

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 1233

By: Crutchfield of the Senate

and

Pope of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2001, Sections 9-200, 9-201, 9-202, 9-203, 9-204, 9-204.1, 9-205, 9-205.1, 9-205.2, 9-205.3, 9-205.3a, 9-205.4, 9-205.5, 9-206, 9-208, 9-209, 9-209.1, 9-210, 9-210.1, 9-210.2, 9-210.3, 9-211, 9-212.1 and 9-214, which relate to the Oklahoma Licensed Managed Feeding Operations Act; modifying legislative intent; clarifying purpose of act; modifying definitions; clarifying language; changing composition of rule advisory committee; adding duty to obtain certain permit; deleting obsolete language; modifying certain application requirements; clarifying burden of proof for administrative hearing; requiring nutrient management plans; modifying criteria for Best Management Practices; modifying new source requirements; modifying land application rates; modifying requirements for odor abatement plans; deleting certain references relating to confined animal feeding operations; modifying irrigation system requirements; deleting references to confined animal feeding operations; deleting reference to outdoor facilities; deleting certain setback requirements; deleting obsolete language; modifying certain setback requirements; providing for restrictions on operations at certain locations; modifying violation points system; establishing penalties for certain operations; creating the Oklahoma Concentrated Animal Feeding Operations Act; defining concentrated animal feeding operations as point sources; defining terms; providing for rulemaking authority for the State Board of Agriculture; creating rule advisory committee; providing for comments on proposed rules; creating process for designation of certain facilities; requiring application for certain permits; providing for exceptions; providing application requirements; requiring permits for certain discharges; providing for determination of no potential to discharge status; establishing deadlines for application of certain permits; establishing duty to maintain permit; authorizing Board to promulgate certain rules; providing for investigative authority; providing for annual fees for Confined Animal Feeding Operations; providing for restrictions on operations at certain locations; amending Section 2, Chapter 94,

O.S.L. 2002 (2 O.S. Supp. 2003, Section 10-9), which relates to acceptance or approval of concentrated animal feeding operations; modifying scope of restrictions; establishing additional requirements for permittees; providing for limits on liability; repealing 2 O.S. 2001, Section 9-212, which relates to penalties; providing for codification; providing for noncodification; providing for recodification; 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. 2001, Section 9-200, is amended to read as follows:

Section 9-200. It is the intent of the Legislature that the ~~amendments and the new law contained in this act~~ the Oklahoma Licensed Managed Feeding Operations Act shall only apply to swine and operations which house swine ~~except as otherwise provided by Sections 17, 18 and 19 of this act.~~

SECTION 2. AMENDATORY 2 O.S. 2001, Section 9-201, is amended to read as follows:

Section 9-201. A. Sections ~~9-201~~ 1 through ~~9-215~~ 22 and Section 24 of this ~~title act~~ shall be known and may be cited as the "Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act".

B. The purpose of the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act is to provide for environmentally responsible construction and expansion of ~~animal~~ licensed managed feeding operations and to protect the safety, welfare, and quality of life of persons who live in the vicinity of ~~an animal~~ a licensed managed feeding operation.

C. The implementation and enforcement of the Oklahoma Licensed Managed Feeding Operations Act shall also be subject to the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the Oklahoma Agriculture Environmental Permitting Act.

SECTION 3. AMENDATORY 2 O.S. 2001, Section 9-202, is amended to read as follows:

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

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

1. "Affected property owner" means a surface landowner within:

a. one (1) mile of the designated perimeter of ~~an animal~~ a licensed managed feeding operation ~~which:~~

~~(1) does not meet the definition of a licensed managed feeding operation, or~~

~~(2) that is previously unlicensed or an expanding licensed managed feeding operation with a capacity of two thousand (2,000) or less animal units, or~~

b. two (2) miles of the designated perimeter of a licensed managed feeding operation or an expanding operation with a capacity of more than two thousand (2,000) animal units 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) 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, or an aquatic animal production facility;~~

~~3. "Animal unit" means a unit of measurement for any animal licensed managed 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 fifty-five (55) pounds multiplied by one-tenth (0.1), plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2);~~

~~4. 3. "Animal waste" means animal excrement, animal carcasses, feed wastes, process wastewaters, or any other waste associated with the confinement of animals from an animal a licensed managed 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 ~~9-205.3~~ of this title;~~

~~6. 4. "Animal waste management system" means a combination of structures and nonstructural practices serving an animal a licensed managed feeding operation that provides for the collection, treatment, disposal, distribution, storage, and land application of animal waste;~~

~~7. 5. "Artificially constructed" means constructed by humans;~~

~~8. 6. "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 State Department of Agriculture pursuant to Section 9-205.3 of this title;~~

~~9. 7. "Board" means the State Board of Agriculture;~~

~~10. 8. "Common ownership" includes but is not limited to any corporation, partnership, or individual where the same owner operator 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 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) 500 horses,~~

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

~~(e) 55,000 turkeys,~~

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

~~(g) 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~~

e. ~~an 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) 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 weaned swine each weighing under 25 kilograms,~~

~~(e) 150 horses,~~

~~(f) 3,000 sheep or lambs,~~

~~(g) 16,500 turkeys,~~

~~(h) 30,000 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) 300 animal units, and~~

~~(2) either one of the following conditions are 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 9-204.1 of this title;~~

~~12.~~ 9. "Department" means the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry;

~~13.~~ 10. "Designated perimeter" means the perimeter of any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. ~~Such~~ The structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing animals, composters, waste storage sites, or retention structures or appurtenances or additions thereto;

~~14.~~ 11. "Director" means the Director of the Agriculture Pollutant Discharge Elimination System;

12. "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 licensed managed feeding operation, or
- b. a licensed managed feeding operation that seeks to increase its licensed capacity in excess of five percent (5%) of the original facility's licensed capacity;

~~15.~~ 13. "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;

~~16.~~ 14. "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~~ a licensed managed feeding operation license and asserts rights to relief in respect to or arising out of the same license;

~~17.~~ 15. "Land application" means the spreading on, or incorporation of animal waste into the soil mantle primarily for beneficial purposes;

16. "License" means an authorization, permit, or equivalent control document issued to implement the Oklahoma Licensed Managed Feeding Operations Act. The terms license and permit may be used interchangeably;

~~18.~~ 17. "Licensed managed feeding ~~operations~~ operation (LMFO)" means ~~an animal feeding operation~~ a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for forty-five (45) days or more in any twelve-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility, and that primarily ~~using~~ uses a liquid animal waste management system, where animals are primarily housed in a roof-covered structure and ~~which~~ that has ~~more than~~ the number of animals specified in any of the following categories confined:

- a. 2,500 swine each weighing over ~~25 kilograms,~~ approximately 55 fifty-five (55) pounds,
- b. 10,000 weaned swine each weighing under ~~25 kilograms~~ fifty-five (55) pounds, or
- c. ~~100,000 laying hens or broilers, if the facility has continuous overflow watering,~~
- d. ~~30,000 laying hens or broilers, if the facility has a liquid manure system, or~~

~~e.~~ any combination of swine weighing over ~~twenty-five~~  
~~(25) kilograms~~ fifty-five (55) pounds or under ~~twenty-~~  
~~five (25) kilograms which would equal~~ fifty-five (55)  
pounds equaling one thousand (1,000) animal units;

~~19.~~ 18. "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;

~~20.~~ "~~Managing operator~~" means ~~the owner or one who is~~  
~~responsible for the management of each facility of a concentrated~~  
~~animal feeding operation or animal feeding operation;~~

~~21.~~ 19. "New source" means any building, structure, facility,  
or installation where there is or may be a discharge of pollutants  
and the construction commenced after the federal Environmental  
Protection Agency's April 14, 2003, promulgation of effluent  
limitations guidelines and standards applicable to the source;

20. "Nutrient management plan" means a written plan that  
includes a combination of conservation and management practices  
designed to protect the natural resources of the state and dealing  
with the amount, source, placement, form, and timing of the land  
application of all nutrients and soil amendments;

21. "Nutrient-limited watershed" means a watershed of a  
~~waterbody~~ water body which is designated as "nutrient-limited" in  
the most recent Oklahoma Water Quality Standards;

22. "Nutrient-vulnerable groundwater" means groundwater which  
is designated "nutrient-vulnerable" in the most recent Oklahoma  
Water Quality Standards;

23. "Occupied residence" means a habitable structure designed  
and constructed for full-time occupancy in all weather conditions  
that:

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;

~~24. "Odor Abatement Plan" or "OAP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce odor as established by the State Department of Agriculture pursuant to Section 10 of this act;~~

~~24. "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;~~

~~25. "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 title~~ "Operator" means the owner and person who is responsible for the management of each facility of a licensed managed feeding operation. The owner and person who are responsible for the management of the facility shall be jointly and severally obligated to comply with the provisions of the Oklahoma Licensed Managed Feeding Operations Act;

26. "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~~ including,

but not limited to, 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~~ that comes into contact with animals or animal waste;

27. "Retention structures" ~~includes~~ means, 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;

28. "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~~ The structures shall include, but not be limited to, pits, burial sites, barns or roof-covered structures housing animals, ~~composters~~ composters, waste storage sites, or retention structures or appurtenances or additions thereto; and

29. "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~~ Provided, waste treatment systems, including treatment ponds and lagoons designed to meet federal and state requirements other than cooling ponds as defined in the Clean Water Act or rules promulgated thereto are not ~~be considered as~~ waters of the state ~~if contaminated at the site.~~

SECTION 4. AMENDATORY 2 O.S. 2001, Section 9-203, is amended to read as follows:

Section 9-203. The State Board of Agriculture is authorized to promulgate rules for the administration, ~~and implementation,~~ and enforcement of the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act. For the performance of its duties and responsibilities, the Board is authorized to employ ~~such~~ personnel and agents as may be required within the funds available.

SECTION 5. AMENDATORY 2 O.S. 2001, 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~~ Licensed Managed Feeding Operations Act.

1. The committee shall consist of:

~~1. One member who shall represent the beef cattle producers;~~

~~2. One member who shall represent the dairy producers;~~

~~3. One member~~

a. three members who shall represent the pork producers~~;~~1

~~4. One member who shall represent the poultry producers;~~

~~5. One~~

b. one member who shall represent the field of hydrogeology~~;~~1

~~6. One~~

c. one member who shall be a soil scientist~~;~~1

~~7. One~~

d. one member designated by the Secretary of the Environment~~;~~1

~~8. One~~

e. one member who shall be a ~~biological systems~~ professional engineer~~;~~1

~~9. One~~

f. one member who shall represent the field of water quality science~~+~~,

~~10. One~~

g. one member who shall represent the field of ecology; and

~~11. Two~~

h. two members who shall represent the general public.

2. Of the initial members, four shall serve for one-year terms; four shall serve for two-year terms; and ~~four~~ three shall serve for three-year terms. Thereafter, all members shall serve for three-year terms; provided, all members shall serve at the pleasure of the Board.

3. At the initial meeting of the rule advisory committee, the membership shall appoint a chair, vice-chair, and secretary from its membership and thereafter as determined by the committee.

B. Except for emergency rules, ~~the State Department of Agriculture shall submit~~ proposed rules shall be submitted to the rule advisory committee at the same time as the Department causes notice to be published in "The Oklahoma Register" pursuant to ~~subsection B of Section 303 of Title 75 of the Oklahoma Statutes~~ Administrative Procedures Act. Comments of the rule advisory committee shall be submitted to the members of the Board at least fifteen (15) days prior to any official action by the Board on the rules.

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

SECTION 6. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The rule advisory committee existing on June 30, 2004, shall terminate upon the effective date of this act and members may be

reappointed to the rule advisory committee created by Section 5 of this act.

SECTION 7. AMENDATORY 2 O.S. 2001, Section 9-204.1, is amended to read as follows:

Section 9-204.1 A. ~~1. Any animal~~ operator of a licensed managed feeding operation ~~meeting the criteria defining a concentrated animal feeding operation~~ shall have a duty and 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.~~

~~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~~ the facility.

