

SB 1233

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THE STATE SENATE  
Thursday, February 19, 2004

Senate Bill No. 1233

As Amended

SENATE BILL NO. 1233 - By: CRUTCHFIELD of the Senate and POPE of the House.

[ agriculture - Oklahoma Licensed Managed Feeding Operations Act - codification - recodification - effective date - 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 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~~ 20-1 through ~~9-215~~ 20-25 of this title 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

1 life of persons who live in the vicinity of ~~an animal~~ a licensed  
2 managed feeding operation.

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

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

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

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

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

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

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

19 b. two (2) miles of the designated perimeter of a  
20 licensed managed feeding operation or an expanding  
21 operation with a capacity of more than two thousand  
22 (2,000) animal units for which a license is being  
23 sought;

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

3           a. ~~animals have been, are, or will be stabled or confined~~  
4           ~~and fed or maintained for a total of ninety (90)~~  
5           ~~consecutive days or more in any twelve-month period,~~  
6           ~~and~~

7           b. ~~crops, vegetation, forage growth or post-harvest~~  
8           ~~residues are not sustained in the normal growing~~  
9           ~~season over any portion of the lot or facility.~~

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

15          ~~3.~~ "Animal unit" means a unit of measurement for any ~~animal~~  
16 licensed managed feeding operation calculated by adding the  
17 following numbers: The number of ~~slaughter and feeder cattle~~  
18 ~~multiplied by one (1), plus the number of mature dairy cattle~~  
19 ~~multiplied by one and four-tenths (1.4), plus the number of swine~~  
20 weighing over twenty-five (25) kilograms, approximately fifty-five  
21 (55) pounds, multiplied by four-tenths (0.4), plus the number of  
22 weaned swine weighing under twenty-five (25) kilograms multiplied by

1 one-tenth (0.1), ~~plus the number of sheep multiplied by one-tenth~~  
2 ~~(0.1), plus the number of horses multiplied by two (2);~~

3 ~~4.~~ 3. "Animal waste" means animal excrement, animal carcasses,  
4 feed wastes, process wastewaters or any other waste associated with  
5 the confinement of animals from ~~an animal~~ a licensed managed feeding  
6 operation;

7 ~~5.~~ "Animal Waste Management Plan" or "AWMP" means a written  
8 ~~plan that includes a combination of conservation and management~~  
9 ~~practices designed to protect the natural resources of the state~~  
10 ~~prepared by an owner or operator of an animal feeding operation as~~  
11 ~~required by the Department pursuant to the provisions of Section 9-~~  
12 ~~205.3 of this title;~~

13 ~~6.~~ 4. "Animal waste management system" means a combination of  
14 structures and nonstructural practices serving ~~an animal~~ a licensed  
15 managed feeding operation that provides for the collection,  
16 treatment, disposal, distribution, storage and land application of  
17 animal waste;

18 ~~7.~~ 5. "Artificially constructed" means constructed by humans;

19 ~~8.~~ 6. "Best Management Practices" ~~or "BMPs"~~ means schedules of  
20 activities, prohibitions of practices, maintenance procedures, and  
21 other management practices to prevent or reduce the pollution of  
22 waters of the state as established by the ~~State~~ Oklahoma Department

1 of Agriculture, Food, and Forestry pursuant to Section ~~9-205.3~~ 20-10  
2 of this title;

3 ~~9.~~ 7. "Board" means the State Board of Agriculture;

4 ~~10.~~ 8. "Common ownership" includes but is not limited to any  
5 corporation, partnership or individual where the same owner has  
6 power or authority to manage, direct, restrict, regulate or oversee  
7 the operation or has financial control of the facility;

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

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

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

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

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

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

17 ~~(c) 500 horses,~~

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

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

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

21 ~~(g) 1,000 animal units, and~~

22 ~~(2) pollutants are discharged into waters of the~~

23 ~~state. Provided, no animal feeding operation~~

1 ~~pursuant to this subparagraph shall be construed~~  
2 ~~to be a concentrated animal feeding operation if~~  
3 ~~such animal feeding operation discharges only in~~  
4 ~~the event of a twenty-five-year, twenty-four-hour~~  
5 ~~storm event, or~~

6 ~~e. an animal feeding operation which meets the following~~  
7 ~~criteria:~~

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

10 ~~(a) 300 slaughter or feeder cattle,~~

11 ~~(b) 200 mature dairy cattle, whether milk or dry~~  
12 ~~ewes,~~

13 ~~(c) 750 swine each weighing over 25 kilograms or~~  
14 ~~approximately 55 pounds,~~

15 ~~(d) 3,000 weaned swine each weighing under 25~~  
16 ~~kilograms,~~

17 ~~(e) 150 horses,~~

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

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

20 ~~(h) 30,000 laying hens or broilers, if the~~  
21 ~~facility has continuous overflow watering,~~

22 ~~(i) 9,000 laying hens or broilers, if the~~  
23 ~~facility has a liquid manure system,~~

