and downgradient from waste retention structures and land application sites. These wells will be sampled by authorized agents of the Board for testing. The Board shall establish fees for the collection and testing of these samples.

C. ~~No~~ Any animal feeding operation licensed pursuant to the Oklahoma Feed Yards Act, Section 9-201 of this title, operated in compliance with such standards, and in compliance with regulations made and 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 (10) or more occupied residences shall be deemed a nuisance unless it is shown by a preponderance of the evidence that the operation endangers the health or safety of others which has applied for a permit pursuant to this act, and begun construction prior to the effective date

hereof, shall not be subject to paragraph 1 or 2 of subsection B of  
this section.

SECTION 4. This act shall become effective November 1, 1997.

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