B. ~~1. Two or more animal feeding operations~~ swine facilities under common ownership are considered, for the purposes of licensure, to be a single ~~animal feeding operation~~ facility 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 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 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 State Department of Agriculture 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~~ For facilities existing on or before April 14, 2003,  
process wastewater in the overflow may be discharged to navigable  
waters of the state whenever rainfall events, ~~either chronic or~~  
~~catastrophic,~~ 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 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 storm event; provided the proper  
design, construction, and operation of the retention structure shall  
include but not be limited to one (1) foot 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 title have been~~  
~~approved by the Department~~ For new sources, there shall be no  
discharge of animal waste to waters of the state, unless rainfall  
events cause an overflow from an animal waste management system that  
is designed, constructed, operated, and maintained to contain all  
animal waste including, but not limited to, the runoff and the  
direct precipitation from a one-hundred-year, twenty-four-hour  
rainfall event.

F. ~~After the effective date of this act, no~~ No new licensed  
managed feeding operation or expanding operation shall be  
constructed until a building permit for ~~such~~ the facility or  
expansion has been issued by the ~~Department~~ Director of the  
Agriculture Pollutant Discharge Elimination System. No new licensed

managed ~~animal~~ feeding operation or expanding operation shall be placed in operation until a license for ~~such~~ the facility or expansion has been issued by the ~~Department~~ Director.

SECTION 8. AMENDATORY 2 O.S. 2001, Section 9-205, is amended to read as follows:

Section 9-205. A. ~~The State Board of Agriculture~~ Director of the Agriculture Pollutant Discharge Elimination System 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,~~ provide for the necessary forms and applications to apply for a license for the operation of a licensed managed feeding operation.

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. If the operator is not the owner of the facility, the name and address of the owner shall be supplied;

2. Name and address of the ~~animal~~ licensed managed 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~~ operator;

5. A copy of the ~~Pollution Prevention Plan containing an Animal Waste~~ Nutrient Management Plan, Best Management Practices, Odor Abatement Plan, ~~or such~~ any other plan authorized ~~by the Oklahoma~~

~~Concentrated Animal Feeding Operations Act~~ and approved by the  
~~Department~~ Director;

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

7. Latitude and longitude of the entrance to the production areas; and

8. Any other information deemed necessary by the ~~State~~  
~~Department of Agriculture~~ Director to administer the provisions of the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act and rules promulgated thereto.

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

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~~ operator by the ~~Department~~ Director. 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~~ operator to request an administrative hearing.

D. ~~No new licensed managed feeding operation or expanding operation shall be constructed until a building permit for such facility or expansion has been issued by the Department. No new licensed managed feeding operation shall be placed in operation until a license for such a 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~~ Within thirty (30) days of the transfer, the new owner  
~~or~~ operator shall submit to the ~~Department~~ Director 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~~  
Director shall review the information, and within 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~~ Director finds a material or  
substantial change in conditions since the issuance of  
the original license to operate the ~~animal~~ licensed  
managed feeding operation,
- c. ~~failure of~~ the new ~~owner or~~ operator fails 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 thereto~~ for licensure under the Oklahoma  
Licensed Managed Feeding Operations Act, or
- d. the new ~~owner or~~ operator has failed to meet the  
requirements of Section ~~9-211~~ 24 of this ~~title~~ act;  
and

3. If a transfer is denied, written notification of ~~such~~ the  
denial and an opportunity for an administrative hearing on the  
denial shall be given to the ~~applicant for a transfer license by the~~  
~~Department~~ operator. 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~~ operator to  
request an administrative hearing.

~~F. E.~~ E. 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 ~~9-211~~ 24 of this ~~title~~ act.

~~G. F.~~ 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~~ licensed managed feeding operation shall be under oath and shall contain the following information:

1. a. A statement of ownership.

(1) (a) If the ~~applicant~~ operator is a firm or partnership, the name and address of each member ~~thereof~~ shall be included in the application, or

~~(2)~~ (b) If the ~~applicant~~ operator 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, and

~~(3)~~ (2) If the ~~applicant~~ operator 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~~ Director;

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

3. a. An environmental history from the past three (3) years of any ~~concentrated animal~~ licensed managed feeding operation established and operated by the ~~applicant~~ operator or any other operation with common ownership in this state or any other state. ~~Such~~ The

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~~ a licensed managed 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~~ that has been set aside by a court on appeal of ~~such~~ the 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~~ operator; 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 thereto~~ Director.

H. G. 1. ~~For licensed managed feeding operations licensed on or after August 1, 1998, all~~ All employees of a proposed licensed managed feeding operation whose duties include treatment, storage, or application of animal waste shall provide proof of certification of satisfactory completion of formal education or training in the areas of waste management and odor control ~~as specified by rules promulgated by the Board~~. Proof of certification of a minimum of nine (9) hours of training and education ~~must~~ shall be submitted either with the license application or within six (6) months of the date of the application for the license.

~~2. All employees of a licensed managed feeding operation licensed before August 1, 1998, whose duties include treatment, storage or application of animal waste shall provide proof of certification of satisfactory completion of formal education or training in the areas of waste management and odor control. Proof of certification of a minimum of nine (9) hours of training and education must be submitted by June 1, 1999.~~

~~3.~~ The ~~Department~~ Director shall require a minimum of three (3) hours of annual refresher training for any employee of a licensed managed feeding operation whose duties include treatment, storage, or application of animal waste.

~~4.~~ 3. Appropriate curricula and course content shall be developed under the supervision of the Director and Oklahoma State University Cooperative Extension Service, ~~which shall provide certification to the Department.~~

~~5.~~ 4. Failure to obtain the prerequisite and annual training and education as required in this subsection shall be deemed a violation ~~of the Oklahoma Concentrated Animal Feeding Operations Act.~~

~~I.~~ ~~1.~~ H. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation, or certification in, 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 Ten Thousand Dollars (\$10,000.00) for each ~~such~~ violation. In addition, the ~~Department~~ Director shall deny licensure to the ~~applicant~~ operator or may require submission of a new application.

~~2.~~ I. The responsibility for ensuring that all affected property owners are notified pursuant to the provisions of ~~this~~

~~section~~ the Oklahoma Licensed Managed Feeding Operations Act shall be upon the ~~applicant~~ operator.

SECTION 9. 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~~ a licensed managed feeding operation shall comply with the notice and hearing requirements as specified by this section and rules promulgated ~~pursuant thereto~~ by the State Board of Agriculture.

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 thereto~~, the ~~State Department of Agriculture~~ Director of the Agriculture Pollutant Discharge Elimination System shall have sixty (60) days to review the application for a new or expanding operation for physical and technical suitability.

C. 1. After ~~such~~ review and after the ~~applicant~~ operator has submitted any additional required information ~~to the Department~~, the ~~Department~~ Director shall require the ~~applicant~~ operator to notify all affected property owners of the proposed facility or expanding ~~operations~~ operation. ~~Such notice~~ Notice shall be sent by certified mail, return receipt requested. The notice shall identify that an application for ~~an animal~~ a licensed managed 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~~ beginning no earlier than the day following the certified mailing of all the required notices, and ~~such~~ other information required by the ~~Department~~ Director.

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~~ they shall be in compliance with all requirements of paragraph 2 of this subsection as determined by the Oklahoma Department of Agriculture, Food, and Forestry. The hearing shall be held ~~by the Department~~ within not less than thirty (30) days nor more than sixty (60) days after the close of the public review period ~~pursuant to subsection D of this section.~~ All interested parties may be joined as parties to the hearing ~~pursuant to rules promulgated by the State Board of Agriculture.~~

4. a. In addition to any other information deemed necessary by the ~~Department~~ Director, at the hearing the ~~Department~~ Director 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 with clear and convincing evidence 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. The burden of proof shall be on the interested party.

b. For applications submitted on and after ~~the effective date of this act~~ August 1, 1998, the Department Director shall deny the issuance of a license to an ~~applicant~~ operator 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 of this act~~ 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. 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 Board.

6. Establishment of property usage ~~which~~ is the date the ~~animal~~ licensed managed feeding operation application was made available, ~~pursuant to this section~~, for public review versus date of initial construction or placement of occupied residence and shall be given consideration when determining a contested matter between an ~~applicant~~ operator 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 Director shall require the ~~applicant~~ operator 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~~ The locations shall include the office of the ~~Department~~ Director 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.

5. The ~~Department~~ Director, 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 license for ~~an animal~~ a licensed managed feeding operation, or expanding operation, the ~~Department~~ Director shall require the ~~applicant~~ operator 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~~ a licensed managed feeding operation license ~~required by this section~~.

F. ~~Applicants for licenses for~~ Operators of licensed managed feeding operations with a capacity of more than two thousand (2,000)

animal units ~~which~~ that 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. Applications for licensed managed feeding operations:

1. Pending on or before July 1, 2004, shall comply with the notice requirements of this section;

2. All applications submitted after July 1, 2004, for licensed managed feeding operations under the Oklahoma Licensed Managed Feeding Operations Act shall comply with the notice to affected property owners and hearing requirements found in the Oklahoma Agriculture Environmental Permitting Act.

SECTION 10. AMENDATORY 2 O.S. 2001, 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~~ licensed managed feeding operation shall develop and implement a Nutrient Management Plan, and provide 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 9-205.3 of this 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~~ Nutrient Management Plan shall be signed by the ~~owner or operator~~ as ~~otherwise authorized~~ required by the ~~State Department of Agriculture and a~~ Director of the Agriculture Pollutant Discharge Elimination System. 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~~ Prior to any change in design, construction, operation, or maintenance, ~~which that~~ has significant effect on the potential for the discharge of pollutants to the waters of the state, the licensed managed feeding operation shall obtain written approval from the Director.

~~D.~~ C. If, ~~after reviewing the Pollution Prevention Plan,~~ the ~~Department~~ Director determines that the ~~Plan~~ licensed managed feeding operation does not meet one or more ~~of the~~ minimum requirements of this section, the ~~animal~~ licensed managed 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.~~ D. The ~~Pollution Prevention Plan~~ licensed managed feeding operation shall ~~provide and require~~ obtain presite approval ~~by Departmental personnel~~ from the Director prior to construction. During construction, the ~~Department~~ Director shall monitor the construction process as deemed necessary by the ~~Department~~ Director 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.~~ E. In addition to other requirements specified by this section, the ~~Pollution Prevention Plan~~ application shall include but not be limited to:

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

2. A map~~r~~ indicating an outline of the drainage area of the facility~~r~~ 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 9-205.4 of this title;~~ and

9. Requirements that all irrigation systems into which any animal waste will be injected shall be equipped as specified by Section ~~9-205.5~~ 14 of this ~~title~~ act.

~~G.~~ F. The following records shall be maintained at the site 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 preventive maintenance and employee training that was completed;
7. Log of removal of animal waste sold or given to other persons for disposal;

8. 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~~ Director;

9. Copy of ~~general~~ any permit issued by the federal Environmental Protection Agency, if applicable, a copy of ~~the completed Pollution Prevention Plan~~ all plans, 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~~ Director; and

10. The notarized statement signed by the ~~applicant~~ operator accepting full responsibility for properly closing all waste retention structures pursuant to subsection ~~F~~ H of this section.

~~H.~~ G. Any required analyses ~~required by the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated thereto~~ shall be performed by a qualified independent testing laboratory certified by the Department of Environmental Quality and approved by the ~~Department~~ Director.

~~I.~~ H. The ~~applicant~~ operator 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~~ operator 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~~ Director.

