

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1645

By: DeWitt

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2001, Section 9-205.1, which relates to the Oklahoma Concentrated Animal Feeding Operations Act; modifying certain application procedures; setting certain time periods; requiring certain information; prohibiting certain additional submissions; requiring certain notices; modifying certain written requests; requiring certain hearing requests; authorizing submission of written comments; modifying public hearings process; limiting standing; providing exceptions; providing for comments; providing for public meetings; requiring scheduling of application consideration; specifying time period for completion; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 9-205.1, is amended to read as follows:

Section 9-205.1 A. 1. Any person applying for a license 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. 1. After submission of a completed application as provided by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto, the State Department of Agriculture shall have

sixty (60) days to review the application for a new or expanding operation for physical and technical suitability.

2. After the initial review, the Department shall notify the applicant in writing, within five (5) working days, that the application is complete or that more information is required. If requesting additional information, the Department shall provide a detailed list of all deficiencies within the application.

3. Upon notice that more information is required, the applicant shall have thirty (30) working days to provide the required information to the Department. This time period begins when the applicant receives the letter from the Department.

4. The Department shall then have an additional thirty (30) working days to review the additional information provided by the applicant. This time period will begin when the Department receives the response from the applicant.

5. No additional submissions shall occur after the commencement of the public review period, unless otherwise agreed to by the administrative law judge.

~~C. 1. After such review and after the applicant has submitted any required information to the Department, the Department shall require the applicant to notify all affected property owners of the proposed facility or expanding operations~~ Upon conclusion of all review periods, the Department shall require the applicant to notify all affected property owners of the proposed facility or expanding operations within ten (10) working days. Such notice shall be sent by certified mail, return receipt requested.

2. 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~~ 3. An affected property owner requesting ~~desiring a~~ hearing on the application shall provide a written request for a ~~hearing shall submit, in writing,~~ to the Department within twenty ~~(20) working days of the certified mailing, and the request shall~~ include the following information:

a. a statement that a hearing on the application is ~~requested,~~

b. the name and address of the interested party affected ~~property owner~~ and proof of standing by showing that ~~providing documentation proving the interested party~~ is an affected property owner,

~~b. c.~~ c. 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

~~e. d.~~ d. the relief sought by the interested party.

~~3. 4.~~ 4. If any of the affected property owners request an administrative hearing, ~~such~~ the hearing process shall be ~~held~~ initiated by the Department within ~~not less than thirty (30)~~ seven ~~(7) working days~~ near of the close of the public review period. The hearing process shall be concluded in not more than ~~sixty (60)~~ ninety (90) working days after the close of the public review period pursuant to subsection D of this section unless otherwise agreed to by both the applicant and the protestants. All ~~interested parties~~ may affected property owners requesting a hearing shall be joined as parties to the hearing ~~pursuant to rules promulgated by the State Board of Agriculture.~~

~~4.~~

5. a. ~~In addition to any other information deemed necessary by the Department, at the hearing the Department~~ The administrative law judge 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~~ affected property owner 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.

b. For applications submitted on and after ~~the effective date of this act~~ August 1, 1998, the Department shall deny the issuance of a license to an applicant for a licensed managed feeding operation if an interested party within:

(1) one (1) mile of the designated perimeter of the proposed licensed managed feeding operation or expansion thereof, or

(2) the setback distance of an occupied residence as provided in subsection A of Section ~~16~~ 9-210.3 of this ~~act~~ title if such setback distances are greater than one (1) mile,

proves that the granting of the license will cause significant harm to the property value of the interested party.

~~5.~~ 6. 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.~~ 7. The administrative law judge shall submit the recommendation and proposed order to the Department within thirty working (30) days after completion of the hearing unless otherwise agreed to by both the applicant and the protestant.

8. 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.

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 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~~ shall remain posted during normal business hours for ~~at least twenty (20) working days after notice is published~~ the twenty working day time period corresponding with the affected property owner notification.

5. Any interested Oklahoma citizen may submit written comments regarding the application to the Department. Such written comments are due to the Department within the twenty working day public notice period.

6. 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~~ hear public comments on the proposed facility or expanding operation. Any public meetings shall be held prior to the start of the hearing process. If no hearing is requested, a public meeting, if held, shall be held not less than thirty (30) days nor more than sixty (60) days after the close of the public comment period.

E. Prior to the issuance of any 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 affected property owners and the corresponding mailing list shall be submitted with each application; and

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

F. Applicants for licenses for licensed managed feeding operations with a capacity of more than two thousand (2,000) animal units which have given the notice required by this section to all surface property owners within one (1) mile of the designated perimeter of the operation prior to March 9, 1998, shall not be required to provide notice by mail to owners of surface property more than one (1) mile but within two (2) miles of the designated perimeter of the operation.

G. Upon receipt of the recommendation and proposed order of the administrative law judge, the Department shall schedule

consideration of the application for the next available regularly scheduled State Board of Agriculture meeting.

H. The Department shall have eighteen (18) months from the effective date of this act to place all pending applications into the process for achieving compliance with the timelines specified in this section.

SECTION 2. 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.

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