SECTION 11. AMENDATORY 2 O.S. 2001, 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~~ animal waste to waters of the state except in accordance with the

provisions of the Oklahoma ~~Concentrated Animal~~ Licensed Managed 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 rainfall event for existing facilities and a one-hundred-year, twenty-four-hour rainfall event for new sources;

3. No waters of the state shall come into direct contact with the animals confined on the ~~animal~~ licensed managed 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 ~~for licensed managed feeding operations~~ and shall not otherwise create unnecessary and unreasonable odors. Odors are unnecessary and unreasonable if ~~such~~ the odors may be reduced by more efficient management practices at a reasonable expense,
- e. not violate any state or federal laws relating to endangered or threatened species of plant, fish, or wildlife or to migratory birds,
- f. conform to the Pest Management ~~Plans for licensed managed feeding operations as required by rules promulgated by the State Board of Agriculture Plan,~~
- g. conform to ~~such~~ other handling, treatment, and management and removal requirements deemed necessary by the ~~State Department of Agriculture to implement the Oklahoma Concentrated Animal Feeding Operations~~

~~Act and rules promulgated pursuant thereto~~ Director of the Agriculture Pollutant Discharge Elimination System, and

- h. ensure that watersheds and groundwater are adequately protected; and

5. If, for any reason, there is a discharge, the ~~licensee is required to~~ operator shall make immediate notification to the ~~Department~~ Director. The report of the discharge 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~~ any other required parameters as required by the ~~Department which~~ that the Department Director has reason to believe could be in the discharge.

C. The ~~Animal Waste~~ licensed managed feeding operation shall develop and implement a Nutrient Management Plan based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and addressing the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and

phosphorus movement to waters of the state. The nutrient management plan 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 operator;

4. Requirements including that:

- a. (1) ~~land application of animal waste shall not exceed the application rates for animal waste applied to land under the ownership or operational control of the licensed managed feeding operation shall minimize phosphorus and nitrogen uptake of the crop coverage or planned crop planting with any land application of wastewater or manure transport from the field to waters of the state in compliance with the technical standards for nutrient management established by the Director. Where local water quality is threatened by phosphorous, in~~ In no case shall the ~~applicant or licensee operator~~ exceed the application rates in the most current United States Natural Resources Conservation Service publications titled Waste Utilization Standard and Nutrient Management Standard, 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, animal waste storage sites management systems, ponds, pipes, ditches, pumps, diversion, and irrigation equipment shall be maintained to ensure ability to fully comply with the Oklahoma ~~Concentrated Animal Licensed Managed 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, and
- e. unless the licensed managed feeding operation exercises a compliance alternative pursuant to this section, animal waste shall not be applied closer than one hundred (100) feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural wellheads, or other conduits to surface waters.
- (1) As a compliance alternative, the licensed managed feeding operation may substitute the one-hundred-foot setback with a thirty-five-foot wide vegetated buffer where applications of animal waste are prohibited.
  - (2) As a compliance alternative, the licensed managed feeding operation may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the

reductions that would be achieved by the one-  
hundred-foot setback; and

5. ~~Such~~ Any other information deemed necessary by the ~~Department~~ Director to administer ~~the provisions of~~ the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act ~~and rules promulgated pursuant thereto.~~

D. 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~~ operator.

E. If the animal waste from a licensed managed feeding operation is sold or given to other persons for land application or disposal, the licensed managed feeding operation shall maintain a log of: date of removal from the ~~animal~~ licensed managed feeding operation; names of ~~such other~~ persons purchasing or taking the waste; and amount, in wet tons, dry tons, or cubic yards, of animal waste removed from the ~~animal~~ licensed managed feeding operation.

F. 1. If the animal waste is to be land applied by other persons, a licensed managed feeding operation shall make available ~~to such other person~~ the most current sample analysis of the animal waste.

2. In addition, the licensed managed feeding operation shall notify, in writing, any person to whom the animal waste is sold or given of the land application disposal requirements for animal waste ~~as specified by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto.~~

3. The licensed managed feeding operation shall remain liable and responsible for compliance with all rules promulgated by the Board regarding proper handling and disposing of animal waste even if ~~such~~ the disposal or application is performed by persons not employed or controlled by the licensed managed feeding operation.

G. Soils in areas ~~in which~~ where animal waste is applied shall be analyzed, annually, for ~~phosphates~~ phosphorus, ~~nitrate~~ nitrogen,

and soil pH prior to the first application of the animal waste in the calendar year. A copy of the results of the analysis shall be submitted to the ~~Department~~ Director upon request ~~by the Department~~. ~~Such~~ The analysis shall be retained by the ~~animal~~ licensed managed feeding operation as long as the facility is in operation.

H. Every ~~animal~~ licensed managed feeding operation ~~licensed pursuant to the provisions of Oklahoma Concentrated Animal Feeding Operations Act~~ shall develop a plan ~~approved by the Department~~ for the disposal of carcasses associated with normal mortality.

1. Dead animals shall be disposed of in accordance with a carcass disposal plan developed by the ~~applicant or licensee and approved by the Department~~ operator.

2. The plan shall include provisions for the disposal of carcasses associated with normal mortality, with emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates, and other provisions which that will provide for a decrease in the possibility of the spread of disease and prevent the contamination of waters of the state. ~~The plan shall comply with rules promulgated by the Department.~~

SECTION 12. AMENDATORY 2 O.S. 2001, Section 9-205.3a, is amended to read as follows:

Section 9-205.3a A. An Odor Abatement 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 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. 1. The Odor Abatement Plan shall include specific methods of odor reduction ~~which that~~ shall be tailored to each facility and

created to address each cause of odor listed in paragraph 2 of this subsection.

2. The Odor Abatement Plan shall address methods for reducing odors in relationship to animal maintenance, waste storage, land application, and carcass disposal.

3. The ~~applicant or licensee~~ operator shall examine the Odor Abatement Plan at least annually to evaluate the effectiveness of the plan, modify for changed conditions at the facility, and determine if economically feasible technological advances are available and appropriate for the facility.

C. If, after reviewing the Odor Abatement Plan, the ~~State Department of Agriculture~~ Director of the Agriculture Pollutant Discharge Elimination System determines that the plan does not adequately meet one or more of the minimum requirements, the licensed managed feeding operation shall make and implement appropriate changes to the Plan ~~which~~ that may include the utilization of economically feasible technology designed to abate odor ~~as required by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.~~

D. In determining the adequacy of an ~~odor abatement plan~~ Odor Abatement Plan, the ~~Department~~ Director shall consider all relevant factors including but not limited to:

1. Design of the facilities;
2. Odor control technology to be utilized;
3. Prevailing wind direction in relation to occupied residences;
4. Size of operation;
5. Distance from facility to occupied residences; and
6. All information contained in the application.

SECTION 13. AMENDATORY 2 O.S. 2001, Section 9-205.4, is amended to read as follows:

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

B. Except as otherwise provided by Section ~~9-210.2~~ 21 of this ~~title act~~, to prevent hydrologic connections between a retention structure and waters of the state, all ~~swine~~ licensed managed feeding operations in this state ~~primarily using 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; and

2. Provide documentation that there is no hydrologic connection between the waters of the state and the retention structure. This documentation shall be certified by a professional environmental, agricultural, or other ~~Department-approved professional~~ approved engineer licensed pursuant to Section 475.12 of Title 59 of the Oklahoma Statutes ~~or a United States Department of Agriculture Natural Resources Conservation Service engineer~~ 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.

C. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ 21 of this ~~title act~~ and subsection E of this section, all retention structures of licensed managed feeding operations shall maintain a minimum separation of ten (10) feet between the bottom of the retention

structure and the maximum historical groundwater elevation ~~which~~ that is measured from the bottom of the retention structure and the highest point of the seasonal groundwater table. Documentation of a ten-foot separation shall be established by submission of a soil log from a soil boring extending a minimum of ten (10) feet below the bottom of all retention structures to ascertain the presence of groundwater or bedrock and a statement from a professional engineer ~~or a United States Department of Agriculture Natural Resources Conservation Service engineer~~ certifying the existence of the ten-foot separation distance.

D. ~~The State Department of Agriculture~~ Director of the Agriculture Pollutant Discharge Elimination System shall establish standards for retention structures ~~pursuant to the provisions of this section.~~

E. ~~The Department~~ Director may allow a separation of less than ten (10) feet but in no event less than four (4) feet between the bottom of the retention structure and the maximum historical groundwater elevation. In determining the minimum separation to be required the ~~Department~~ Director shall consider the following factors:

1. Soil type at the retention structure;
2. Soil tests per American Standards Testing Methods (ASTM) standards on all soils to be used as liner material;
3. Retention structure capacity;
4. Retention structure design;
5. Documentation of lack of hydrologic connection between the waters of the state and the retention structure;
6. Depth of retention structure;
7. Type and characteristics of liner to be used; and
8. Any other relevant information.

F. 1. Licensed managed feeding operations ~~initially licensed on or after August 1, 1998,~~ shall install and maintain in good

working order a leak detection system or sufficient monitoring wells both upgradient and downgradient around the perimeter of each retention structure prior to using the retention structure for storage of liquid waste pursuant to rules ~~promulgated by the State Department of Agriculture~~.

~~2. By September 1, 1999, licensed managed feeding operations licensed prior to August 1, 1998, shall install and maintain in working order a leak detection system or sufficient monitoring wells both upgradient and downgradient around the perimeter of each retention structure.~~

~~3. Samples of water shall be collected by the State Department of Agriculture and submitted for testing at least annually. The analysis of the water samples shall be performed by a qualified environmental laboratory certified by the Department of Environmental Quality and approved by the State Department of Agriculture Director and the cost shall be the responsibility of the owner operator of the licensed managed feeding operation.~~

~~4. 3. Documentation, sampling data, and any other records required by this section shall be maintained on site for the life of the facility with the Pollution Prevention Plan.~~

~~5. 4. Analysis from the sampling taken prior to the operation of the facility shall may be considered the baseline data and must shall be retained on site for the life of the facility. If no sampling or other baseline data is available prior to the operation of the facility, the samples taken during the first year shall may be considered the baseline data and shall be retained on site for the life of the facility. Baseline data for the facility should be considered from the best information available.~~

~~6. 5. The Oklahoma Water Resources Board shall promulgate rules providing for plugging of monitoring wells as appropriate.~~

G. Site-specific conditions shall be considered in the design and construction of liners. Liners for retention structures shall

be designed and constructed in accordance with the provisions of this section and generally accepted engineering practices established by rules of the State Board of Agriculture or as otherwise required by the federal Environmental Protection Agency. ~~Liners for lagoons owned or operated by an animal feeding operation with less than one thousand (1,000) animal units may be designed and constructed pursuant to Technical Note 716 of the Natural Resources Conservation Service or its current equivalent or by the federal Environmental Protection Agency so long as the facility is designed by a United States Department of Agriculture Natural Resources Conservation Service engineer.~~

H. 1. When a liner is installed to prevent hydrologic connection, the ~~licensee or the owner of such operation if unlicensed must~~ operator shall maintain the liner to inhibit infiltration of ~~wastewaters~~ animal waste. Documentation of liner maintenance shall be maintained ~~with~~ at the ~~Pollution Prevention Plan~~ facility.

2. A professional environmental, agricultural, or other ~~Department-approved professional~~ approved engineer licensed pursuant to Section 475.12 of Title 59 of the Oklahoma Statutes ~~or a United States Department of Agriculture Natural Resources Conservation Service engineer,~~ shall conduct a site evaluation ~~every five (5) years on the retention structure of every concentrated animal feeding operation with such a structure and~~ annually on every licensed managed feeding operation 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~~ Director.

3. The ~~Department~~ Director shall establish a compliance schedule ~~of~~ for retrofitting ~~of~~ liners ~~for~~ of waste retention structures for licensed managed feeding operations constructed prior to ~~the effective date of this act~~ August 1, 1998, which are located

in nutrient-limited watersheds or nutrient-vulnerable groundwaters as designated by the Oklahoma Water Resources Board ~~pursuant to Section 3 of this act,~~ and which do not have liners meeting the specifications established in this section.

I. All substances entering the retention structures shall be composed entirely of ~~wastewaters~~ animal waste from the proper operation and maintenance of ~~an animal~~ a licensed managed feeding operation and the runoff from the ~~animal~~ licensed managed 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.

J. All new retention structures of licensed managed feeding operations shall be designed for odor abatement, groundwater protection, and nutrient conservation.

K. Documentation, sampling data, and any other records required by this section shall be maintained on site for as long as the facility is in operation. Samples collected during the first year of the retention structure ~~shall~~ may be considered the baseline data and ~~must~~ shall be retained on site as long as the facility is in operation. Baseline data for the facility should be considered from the best information available.

SECTION 14. AMENDATORY 2 O.S. 2001, Section 9-205.5, is amended to read as follows:

Section 9-205.5 A. All irrigation systems into which any animal waste will be injected shall be equipped with one or both of the following systems:

1. An antipollution system, ~~approved by the State Board of Agriculture,~~ capable of preventing the backflow of ~~such~~ animal waste into the groundwater. The system shall include a safety check valve with a removable inspection port, anti-syphon vent, and low-pressure escape drain. An interlock device shall be installed on pumps that

pump the animal waste so that if a fresh water irrigation pump shuts down, the pump that pumps the animal waste will also immediately shut down, preventing the chance of leakage past the check valve; or

2. A system ~~which~~ that provides for a complete and total disconnection between the flow of fresh water and the flow of animal waste. ~~Such~~ The system shall be capable of a manual disconnection between fresh water and the animal waste.

B. The Oklahoma Department of Agriculture, Food, and Forestry shall make annual on-site inspections examining the operative status of the check valves and interlock devices.

C. The operator of ~~said~~ the irrigation system shall be responsible to ensure:

1. That the valves and interlock devices remain operative between annual inspections ~~by the Department of Agriculture;~~ or

2. Complete disconnection from fresh water when introducing animal waste into the system.

SECTION 15. AMENDATORY 2 O.S. 2001, Section 9-206, is amended to read as follows:

Section 9-206. A. ~~The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of any animal feeding operation for the purpose of investigating complaints as to the operation or to determine whether there are any violations of the Oklahoma Concentrated Animal Feeding Operations Act. The Department shall make at least one unannounced inspection per year of every animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~

Any holder of a permit or applicant for a permit under the Licensed Managed Feeding Operations Act shall be deemed to have given consent to any authorized officer, employee, or agent of the Oklahoma Department of Agriculture, Food, and Forestry to:

1. Enter and inspect a facility in accordance with the provisions of the Oklahoma Licensed Managed Feeding Operations Act;

2. Have access at any reasonable time for the purposes of reviewing and copying any records required to be maintained;

3. Inspect any monitoring equipment, methods, disposal systems, or other facilities or equipment as may be required;

4. Have access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or for inspection and sampling of any sludge source, storage, beneficial use, reuse, or disposal site; and

5. Obtain copies of records, plans, reports, or other information required by the Department. All records shall be submitted upon request and shall be subject to and made available for inspection at reasonable times to any authorized representative of the Department. Any authorized representative of the Department may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by permit, order, or duly promulgated rules of the Board.

B. For unpermitted facilities, authorized employees or representatives, upon presentation of credential and, if necessary, a proper warrant shall have:

1. A right of entry to, upon, or through any private or public premises upon which an effluent or sludge source is or may be located or in which any records are required to be maintained;

2. Access, at any reasonable time, for the purposes of reviewing and copying any records required to be maintained;

3. Authority to inspect any monitoring equipment, methods, disposal systems, or other facilities or equipment as may be required; and

4. Access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or for inspection and sampling of any sludge source, storage, beneficial use, reuse, or disposal site.

C. 1. The Board shall promulgate standard precautions for the prevention of the transmission of communicable diseases to humans and animals to be used ~~by employees of the Department of Agriculture~~ when inspecting animal licensed managed feeding operations pursuant ~~to their official duties specified by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.~~

2. Except for emergency situations or when enforcement of ~~the provisions of the Oklahoma Concentrated Animal~~ Licensed Managed Feeding Operations Act requires the use of the standard precautions ~~as promulgated by the Board pursuant to paragraph 1 of this subsection,~~ Department employees shall observe the health standards and sanitary requirements of the facility.

~~C.~~ D. The ~~Board~~ Director shall maintain necessary records and undertake ~~such~~ studies, investigations, and surveys for the proper administration of the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act.

SECTION 16. AMENDATORY 2 O.S. 2001, Section 9-208, is amended to read as follows:

Section 9-208. A. ~~1.~~ It shall be unlawful for any person to operate a ~~concentrated animal~~ licensed managed feeding operation, without ~~having first obtained~~ obtaining a license ~~from the State Board of Agriculture.~~

~~2. The owner or operator of an animal feeding operation not classified as a concentrated animal feeding operation may apply for a license if such owner or operator elects to come under the provision of the Oklahoma Concentrated Animal Feeding Operations Act and the rules of the Board.~~

~~3. The owner or operator of an animal feeding operation which houses swine and primarily uses a liquid animal waste management system not classified as a licensed managed feeding operation may apply for a license if such owner or operator voluntarily elects to~~

~~come under the provisions of the Oklahoma Concentrated Animal Feeding Operations Act relating to licensed managed feeding operations and the rules of the Board.~~

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

- a. 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,
- b. slaughterhouses, but not including feedlots at ~~such~~ these facilities, and
- c. aquaculture 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~~ these facilities.

2. Facilities ~~which store~~ storing grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal National Pollutant Discharge Elimination System regulations to obtain a ~~federal National Pollutant Discharge Elimination System~~ 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.

~~3. Any point source discharge related to agriculture, as specified in paragraph 1 of subsection D of Section 1-3-101 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems individual 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 State Department of Agriculture.~~

SECTION 17. AMENDATORY 2 O.S. 2001, 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 license ~~fee~~ and animal unit fees set forth in ~~subsection B~~ of this section and continued compliance with the provisions of the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act and the rules of the Board.

B. The fees for ~~an animal~~ a licensed managed feeding operations license and annual renewal ~~thereof~~ shall be:

<del>Animal feeding operations capacity</del>	<del>Amount 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 and one to three thousand animal units</del>	<del>\$75.00</del>
<del>Three thousand and one to ten thousand animal units</del>	<del>\$150.00</del>
<del>Over ten thousand animal units</del>	<del>\$225.00</del>

1. Seventy-five Dollars (\$75.00) for facilities with a capacity of one thousand (1,000) animal units to three thousand (3,000) animal units;

2. One Hundred Fifty Dollars (\$150.00) for facilities with a capacity of three thousand one (3,001) animal units to ten thousand (10,000) animal units; and

3. Two Hundred Twenty-five Dollars (\$225.00) for facilities with a capacity of more than ten thousand (10,000) animal units.

~~C. For the license year ending June 30, 1999, all licensed managed feeding operations shall pay an additional license fee for original or renewal licenses in an amount equal to eighty cents (\$0.80) per licensed animal unit capacity.~~

~~For original applications pending with the State Department of Agriculture on July 1, 1998, one-half of such amount shall be due and payable no later than September 1, 1998. For all other original applications for the license year ending June 30, 1999, one-half of such amount shall be due and payable with the application.~~

~~The other half of such amount shall be due thirty (30) days from the date such application is approved. In the event the application is not approved, any amount of such fee which is in excess of the costs incurred by the Department in processing the application pursuant to the requirements of the Oklahoma Concentrated Animal Feeding Operations Act shall be refunded to the applicant.~~

~~The fee imposed by this subsection for renewal applications shall be due by September 1, 1998.~~

~~D. For the license year ending June 30, 2000, and every year thereafter, all~~

1. All licensed managed feeding operations shall pay an additional license fee for ~~original licenses~~ new sources in an amount equal to eighty cents (\$0.80) per licensed animal unit capacity. One-half (1/2) of ~~such the~~ amount shall be due and payable with the application.

2. The other ~~half~~ one-half (1/2) of ~~such the~~ amount shall be due thirty (30) days from the date ~~such the~~ application is approved. In the event the application is not approved, any amount of ~~such the~~ fee ~~which is~~ in excess of the costs ~~incurred by the Department in~~ of processing the application ~~pursuant to the requirements of the Oklahoma Concentrated Animal Feeding Operations Act~~ shall be refunded to the ~~applicant~~ operator.

~~For the license year ending June 30, 2000, and every year thereafter all~~

3. All licensed managed feeding operations shall pay an additional license fee for renewal licenses in an amount established by ~~the Department pursuant to rules promulgated under the Administrative Procedures Act and in accordance with subsection E of this section.~~

~~E. D.~~ The Department is directed to Director of the Agriculture Pollutant Discharge Elimination System shall review ~~its~~ costs related to the administration, regulation, and enforcement of licensed managed feeding operations ~~required by the Oklahoma Concentrated Animal Feeding Operations Act.~~ Based on ~~its~~ the review ~~the Department shall promulgate emergency rules shall be promulgated~~ pursuant to the Administrative Procedures Act ~~which will establish~~ establishing a renewal fee for licensed managed feeding operations. ~~The Department is directed to promulgate such emergency rules on or before March 1, 1999.~~ The fee shall be based on the costs incurred by the Oklahoma Department of Agriculture, Food, and Forestry in salaries, travel claims, and other necessary expenses incurred in fulfilling its regulatory and administrative obligations with regard to licensed managed feeding operations. Under no circumstances shall the fee exceed eighty cents (\$0.80) per animal unit.

~~F. E.~~ All fees received ~~by the Board~~ for licensure of ~~animal licensed managed~~ feeding operations ~~pursuant to this section~~ shall be deposited in the State Department of Agriculture Revolving Fund.

SECTION 18. AMENDATORY 2 O.S. 2001, Section 9-209.1, is amended to read as follows:

Section 9-209.1 A. Any person who is licensed to operate ~~an animal~~ a licensed managed feeding operation ~~with a liquid animal waste management system~~ within this state shall furnish ~~to the Department of Agriculture~~ evidence of financial ability to comply with the requirements for closure of retention structures and other

waste facilities as established pursuant to the provisions of this section and rules ~~promulgated by the State Board of Agriculture.~~

B. 1. To establish evidence of financial ability the ~~Department~~ Director of the Agriculture Pollutant Discharge Elimination System shall require:

a. Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with banks and other financial institutions. The financial statement shall be confidential and shall not be opened to public inspection. The statement shall prove a net worth of not less than:

(1) ~~Ten Thousand Dollars (\$10,000.00) for any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act having a capacity of more than three hundred (300) animal units but having one thousand (1,000) animal units or less,~~

~~(2)~~ Twenty-five Thousand Dollars (\$25,000.00) for any ~~animal~~ licensed managed feeding operation ~~licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~ having a capacity of ~~more than one thousand (1,000)~~ animal units ~~but less than two thousand~~ up to ~~(2,000)~~ animal units, or

~~(3)~~ (2) Fifty Thousand Dollars (\$50,000.00) for any ~~animal~~ licensed managed feeding operation ~~licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~ having a capacity of more than ~~two thousand (2,000)~~ animal units, or

b. Category B surety which shall include an irrevocable commercial letter of credit, cash, a cashier's check, a Certificate of Deposit, Bank Joint Custody Receipt, other negotiable instrument or a blanket surety bond. Except as provided in paragraph 2 of this subsection, amount of ~~such~~ the letter of credit, cash, check, certificate, bond, receipt or other negotiable instrument shall be in the amount of Twenty-five Thousand Dollars (\$25,000.00). The ~~Department~~ Director is authorized to determine the amount of Category B surety based upon the past performance of the owner or operator regarding compliance with the laws of this state, and any rules promulgated pursuant thereto. Any instrument shall constitute an unconditional promise to pay and be in a form negotiable by the Oklahoma Department of Agriculture, Food, and Forestry.

2. ~~The Department upon~~ Upon certification by any ~~animal~~ licensed managed feeding operation subject to Category B surety that its liability statewide is less than the twenty-five-thousand-dollar standard specified in this section, the Director may allow ~~said~~ ~~owner or~~ the operator to provide Category B type surety in an amount less than the required Twenty-five Thousand Dollars (\$25,000.00), but at least sufficient to cover the estimated cost of all closure and removal operations currently the responsibility of that ~~owner or~~ operator.

C. 1. Any ~~animal~~ licensed managed feeding operation ~~licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act which~~ that does not have any outstanding contempt citations or fines may post Category A surety.

2. Any ~~animal~~ licensed managed feeding operation ~~licensed pursuant to the provisions of the Oklahoma Concentrated Animal~~

~~Feeding Operations Act which~~ that does have outstanding fines or contempt citations shall be required to post Category B surety.

~~Animal Licensed managed~~ feeding operations ~~which have posted that~~ post and operate under Category B surety and ~~have operated under this type surety and~~ have no outstanding fines at the end of three (3) years may post Category A surety.

D. For good cause shown concerning pollution by the ~~animal licensed managed~~ feeding operations posting either Category A or B surety, the ~~Department~~ Director, after notice and hearing, may require the filing of additional Category B surety in an amount greater than Twenty-five Thousand Dollars (\$25,000.00) but not to exceed Five Dollars (\$5.00) times the number of animal units for the facility being licensed.

E. 1. If the ~~Department~~ Director, after notice and an opportunity for hearing, determines that the ~~animal licensed managed~~ feeding operation ~~licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act~~ has neglected, failed, or refused to close any surface impoundment, or remove or cause to be removed any equipment, or has abandoned the facility, then the ~~animal licensed managed~~ feeding operation shall be deemed to have forfeited the letter of credit or negotiable instrument required by this section or shall pay to this state, for deposit in the State Treasury, a sum equal to the cost of closure of any surface impoundment or removal of equipment.

2. The ~~Department~~ Director may cause the remedial work to be done, issuing a warrant in payment of the cost ~~thereof~~ drawn against the monies accruing in the State Treasury from the forfeiture or payment.

3. The ~~Department~~ Director shall also recover any costs arising from litigation to enforce this provision. Provided, before ~~an animal~~ a licensed managed feeding operation is required to forfeit or pay any monies to the state pursuant to this section, the

~~Department~~ Director shall notify the ~~animal~~ licensed managed feeding operation at the last-known address of the determination of neglect, failure, or refusal to close any surface impoundment or remove equipment and the ~~animal~~ licensed managed feeding operation shall have ten (10) days from the date of notification within which to commence remedial operations. Failure to commence remedial operations shall result in forfeiture or payment as provided in this subsection.

F. If title to ~~an animal~~ a licensed managed feeding operation is transferred, the ~~transferee~~ new operator shall furnish the evidence of financial ability to close surface impoundments required by the provisions of this section, prior to the transfer.

SECTION 19. AMENDATORY 2 O.S. 2001, Section 9-210, is amended to read as follows:

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

1. ~~Provide~~ 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 ~~animal~~ licensed managed 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~~ licensed managed feeding operation shall be located or operated in violation of any zoning regulations.

2. Any ~~animal~~ licensed managed 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.

SECTION 20. AMENDATORY 2 O.S. 2001, Section 9-210.1, is amended to read as follows:

Section 9-210.1 A. ~~Except as otherwise provided by Section 9-210.2 of this title, the state shall be divided east and west based on the Indian Meridian for the purpose of determining setback requirements from occupied residences for animal feeding operations using a liquid animal waste management system where swine are primarily housed in a roof covered structure and which were established between September 1, 1997, and June 1, 1998:~~

~~1. No new or expanding licensed managed feeding operation with a capacity of two thousand (2,000) or more animal units:~~

- ~~a. 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~~
- ~~b. 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.~~

~~2. 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:~~

- ~~a. 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 occupied residence not owned or leased by the owner of the animal feeding operation, or~~
- ~~b. 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 occupied residence not owned or leased by the owner of the animal feeding operation.~~

~~3. 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 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.~~

~~B.~~ 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~~ operator of the animal licensed managed feeding operation.

~~C.~~ B. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ 21 of this title act, no ~~concentrated animal~~ licensed managed feeding operation shall be established after ~~September 1, 1997, which is~~ within one (1) mile of ten or more residences ~~which~~ that are occupied residences at the time of the establishment of the ~~concentrated animal~~ licensed managed feeding operation.

~~D.~~ C. The proscription contained in subsections ~~A, and B and C~~ of this section shall not apply if the applicable property owner executes a written waiver with the ~~owner or~~ operator of the animal

licensed managed 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 such~~ where the property is located. The filed waiver shall preclude enforcement of the setback requirements contained in subsections A, and B ~~and~~ C of this section. A change in ownership of the applicable property or change in the ownership of the property on which the ~~animal~~ licensed managed feeding operation is located shall not affect the validity of the waiver.

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

~~F.~~ E. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ 21 of this ~~title act~~, no ~~concentrated animal~~ licensed managed feeding operation shall be established ~~after September 1, 1997, which is if~~ located:

1. Within three (3) miles of a state park or resort;
2. On land within three (3) miles of the incorporated limits of any municipality; or
3. Within three (3) miles of the high water mark of a surface public water supply if the ~~concentrated animal~~ licensed managed feeding operation is located within the drainage basin for the public water supply.

~~G.~~ F. All distances between occupied residences and ~~animal~~ licensed managed 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 ~~State Department of Agriculture~~ Director. 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 21. AMENDATORY 2 O.S. 2001, 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 State 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 9-210.1 20 of this title act relating to setback requirements and the provisions of subsections B and C of Section 9-205.4 13 of this title act 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 facilities specified by this subsection~~ any licensed managed feeding operation that is licensed by or has submitted a substantially completed application on or before September 1, 1997.~~

B. ~~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 State 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 9-210.1 of this title relating to setback requirements and the provisions of subsections B and C of Section 9-205.4 of this title relating to utilization of liners in retention structures or documentation of no hydrologic connection and to a minimum separation of four (4) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to the facilities specified by this subsection.~~

~~C. 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 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 C of Section 9-205.4 of this title relating to utilization of liners in retention structures or documentation of no hydrologic connection and to a minimum separation of four (4) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to facilities 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. On or after September 1, 1997, any Any expanding operations shall be in accordance with the Oklahoma ~~Concentrated Animal Licensed Managed~~ Feeding Operations Act and rules promulgated pursuant thereto.~~

SECTION 22. AMENDATORY 2 O.S. 2001, Section 9-210.3, is amended to read as follows:

Section 9-210.3 A. Except as ~~otherwise~~ provided by Section ~~14~~ 20 of this act and subsection F of this section, ~~animal licensed managed~~ licensed feeding operations ~~using liquid animal waste management systems where swine are housed in roof covered structures~~ shall not be located within the following applicable distances from an occupied residence:

- ~~1. More than 4000 animal units..... 2 miles;~~
- ~~2. 2001 to 4000 animal units.....1 1/4 miles; and~~
- ~~3. ~~1001~~ 1000 to 2000 animal units..... 3/4 mile;~~
- ~~4. 601 to 1000 animal units..... 1/2 mile;~~
- ~~5. 300 to 600 animal units.....1/4 mile; and~~
- ~~6. Less than 300 animal units.....no setback.~~

B. Except as ~~otherwise~~ provided by this section, no licensed managed feeding operation ~~which~~ that applies for a new or expanding ~~concentrated animal feeding operation~~ license ~~after March 9, 1998,~~ shall be located within three (3) miles of the outside boundary of any area or facility owned or operated as a camp or recreational site by a nonprofit organization established prior to application of the ~~concentrated animal~~ licensed managed feeding operation.

C. The setback requirements contained in subsections A and B of this section shall not apply to any property owner who executes a written waiver with the owner or operator of the ~~animal~~ licensed managed feeding operation, under ~~such~~ terms and conditions as are agreed to by the parties. The written waiver shall be effective upon recording of the waiver in the office of the county clerk in the county ~~in which such~~ where the property is located. The filed waiver shall preclude enforcement of the setback requirements of ~~subsections~~ subsection A or B of this section with regard to property described in the waiver and owned by the person executing ~~such~~ the waiver. A change in ownership of the applicable property or change in ownership of the property ~~on which~~ where the ~~animal~~ licensed managed feeding operation is located shall not affect the validity of the waiver.

D. No licensed managed feeding operation ~~established after the effective date of this act which applies for a new or expanding license after March 9, 1998,~~ shall be located:

1. Within three (3) miles of any designated scenic river area as specified by the Scenic Rivers Act;
2. Within three (3) miles of the outside boundary of any historic property or museum owned by the State of Oklahoma;
3. Within three (3) miles of a public drinking water well;
4. Within one (1) mile of a waterbody specified as Outstanding Resource Waters that has recreational or ecological significance as

outlined by the most current Water Quality Standards promulgated by the Oklahoma Water Resources Board; or

5. Within three (3) miles of a national park designated by the United States Department of the Interior National Park Service.

E. All distances between occupied residences and ~~animal~~ licensed managed 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 ~~State Department of Agriculture~~ Director of the Agriculture Pollutant Discharge Elimination System. 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.

F. The provisions of this section shall not apply to any ~~animal~~ licensed managed feeding operation ~~which~~ that has been licensed by or which had submitted an application ~~to the State Department of Agriculture~~ on or prior to March 9, 1998. In addition, the provisions of this section shall not apply to any ~~animal~~ licensed managed feeding operation with a capacity of 2,000 animal units or less ~~which~~ that was established prior to June 1, 1998.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-21.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Agriculture, Food, and Forestry shall not accept or approve any pending applications requesting permits for construction or expansion of any concentrated animal feeding operation, as defined in Section 29 of this act, to be located within one (1) mile upstream of the Pensacola Project boundary as described in the records of the Grand River Dam Authority and the Federal Emergency Management Agency. Any such operation authorized or permitted prior to April 17, 2002, shall not be affected by the provisions of this section.

SECTION 24. AMENDATORY 2 O.S. 2001, Section 9-211, is amended to read as follows:

Section 9-211. A. 1. The State Board of Agriculture is authorized and directed to promulgate a violation points system for violating the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act, ~~which provides~~ providing greater punishment for intentional violations ~~which are intentional~~ and for violations ~~which pose~~ posing a greater threat to the environment.

2. ~~The State Board of Agriculture~~ Director of the Agriculture Pollutant Discharge Elimination System shall have the power to suspend, revoke, or not renew the license of any ~~animal~~ licensed managed feeding operation based on ~~such~~ the point system after a hearing, and after an administrative determination that ~~such animal~~ the licensed managed feeding operation has violated or has failed to comply with any of the provisions of the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act, ~~or any rule promulgated pursuant thereto.~~

3. ~~The Board~~ Director shall have the power and duty to reinstate or renew any ~~such~~ suspended or revoked licenses, ~~or renew such licenses,~~ upon a satisfactory and acceptable showing and assurance that ~~such animal~~ the licensed managed feeding operation conducted ~~animal feeding~~ operations in conformity with, and in compliance with, the provisions of the Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act ~~and rules promulgated pursuant thereto,~~ and that ~~such~~ conformity and compliance will be continuous.

B. In order to protect the public health and safety and the environment of this state, ~~the Board, pursuant to the Oklahoma Concentrated Animal Feeding Operations Act,~~ Director may deny issuance of a license or transfer of a license to establish and operate ~~an animal~~ a licensed managed feeding operation ~~on and after September 1, 1997,~~ to any person ~~or other legal entity which~~ that:

1. Is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any state or federal agency relating to ~~animal~~ licensed managed feeding operations; or

2. Has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of noncompliance with environmental laws and rules resulting in endangerment of human health or the environment.

C. Any action taken in regard to the denial, suspension, or revocation of a license shall be in conformity with the rules ~~of the Board~~ governing Administrative Procedures and the Administrative Procedures Act.

SECTION 25. AMENDATORY 2 O.S. 2001, Section 9-212.1, is amended to read as follows:

Section 9-212.1 A. Due to the inherently unique nature of poultry-laying operations, and the increased propensity for vector propagation at such facilities, poultry-laying operations ~~licensed~~ permitted pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, shall be conducted only in a manner ~~as~~ prescribed ~~by the State Department of Agriculture~~ by ~~rule~~ rules promulgated pursuant to this section and the Oklahoma Concentrated Animal Feeding Operations Act.

B. If three valid complaints are received by the ~~Department~~ Director of the Agriculture Pollutant Discharge Elimination System against a poultry-laying operation, ~~licensed~~ permitted pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, within a period of sixty (60) days, the ~~Department~~ Director, upon inspection and verification of the complaint, shall declare that an emergency exists.

C. Whenever the ~~Department~~ Director finds that an emergency exists requiring immediate action to protect the public health or welfare or the environment pursuant to this subsection, the

~~Department~~ Director may without notice or hearing issue an order, effective upon issuance, reciting the existence of ~~such~~ an emergency and requiring that ~~such~~ action be taken as deemed necessary to meet the emergency. Any person to whom such an order is directed shall comply ~~therewith~~ immediately but may request an administrative enforcement hearing ~~thereon~~ within fifteen (15) days after the order is served. ~~Such~~ The hearing shall be held ~~by the Department~~ within ten (10) days after receipt of the request. On the basis of the hearing record, the ~~Department~~ Director shall sustain or modify ~~such~~ the order.

D. If, at the hearing, it is determined that the operator is in violation of the provisions of this section and rules promulgated pursuant thereto, in addition to other administrative penalties authorized by law, the ~~Department~~ Director may order that the operator be prohibited from land applying waste for one hundred sixty (160) days after determination that the facility is in violation.

E. Any party aggrieved by a final order may petition ~~the Department~~ for rehearing, reopening, or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order, including the Attorney General on behalf of the state, may, pursuant to the Administrative Procedures Act, petition for a judicial review ~~thereof~~.

F. The provisions of this section may be enforced pursuant to the provisions of Section ~~9-212 of Title 2 of the Oklahoma Statutes~~ 27 of this act.

SECTION 26. AMENDATORY 2 O.S. 2001, Section 9-214, is amended to read as follows:

Section 9-214. The Oklahoma ~~Concentrated Animal~~ Licensed Managed Feeding Operations Act shall be enacted as a part of the Oklahoma Agricultural Code ~~and shall be codified accordingly~~.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-8 of Title 2, unless there is created a duplication in numbering, read as follows:

A. Whenever there are reasonable grounds to believe that there has been a violation of any of the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, any permit, any rule, or any order of the Director of the Agriculture Pollutant Discharge Elimination System, the Director shall have the authority and powers to proceed as specified in the Administrative Procedures Act unless otherwise provided herein. Provided, however, that provisions of this section for written notice, enforcement hearing, and administrative orders shall not be conditions precedent for the Oklahoma Department of Agriculture, Food, and Forestry to seek action in the district court as provided by the Oklahoma Agriculture Pollutant Discharge Elimination System Act or other applicable provisions of law.

B. The Oklahoma Agriculture Pollutant Discharge Elimination System Act shall not in any way impair or in any way affect the right of a person to recover damages for pollution in a court of competent jurisdiction. Any person having any interest connected with the geographic area or waters or water system affected, including, but not limited to, any aesthetic, recreational, health, environmental, pecuniary or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the Agriculture Pollutant Discharge Elimination System or rules, permits or orders issued hereunder.

C. Whenever on the basis of any information available, the Department finds that any person regulated by the Department is in violation of any statute, rule, order, permit, condition or limitation implementing the Oklahoma Agriculture Pollutant Discharge

Elimination System Act, or any previously issued discharge permit, the Director shall issue an order requiring such person or entity to comply with the provision or requirement, commence appropriate administrative enforcement proceedings, or bring a civil action. Provided, however, the issuance of a compliance order or suspension or revocation of a permit shall not be considered a condition precedent to the accrual or imposition of penalties or fines in any administrative, civil, or criminal proceeding.

D. 1. A copy of any order issued pursuant to this section shall be sent immediately to the violator. In any case in which an order or notice to a violator is issued to an organization, a copy of the order shall be served on any appropriate individual, officers or service agents.

2. Any order issued pursuant to this section shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a reasonable time in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order or notice issued by the Director may be served in any manner allowed by Oklahoma Rules of Civil Procedures applicable to a civil summons.

E. 1. Whenever on the basis of any information available the Director finds that any person regulated by the Department has allegedly violated any of the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any permit, rule, order or condition or limitation implementing any of these sections, or previously issued discharge permit or related order, the Director may, after providing notice and opportunity for an enforcement hearing to the alleged violator, assess an administrative fine of

not more than Ten Thousand Dollars (\$10,000.00) per day of violation, for each day during which the violation continues.

2. The total amount of the fine shall not exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00) per violation. In determining the amount of any penalty assessed under this subsection, the Director shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of violations, the degree of culpability, economic benefit savings, if any, resulting from the violation, and any other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. Enforcement hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act.

F. 1. The Director is authorized to commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, for any violation for which the Director is authorized to issue a compliance order under subsection C of this section.

2. Any person who violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any permit condition or limitation implementing any of such provisions in a permit issued under the Agriculture Pollutant Discharge Elimination System and any person who violates any order issued by the Director under subsection C of this section, shall be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation.

3. In determining the amount of the civil penalty, the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of violations, any good faith efforts to comply with the applicable

requirements, the economic impact of the penalty on the violator, and any other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

4. Any action pursuant to this subsection may be brought in the district court for the district in which the property or defendant is located or defendant resides or is doing business, and the court shall have jurisdiction to restrain any violation and to require compliance.

5. The prior revocation of a permit shall not be a condition precedent to the filing of a civil action under the Agriculture Pollutant Discharge Elimination System.

G. 1. Any person who:

- a. negligently violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any order issued by the Director hereunder, or any permit condition or limitation in a permit issued pursuant to the Agriculture Pollutant Discharge Elimination System, or
- b. negligently introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes the treatment work to violate any effluent limitation or condition in a permit issued to the treatment works pursuant to the Agriculture Pollutant Discharge Elimination System,

shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year, or by both. If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be a fine of not more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the supervision of the Oklahoma Department of Corrections for not more than two (2) years, or by both.

2. Any person who:

- a. knowingly violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any order issued by the Director hereunder, or any permit condition or limitation in a permit issued pursuant to the Agriculture Pollutant Discharge Elimination System, or
- b. knowingly introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes the treatment work to violate any effluent limitation or condition in a permit issued to the treatment works under the Agriculture Pollutant Discharge Elimination System,

shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year or in the supervision of the Oklahoma Department of Corrections for not more than three (3) years, or by both. If a

conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be a fine of not more than One Hundred Thousand Dollars (\$100,000.00) per day of violation, or by imprisonment in the supervision of the Oklahoma Department of Corrections for not more than six (6) years, or by both.

3. a. Any person who knowingly violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any permit condition or limitation in a permit issued hereunder by the Director, and who knows at that time that the person thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than Five Hundred Thousand Dollars (\$500,000.00) or imprisonment in the supervision of the Oklahoma Department of Corrections for not more than fifteen (15) years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than One Million Dollars (\$1,000,000.00). If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.
- b. For the purpose of subparagraph a of this paragraph, in determining whether a defendant who is an individual knew that their conduct placed another person in imminent danger of death or serious bodily injury, a person shall be responsible only for actual awareness or actual belief that such person possessed. Knowledge possessed by a person other than the defendant but not by the defendant may not be

attributed to the defendant; provided, however, that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

4. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Oklahoma Agriculture Pollutant Discharge Elimination System Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Agriculture Pollutant Discharge Elimination System, shall upon conviction, be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for not more than two (2) years, or by both. If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be by a fine of not more than Twenty Thousand Dollars (\$20,000.00) per day of violation, or by imprisonment for not more than four (4) years, or by both.

5. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

H. 1. Whenever, on the basis of information available to it, the Department finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of the Agriculture Pollutant Discharge Elimination System or any requirement, rule, permit, or order issued under the Agriculture Pollutant Discharge Elimination System, the Department shall notify the operator of the treatment works of the violation.

2. If the operator of the treatment works does not commence appropriate enforcement action within thirty (30) days of the date

of the notification, the Department may commence a civil action for appropriate relief, including, but not limited to, a permanent or temporary injunction, against the operator of the treatment works.

3. In the civil action the Department shall join the operator of the source as a party to the action.

4. The action shall be brought in the district court in the county in which the treatment works is located.

5. The court shall have jurisdiction to restrain the violation and to require the operator of the treatment works and the owner or operator of the source to take any action as may be necessary to come into compliance with the Agriculture Pollutant Discharge Elimination System.

6. Nothing in this subsection shall be construed to limit or prohibit any other authority the Department may have under this section.

I. 1. Any person against whom an administrative compliance or penalty order is issued under this section may obtain review of the order by filing a petition for review in district court pursuant to the Administrative Procedures Act. The court shall only set aside or remand the order if there is not substantial evidence in the administrative record, taken as a whole, to support the finding of a violation or if the assessment of the penalty constitutes an abuse of discretion. The court shall not impose additional penalties for the same violation unless the assessment of the penalty constitutes an abuse of discretion. No stay of an administrative penalty order shall be granted until the amount of penalty assessed has been deposited with the reviewing district court pending resolution of the petition for review.

2. If any person fails to pay an assessment of an administrative penalty:

- a. after the order making the assessment has become final, or

- b. after a court in an action brought under paragraph 1 of this subsection has entered a final judgment in favor of the Department,

the Department may commence or may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be. In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3. Any person who fails to pay on a timely basis the amount of an assessment of an administrative or civil penalty shall be required to pay, in addition to the amount and interest, attorneys fees and costs for collection proceeding and quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of the person's penalties and nonpayment penalties which are unpaid as of the beginning of the quarter.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-40 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Sections 28 through 45 of this act shall be known and may be cited as the "Oklahoma Concentrated Animal Feeding Operations Act".

B. The purpose of the Oklahoma Concentrated Animal Feeding Operations Act is to:

1. Implement the federal National Pollutant Discharge Elimination System regulations for concentrated animal feeding operations;

2. Assist the Oklahoma Department of Agriculture, Food, and Forestry in obtaining delegation of federal Clean Water Act programs within its areas of environmental jurisdiction; and

3. Issue permits to regulated facilities.

C. The implementation and enforcement of the Oklahoma Confined Animal Feeding Operations Act shall also be subject to the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the Oklahoma Agriculture Environmental Permitting Act.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-41 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Concentrated Animal Feeding Operations Act:

1. "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 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;

2. "Concentrated animal feeding operation" means an animal feeding operation that is defined as a large or medium concentrated animal feeding operation or is designated as a concentrated animal feeding operation by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act;

3. "Director" means the Director of the Agriculture Pollutant Discharge Elimination System;

4. "Land application area" means land under the control of an animal feeding operation owner or operator, whether owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied;

5. "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines as many as or more

than the numbers of animals specified in any of the following categories:

- a. 700 mature dairy cows, whether milked or dry,
- b. 1,000 veal calves,
- c. 1,000 cattle other than mature dairy cows or veal calves, and cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs,
- d. 2,500 swine each weighing fifty-five (55) pounds or more,
- e. 10,000 swine each weighing less than fifty-five (55) pounds,
- f. 500 horses,
- g. 10,000 sheep or lambs,
- h. 55,000 turkeys,
- i. 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system,
- j. 125,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- k. 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- l. 30,000 ducks, if the animal feeding operation uses other than a liquid manure handling system, or
- m. 5,000 ducks, if the animal feeding operation uses a liquid manure handling system;

6. "Manure" means manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal;

7. "Medium concentrated animal feeding operation" means any animal feeding operation with the type and number of animals in any of the following ranges and is defined or designated as a concentrated animal feeding operation pursuant to the following:

a. the type and number of animals stabled and confined falls within any of the following ranges:

- (1) 200 to 699 mature dairy cows, whether milked or dry,
  - (2) 300 to 999 veal calves,
  - (3) 300 to 999 cattle other than mature dairy cows or veal calves cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs,
  - (4) 750 to 2,499 swine each weighing fifty-five (55) pounds or more,
  - (5) 3,000 to 9,999 swine each weighing less than fifty-five (55) pounds,
  - (6) 150 to 499 horses,
  - (7) 3,000 to 9,999 sheep or lambs,
  - (8) 16,500 to 54,999 turkeys,
  - (9) 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system,
  - (10) 37,500 to 124,999 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system,
  - (11) 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system,
  - (12) 10,000 to 29,999 ducks, if the animal feeding operation uses other than a liquid manure handling system, or
  - (13) 1,500 to 4,999 ducks, if the animal feeding operation uses a liquid manure handling system,
- and

b. either one of the following conditions are met:

- (1) pollutants are discharged into waters of the state through a human-made ditch, flushing system, or other similar human-made device, or
- (2) pollutants are discharged directly into waters of the state 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;

8. "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants and construction commenced after the federal Environmental Protection Agency's April 14, 2003, promulgation of effluent limitations guidelines and standards applicable to the new source;

9. "No potential to discharge" means that there is no potential for any concentrated animal feeding operation manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition;

10. "Permit" means an authorization, permit, license, or equivalent control document issued to implement the Oklahoma Confined Animal Feeding Operations Act. The terms license and permit may be used interchangeably;

11. "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure;

12. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control; or any water that comes into contact with any raw materials, products,

or byproducts including, but not limited to, manure, litter, feed, milk, eggs, or bedding;

13. "Production area" means that part of an animal feeding operation that includes the animal confinement area; the manure storage area; the raw materials storage area; the waste containment areas; any egg washing or egg processing facility; and any area used in the storage, handling, treatment, or disposal of mortalities;

14. "Small concentrated animal feeding operation" means an animal feeding operation that is designated as a concentrated animal feeding operation by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and is not a medium or large concentrated animal feeding operation; and

15. "Ten-year, twenty-four-hour rainfall event", "twenty-five-year, twenty-four-hour rainfall event", and "one-hundred-year, twenty-four-hour rainfall event" mean precipitation events with a probable recurrence interval of once in ten (10) years, twenty-five (25) years, or one hundred (100) years, respectively, as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May 1961, or equivalent regional or State rainfall probability information developed from this source.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-42 of Title 2, unless there is created a duplication in numbering, reads as follows:

Concentrated animal feeding operations are point sources and shall obtain Agriculture Pollutant Discharge Elimination System (AgPDES) permits for discharges or potential discharges. Once an operation is defined as a concentrated animal feeding operation, the Agriculture Pollutant Discharge Elimination System requirements for concentrated animal feeding operations apply to all animals in confinement at the operation and all manure, litter, and process

wastewater generated by those animals or the production of those animals, regardless of the type of animal.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-43 of Title 2, unless there is created a duplication in numbering, reads as follows:

The State Board of Agriculture is authorized to promulgate rules for the administration, implementation and enforcement of the Oklahoma Concentrated Animal Feeding Operations Act. For the performance of its duties and responsibilities, the Board is authorized to employ personnel and agents as may be required within the funds available.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-44 of Title 2, unless there is created a duplication in numbering, reads as follows:

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.

1. The committee shall consist of:

- a. one member who shall represent the beef cattle producers,
- b. one member who shall represent the dairy producers,
- c. one member who shall represent the pork producers,
- d. one member who shall represent the poultry producers,
- e. one member who shall represent the field of hydrology,
- f. one member who shall be a soil scientist,
- g. one member designated by the Secretary of the Environment,
- h. one member who shall be a professional engineer,
- i. one member who shall represent the field of water quality science,

j. one member who shall represent the field of ecology,  
and

k. one member who shall represent the general public.

2. Of the initial members, four shall serve for one-year terms; four shall serve for two-year terms; and three shall serve for three-year terms. Thereafter, all members shall serve for three-year terms; provided, all members shall serve at the pleasure of the Board.

3. At the initial meeting of the rule advisory committee, the membership shall appoint a chairman, vice-chairman, and secretary from its membership and thereafter as determined by the committee.

B. Except for emergency rules, proposed rules shall be submitted to the rule advisory committee at the same time as the Department causes notice to be published in "The Oklahoma Register" pursuant to the Administrative Procedures Act. Comments of the rule advisory committee shall be submitted to the members of the Board at least fifteen (15) days prior to any official action by the Board on the rules.

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

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-45 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any animal feeding operation may be designated as a concentrated animal feeding operation by the Director of the Agriculture Pollutant Discharge Elimination System upon a determination that it is a significant contributor of pollutants to any waters of the state.

B. In making this designation, the Director shall consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the state;

2. The location of the animal feeding operation relative to any waters of the state;

3. The means of conveyance of animal wastes and process wastewaters into waters of the state;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process wastewaters into any waters of the state; and

5. Other relevant factors.

C. No animal feeding operation shall be designated under this section unless the Oklahoma Department of Agriculture, Food, and Forestry has conducted an on-site inspection of the operation and determined that the operation should be regulated under the permit program. In addition, no animal feeding operation with numbers of animals below those established for medium concentrated animal feeding operations may be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into any waters of the state through a human-made ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into any waters of the state which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-46 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All concentrated animal feeding operation owners or operators shall apply for an Agriculture Pollutant Discharge Elimination System permit, except as provided in subsection B of this section.

1. The concentrated animal feeding operation owner or operator shall apply for an individual Agriculture Pollutant Discharge Elimination System permit or submit a notice of intent for coverage under an Agriculture Pollutant Discharge Elimination System general permit.

2. If a general permit is not available to the concentrated animal feeding operation, the owner or operator shall submit an application for an individual permit.

B. An owner or operator of a large concentrated animal feeding operation need not seek coverage under an Agriculture Pollutant Discharge Elimination System permit if the owner or operator has received notification of a determination that the large concentrated animal feeding operation has no potential to discharge manure, litter, or process wastewater pursuant to Section 36 of this act.

C. Two or more animal feeding operations under common ownership are considered 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.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-47 of Title 2, unless there is created a duplication in numbering, reads as follows:

An applicant for an individual permit and an applicant notice of intent for a general permit for new and existing concentrated animal feeding operations shall use application forms provided by the Director of the Agriculture Pollutant Discharge Elimination System. The applicant shall provide all information required by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-48 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The discharge of manure, litter, or process wastewater to waters of the state from a concentrated animal feeding operation as a result of the application of that manure, litter, or process wastewater by the concentrated animal feeding operation to land areas under the control of the concentrated animal feeding operation is a discharge from that concentrated animal feeding operation subject to Agriculture Pollutant Discharge Elimination System permit requirements, except when it is an agricultural storm water discharge.

B. When the manure, litter, or process wastewater has been applied in accordance with the site specific Nutrient Management Plan that ensures appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, a discharge of manure, litter, or process wastewater that is caused solely by a precipitation event from land areas under the control of the concentrated animal feeding operation is an agricultural storm water discharge.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-49 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Director of the Agriculture Pollutant Discharge Elimination System, upon request, may make a case-by-case determination that a large concentrated animal feeding operation has no potential to discharge pollutants to waters of the state.

1. In making this determination, the Director shall consider the potential for discharges from both the production area and any land application areas and shall consider any record of prior discharges by the concentrated animal feeding operation.

2. In no case may the concentrated animal feeding operation be determined to have no potential to discharge if it has had a discharge within the five (5) years prior to the date of the request.

B. A determination that there is no potential to discharge only relates to discharges of manure, litter, and process wastewater covered by the Oklahoma Concentrated Animal Feeding Operations Act.

C. In requesting a determination of no potential to discharge, the concentrated animal feeding operation owner or operator shall submit any information that would support the determination within the time frame provided by the Director and in accordance with any application time periods.

1. The request for a determination of no potential to discharge shall include all information required by rules promulgated pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

2. The Director has discretion to require additional information to supplement the request, and may also gather additional information through on-site inspection of the concentrated animal feeding operation.

D. Before making a final decision to grant a no potential to discharge determination, the Director shall issue a notice to the public stating that a no potential to discharge request has been received. A fact sheet accompany the notice and shall include, if applicable:

1. A brief description of the type of facility or activity which is the subject of the no potential to discharge determination;

2. A brief summary of the factual basis of the request to grant a no potential to discharge determination; and

3. A description of the procedures for reaching a final decision on the no potential to discharge determination.

E. The Director shall base the decision to grant a no potential to discharge determination on the administrative record that includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the Director.

F. The Director shall notify any concentrated animal feeding operation seeking a no potential to discharge determination of the final determination within ninety (90) days of receiving the request.

G. The owner or operator shall request a no potential to discharge determination by any applicable permit application date. If the Director's final decision is to deny the no potential to discharge determination, the owner or operator shall seek coverage under a permit within thirty (30) days after the denial.

H. 1. Any unpermitted concentrated animal feeding operation that discharges pollutants into the waters of the state is in violation of the Oklahoma Concentrated Animal Feeding Operations Act, even if it has received a no potential to discharge determination from the Director.

2. Any concentrated animal feeding operation that has received a determination of no potential to discharge, but anticipates changes in circumstances that could create the potential for a discharge, shall contact the Director and apply for and obtain permit authorization prior to a change in circumstances.

I. Where the Director has issued a determination of no potential to discharge, the Director retains the authority to subsequently require permit coverage if:

1. Circumstances at the facility change;
2. New information becomes available; or
3. For any other reason the Director determines that the concentrated animal feeding operation has a potential to discharge pollutants into the waters of the state.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-50 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. For animal feeding operations that were defined as concentrated animal feeding operations prior to April 14, 2003, the

owner or operator shall have obtained or sought to obtain coverage under a permit prior to April 14, 2003, and comply with all applicable Agriculture Pollutant Discharge Elimination System requirements including, but not limited to, the duty to maintain permit coverage.

B. For operations newly defined as concentrated animal feeding operations on and after April 14, 2003, which were not defined as concentrated animal feeding operations prior to that date, the owner or operator of the concentrated animal feeding operation shall seek to obtain coverage under an Agriculture Pollutant Discharge Elimination System permit by a date specified by the Director of the Agriculture Pollutant Discharge Elimination System, but no later than February 13, 2006.

C. For operations that become defined as concentrated animal feeding operations on and after April 14, 2003, but are not new sources, the owner or operator shall seek to obtain coverage under an Agriculture Pollutant Discharge Elimination System permit, as follows:

1. For newly constructed operations not subject to effluent limitations guidelines, one hundred eighty (180) days prior to the time the concentrated animal feeding operation commences operation; or

2. For other animal feeding operations, including those increasing the number of animals, no later than ninety (90) days after becoming defined as a concentrated animal feeding operation; except that, if an operational change that makes the operation a concentrated animal feeding operation would not have made it a concentrated animal feeding operation prior to April 14, 2003, the operation has until April 13, 2006, or ninety (90) days after becoming defined as a concentrated animal feeding operation, whichever is later.

D. New sources shall seek to obtain coverage under a permit at least one hundred eighty (180) days prior to the time that the concentrated animal feeding operation commences operation, unless permission for a later date has been granted by the Director.

E. For operations designated as a concentrated animal feeding operation, the owner or operator shall seek to obtain coverage under a permit no later than ninety (90) days after receiving notice of the designation.

F. 1. A concentrated animal feeding operation that has received a no potential to discharge determination is not required to seek coverage under an Agriculture Pollutant Discharge Elimination System permit that would otherwise be required by this section.

2. If circumstances materially change at a concentrated animal feeding operation that has received a no potential to discharge determination, and the concentrated animal feeding operation now has a potential for a discharge, the concentrated animal feeding operation has a duty to immediately notify the Director and seek coverage under an Agriculture Pollutant Discharge Elimination System permit within thirty (30) days after the change in circumstances.

G. As of July 1, 2004, all concentrated animal feeding operations with an effective permit shall submit a new application one hundred eighty (180) days before the existing permit expires, unless permission for a later date has been granted by the Director, but in no case later than the permit expiration date.

H. 1. Except for general permits, the Director shall not issue a permit before receiving a complete application for a permit.

2. An application for a permit is complete when the Director receives an application form and any supplemental information which are satisfactorily completed.

3. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-51 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The owner or operator of a concentrated animal feeding operation has a duty to maintain permit coverage and shall submit an application to renew its permit no later than one hundred eighty (180) days before the expiration of the permit.

B. It is not necessary for the owner or operator to seek continued coverage under a permit or reapply for a permit if:

1. The facility has ceased operation or is no longer a concentrated animal feeding operation; and
2. The owner or operator has demonstrated to the satisfaction of the Director that there is no remaining potential for a discharge of manure, litter, or process wastewater that was generated while the operation was a concentrated animal feeding operation, other than agricultural storm water from land application areas.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-52 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Agriculture shall promulgate rules for effluent guidelines and standards for concentrated animal feeding operations.

B. The rules for effluent guidelines and standards shall include, at a minimum, the following:

1. Provisions for best management practices;
2. Nutrient management plans;
3. Effluent limitations;
4. Transfers of manure and process wastewater to other persons;
5. Record keeping provisions;

6. Annual reporting requirements;
7. Design of animal waste management systems; and
8. Any other requirements as determined by the Director to achieve the purposes of the Oklahoma Concentrated Animal Feeding Operations Act.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-53 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any holder of a permit or applicant for a permit under the Licensed Managed Feeding Operations Act shall be deemed to have given consent to any authorized officer, employee, or agent of the Oklahoma Department of Agriculture, Food, and Forestry to:

1. Enter and inspect a facility in accordance with the provisions of the Oklahoma Licensed Managed Feeding Operations Act;

2. Have access at any reasonable time for the purposes of reviewing and copying any records required to be maintained;

3. Inspect any monitoring equipment, methods, disposal systems, or other facilities or equipment as may be required;

4. Have access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or for inspection and sampling of any sludge source, storage, beneficial use, reuse, or disposal site; and

5. Obtain copies of records, plans, reports, or other information required by the Department. All records shall be submitted upon request and shall be subject to, and made available for, inspection at reasonable times to any authorized representative of the Department. Any authorized representative of the Department may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by permit, order, or duly promulgated rules of the Board.

B. For unpermitted facilities, authorized employees or representatives, upon presentation of credential and, if necessary, a proper warrant shall have:

1. A right of entry to, upon, or through any private or public premises upon which an effluent or sludge source is or may be located or in which any records are required to be maintained;

2. Access, at any reasonable time, for the purposes of reviewing and copying any records required to be maintained;

3. Authority to inspect any monitoring equipment, methods, disposal systems, or other facilities or equipment as may be required; and

4. Access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or for inspection and sampling of any sludge source, storage, beneficial use, reuse, or disposal site.

C. 1. The Board shall promulgate standard precautions for the prevention of the transmission of communicable diseases to humans and animals to be used when inspecting animal feeding operations.

2. Except for emergency situations or when enforcement of the act requires the use of the standard precautions, Department employees shall observe the health standards and sanitary requirements of the facility.

D. The Director shall maintain necessary records and undertake studies, investigations, and surveys for the proper administration of the Oklahoma Concentrated Animal Feeding Operations Act.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-54 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The annual fee set forth in this section shall be due by June 30 of each year.

B. The application and annual fees for an animal feeding operation shall be:

1. Fifteen Dollars (\$15.00) for the following numbers and less:

- a. 178 mature dairy cows, whether milked or dry,
- b. 178 veal calves,
- c. 249 cattle other than mature dairy cows or veal calves, and includes but is not limited to heifers, steers, bulls, and cow/calf pairs,
- d. 624 swine each weighing fifty-five (55) pounds or more,
- e. 2,499 swine each weighing less than fifty-five (55) pounds,
- f. 124 horses,
- g. 2,499 sheep or lambs,
- h. 12,499 turkeys,
- i. 8,332 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system,
- j. 24,899 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- k. 24,899 laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- l. 8,332 ducks, if the animal feeding operation uses other than a liquid manure handling system, or
- m. 1,249 ducks, if the animal feeding operation uses a liquid manure handling system;

2. Thirty-seven Dollars and fifty cents (\$37.50) for the following numbers:

- a. 179 to 357 mature dairy cows, whether milked or dry,
- b. 179 to 357 veal calves,
- c. 250 to 500 cattle other than mature dairy cows or veal calves, and includes but is not limited to heifers, steers, bulls, and cow/calf pairs,

- d. 625 to 1,250 swine each weighing fifty-five (55) pounds or more,
  - e. 2,500 to 5,000 swine each weighing less than fifty-five (55) pounds,
  - f. 125 to 250 horses,
  - g. 2,500 to 5,000 sheep or lambs,
  - h. 12,500 to 25,000 turkeys,
  - i. 8,333 to 16,667 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system,
  - j. 24,900 to 50,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system,
  - k. 24,900 to 50,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system,
  - l. 8,333 to 16,667 ducks, if the animal feeding operation uses other than a liquid manure handling system, or
  - m. 1,250 to 2,500 ducks, if the animal feeding operation uses a liquid manure handling system;
3. Seventy-five Dollars (\$75.00) for the following numbers:
- a. 358 to 2,143 mature dairy cows, whether milked or dry,
  - b. 358 to 2,143 veal calves,
  - c. 501 to 3,000 cattle other than mature dairy cows or veal calves, and includes but is not limited to heifers, steers, bulls, and cow/calf pairs,
  - d. 1,251 to 7,500 swine each weighing fifty-five (55) pounds or more,
  - e. 5,001 to 30,000 swine each weighing less than fifty-five (55) pounds,
  - f. 251 to 1,500 horses,
  - g. 5,001 to 30,000 sheep or lambs,

- h. 25,001 to 150,000 turkeys,
- i. 16,668 to 100,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system,
- j. 50,001 to 300,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- k. 50,001 to 300,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- l. 16,668 to 100,000 ducks, if the animal feeding operation uses other than a liquid manure handling system, or
- m. 2,501 to 15,000 ducks, if the animal feeding operation uses a liquid manure handling system;

4. One Hundred Fifty Dollars (\$150.00) for the following numbers:

- a. 2,144 to 7,143 mature dairy cows, whether milked or dry,
- b. 2,144 to 7,143 veal calves,
- c. 3,001 to 10,000 cattle other than mature dairy cows or veal calves, and includes but is not limited to heifers, steers, bulls, and cow/calf pairs,
- d. 7,501 to 25,000 swine each weighing fifty-five (55) pounds or more,
- e. 30,001 to 100,000 swine each weighing less than fifty-five (55) pounds,
- f. 1,501 to 5,000 horses,
- g. 30,001 to 100,000 sheep or lambs,
- h. 150,001 to 500,000 turkeys,

- i. 100,001 to 333,333 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system,
- j. 300,001 to 1,000,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- k. 300,001 to 1,000,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- l. 100,001 to 333,333 ducks, if the animal feeding operation uses other than a liquid manure handling system, or
- m. 15,001 to 50,000 ducks, if the animal feeding operation uses a liquid manure handling system; and

5. Two Hundred Twenty-five Dollars (\$225.00) for the following numbers and more:

- a. 7,144 mature dairy cows, whether milked or dry,
- b. 7,144 veal calves,
- c. 10,001 cattle other than mature dairy cows or veal calves, and includes but is not limited to heifers, steers, bulls, and cow/calf pairs,
- d. 25,001 swine each weighing fifty-five (55) pounds or more,
- e. 100,001 swine each weighing less than fifty-five pounds,
- f. 5,001 horses,
- g. 100,001 sheep or lambs,
- h. 500,001 turkeys,
- i. 333,334 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system,

- j. 1,000,001 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- k. 1,000,001 laying hens, if the animal feeding operation uses other than a liquid manure handling system,
- l. 333,334 ducks, if the animal feeding operation uses other than a liquid manure handling system, or
- m. 50,001 ducks, if the animal feeding operation uses a liquid manure handling system.

C. All fees received for permitting of animal feeding operations shall be deposited in the State Department of Agriculture Revolving Fund.

SECTION 43. AMENDATORY Section 2, Chapter 94, O.S.L. 2002 (2 O.S. Supp. 2003, Section 10-9), is amended to read as follows:

Section 10-9. ~~On the effective date of this act, the~~ The Oklahoma Department of Agriculture, Food, and Forestry shall not accept or approve any pending applications requesting permits for registration, construction or expansion of any ~~concentrated animal feeding operation, as defined in Section 9-202 of Title 2 of the Oklahoma Statutes,~~ ~~or~~ poultry feeding operation, as defined in Section 10-9.1 of Title 2 of the Oklahoma Statutes, to be located within one (1) mile upstream of the Pensacola Project boundary as described in the records of the Grand River Dam Authority and the Federal Emergency Management Agency. Any such operation ~~currently~~ authorized or permitted prior to April 17, 2002, shall not be affected by the provisions of this section.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-55 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other requirement of the Oklahoma Concentrated Animal Feeding Operations Act, animal feeding operations owners and operators with a permit 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 concentrated animal feeding operation premises; and

3. Provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks, and feeding devices.

B. 1. Any permitted 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.

2. Any permitted animal feeding operation permitted pursuant to the Oklahoma Licensed Managed 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 is 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.

C. The animal feeding operation shall not be located or operated in violation of any zoning regulations.

D. Animal feeding operations using liquid animal waste management systems where swine are housed in a roof-covered structure shall not be located within the following applicable distances from an occupied residence:

1. One-half (1/2) mile for the following:

- a. 1,501 to 2,499 swine weighing more than fifty-five (55) pounds, or
  - b. 6,001 to 9,999 swine weighing less than fifty-five (55) pounds; and
2. One-fourth (1/4) mile for the following:
- a. 750 to 1,500 swine weighing more than fifty-five (55) pounds, or
  - b. 3,000 to 6,000 swine weighing less than fifty-five (55) pounds.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-55.1 of Title 2, unless there is created a duplication in numbering, read as follows:

The Department of Agriculture, Food, and Forestry shall not accept or approve any pending applications requesting permits for construction or expansion of any licensed managed feeding operation, as defined in Section 3 of this act, to be located within one (1) mile upstream of the Pensacola Project boundary as described in the records of the Grand River Dam Authority and the Federal Emergency Management Agency. Any such operation authorized or permitted prior to April 17, 2002, shall not be affected by the provisions of this section.

SECTION 46. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The State Board of Agriculture shall promulgate emergency rules to implement Sections 1 through 45 of this act.

SECTION 47. RECODIFICATION 2 O.S. 2001, Sections 9-200, 9-201, 9-202 and 9-203, as amended by Sections 1, 2, 3 and 4 of this act, shall be recodified as Sections 20-1, 20-2, 20-3 and 20-4 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering. 2 O.S. 2001, Section 9-203.1, shall be recodified as Section 1085.30a of Title 82 of the Oklahoma Statutes, unless there is created a duplication in numbering. 2 O.S. 2001,

Sections 9-204, 9-204.1, 9-205, 9-205.1, 9-205.2, 9-205.3, 9-205.3a, 9-205.4, 9-205.5, 9-206, 9-208, 9-209, 9-209.1, 9-210, 9-210.1, 9-210.2, 9-210.3 and 9-211, as amended by Sections 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24 of this act, shall be recodified as Sections 20-5, 20-6, 20-7, 20-8, 20-9, 20-10, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-21 and 20-22 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering. 2 O.S. 2001, Section 9-212.1, as amended by Section 25 of this act, shall be recodified as Section 20-56 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering. 2 O.S. 2001, Section 9-214, as amended by Section 26 of this act, shall be recodified as Section 20-25 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering. 2 O.S. 2001, Section 9-215, shall be recodified as Section 20-26 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 48. REPEALER 2 O.S. 2001, Section 9-212, is hereby repealed.

SECTION 49. This act shall become effective July 1, 2004.

SECTION 50. 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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