1 ~~(j) 1,500 ducks, or~~

2 ~~(k) 300 animal units, and~~

3 ~~(2) either one of the following conditions are met:~~

4 ~~(a) pollutants are discharged into waters of the~~  
5 ~~state through an artificially constructed~~  
6 ~~ditch, flushing system or other similar~~  
7 ~~artificially constructed device, or~~

8 ~~(b) pollutants are discharged directly into~~  
9 ~~navigable waters which originate outside of~~  
10 ~~and pass over, across or through the~~  
11 ~~facility or otherwise come into direct~~  
12 ~~contact with the animals confined in the~~  
13 ~~operation.~~

14 ~~Provided, however, that no animal feeding operation~~  
15 ~~pursuant to this subparagraph is a concentrated animal~~  
16 ~~feeding operation if such animal feeding operation~~  
17 ~~discharges only in the event of a twenty-five-year,~~  
18 ~~twenty-four-hour storm event, or~~

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

22 ~~12. 9.~~ "Department" means the State Oklahoma Department of  
23 Agriculture, Food, and Forestry;

1       ~~13.~~ 10. "Designated perimeter" means the perimeter of any  
2 structure or combination of structures utilized to control animal  
3 waste until it can be disposed of in an authorized manner. Such  
4 structures shall include but not be limited to pits, burial sites,  
5 barns or roof-covered structures housing animals, composters, waste  
6 storage sites, or retention structures or appurtenances or additions  
7 thereto;

8       ~~14.~~ 11. "Expanding operation" means:

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

17       ~~15.~~ 12. "Facility" means any place, site or location or part  
18 thereof where animals are kept, handled, housed, or otherwise  
19 maintained and processed and includes but is not limited to  
20 buildings, lots, pens, and animal waste management systems;

21       ~~16.~~ 13. "Interested party" means an affected property owner who  
22 validly requests an individual hearing, in accordance with the  
23 provisions of the Oklahoma ~~Concentrated Animal~~ Licensed Managed

1 Feeding Operations Act and rules promulgated pursuant thereto  
2 regarding the issuance of ~~an animal~~ a licensed managed feeding  
3 operation license and asserts rights to relief in respect to or  
4 arising out of the same license;

5 ~~17.~~ 14. "Land application" means the spreading on, or  
6 incorporation of animal waste into the soil mantle primarily for  
7 beneficial purposes;

8 ~~18.~~ 15. "Licensed managed feeding operations (LMFO)" means ~~an~~  
9 ~~animal feeding operation~~ a lot or facility where animals have been,  
10 are, or will be stabled or confined and fed or maintained for forty-  
11 five (45) days or more in any twelve-month period, and crops,  
12 vegetation, forage growth or post-harvest residues are not sustained  
13 in the normal growing season over any portion of the lot or  
14 facility, and primarily using a liquid animal waste management  
15 system, where animals are primarily housed in a roof-covered  
16 structure and which has more than the number of animals specified in  
17 any of the following categories confined:

- 18 a. 2,500 swine each weighing over twenty-five (25)  
19 kilograms, approximately fifty-five (55) pounds,  
20 b. 10,000 weaned swine each weighing under twenty-five  
21 (25) kilograms, or  
22 c. ~~100,000 laying hens or broilers, if the facility has~~  
23 ~~continuous overflow watering,~~

1           ~~d. 30,000 laying hens or broilers, if the facility has a~~  
2           ~~liquid manure system, or~~  
3           ~~e.~~ any combination of swine weighing over twenty-five  
4           (25) kilograms or under twenty-five (25) kilograms  
5           which would equal one thousand (1,000) animal units;  
6       ~~19.~~ 16. "Liquid animal waste management system" means any  
7       animal waste management system which uses water as the primary  
8       carrier of such waste into a primary retention structure;  
9       ~~20.~~ 17. "Managing operator" means the owner or one who is  
10       responsible for the management of each facility of a ~~concentrated~~  
11       ~~animal~~ licensed managed feeding operation ~~or animal feeding~~  
12       ~~operation;~~  
13       ~~21.~~ 18. "Nutrient-limited watershed" means a watershed of a  
14       waterbody which is designated as "nutrient-limited" in the most  
15       recent Oklahoma Water Quality Standards;  
16       ~~22.~~ 19. "Nutrient-vulnerable groundwater" means groundwater  
17       which is designated "nutrient-vulnerable" in the most recent  
18       Oklahoma Water Quality Standards;  
19       ~~23.~~ 20. "Odor Abatement Plan" or "OAP" means schedules of  
20       activities, prohibitions of practices, maintenance procedures and  
21       other management practices to prevent or reduce odor as established  
22       by the ~~State Department of Agriculture~~ pursuant to Section ~~10~~ 20-11  
23       of this act title;

1       ~~24.~~ 21. "Occupied residence" means a habitable structure  
2 designed and constructed for full-time occupancy in all weather  
3 conditions which:

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

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

14       ~~26.~~ 22. "Process wastewater" means any water utilized in the  
15 facility that comes into contact with any manure, litter, bedding,  
16 raw, intermediate, or final material or product used in or resulting  
17 from the production of animals and any products directly or  
18 indirectly used in the operation of a facility, such as spillage or  
19 overflow from animal watering systems; washing, cleaning, or  
20 flushing pens, barns, manure pits, direct contact, swimming, washing  
21 or spray cooling of animals; and dust control and any precipitation  
22 which comes into contact with animals or animal waste;

1       ~~27.~~ 23. "Retention structures" includes but is not limited to  
2 all collection ditches, conduits and swales for the collection of  
3 runoff water and process wastewater, and basins, ponds and lagoons  
4 or other structures used to store animal wastes;

5       ~~28.~~ 24. "Waste facility" means any structure or combination of  
6 structures utilized to control animal waste until it can be disposed  
7 of in an authorized manner. Such structures shall include but not  
8 be limited to pits, burial sites, barns or roof-covered structures  
9 housing animals, compostors, waste storage sites, or retention  
10 structures or appurtenances or additions thereto; and

11       ~~29.~~ 25. "Waters of the state" means all streams, lakes, ponds,  
12 marshes, watercourses, waterways, wells, springs, irrigation  
13 systems, drainage systems, storm sewers and all other bodies or  
14 accumulations of water, surface and underground, natural or  
15 artificial, public or private, which are contained within, flow  
16 through or border upon this state or any portion thereof, and shall  
17 include under all circumstances the waters of the United States  
18 which are contained within the boundaries of, flow through or border  
19 upon this state or any portion thereof. ~~Process wastewaters shall~~  
20 Provided, waste treatment systems, including treatment ponds and  
21 lagoons designed to meet federal and state requirements, other than  
22 cooling ponds as defined in the Clean Water Act or rules promulgated

1 thereto, are not be considered as waters of the state ~~if~~  
2 ~~contaminated at the site.~~

3 SECTION 4. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 20-40 of Title 2, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. This act shall be known and cited as the "Oklahoma  
7 Concentrated Animal Feeding Operations Act."

8 B. The purpose of this act is to implement the federal National  
9 Pollutant Discharge Elimination System regulations, and to assist  
10 the Oklahoma Department of Agriculture, Food, and Forestry in  
11 obtaining delegation of the federal Clean Water Act programs and to  
12 issue permits to the regulated facilities.

13 SECTION 5. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 20-41 of Title 2, unless there  
15 is created a duplication in numbering, reads as follows:

16 As used in the Oklahoma Concentrated Animal Feeding Operations  
17 Act:

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

20 a. animals have been, are, or will be stabled or confined  
21 and fed or maintained for a total of forty-five (45)  
22 days or more in any twelve-month period, and

1           b.    crops, vegetation, forage growth, or post-harvest  
2                    residues are not sustained in the normal growing  
3                    season over any portion of the lot or facility;

4           2.    "Concentrated animal feeding operation" means an animal  
5    feeding operation that is defined as a large concentrated animal  
6    feeding operation or as a medium concentrated animal feeding  
7    operation by the terms of this section, or that is designated as a  
8    concentrated animal feeding operation in accordance with this  
9    section. Two or more animal feeding operations under common  
10   ownership are considered to be a single animal feeding operation if  
11   they adjoin each other or if they use a common area or system for  
12   the disposal of wastes;

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

17          4.    "Large concentrated animal feeding operation" means an  
18    animal feeding operation if it stables or confines as many as or  
19    more than the numbers of animals specified in any of the following  
20    categories:

- 21           a.    700 mature dairy cows, whether milked or dry,  
22           b.    1,000 veal calves,

- 1 c. 1,000 cattle other than mature dairy cows or veal  
2 calves. Cattle includes but is not limited to  
3 heifers, steers, bulls, and cow/calf pairs,  
4 d. 2,500 swine each weighing fifty-five (55) pounds or  
5 more,  
6 e. 10,000 swine each weighing less than fifty-five (55)  
7 pounds,  
8 f. 500 horses,  
9 g. 10,000 sheep or lambs,  
10 h. 55,000 turkeys,  
11 i. 30,000 laying hens or broilers, if the animal feeding  
12 operation uses a liquid manure handling system;  
13 j. 125,000 chickens, other than laying hens, if the  
14 animal feeding operation uses other than a liquid  
15 manure handling system,  
16 k. 82,000 laying hens, if the animal feeding operation  
17 uses other than a liquid manure handling system,  
18 l. 30,000 ducks, if the animal feeding operation uses  
19 other than a liquid manure handling system, or  
20 m. 5,000 ducks, if the animal feeding operation uses a  
21 liquid manure handling system;

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

1           6. "Medium concentrated animal feeding operation" means any  
2 animal feeding operation with the type and number of animals that  
3 fall within any of the following ranges and which has been defined  
4 or designated as a concentrated animal feeding operation. An animal  
5 feeding operation is defined as a concentrated animal feeding  
6 operation if:

- 7           a. the type and number of animals that it stables and  
8           confines falls within any of the following ranges:
- 9           (1) 200 to 699 mature dairy cows, whether milked or  
10           dry,
  - 11           (2) 300 to 999 veal calves,
  - 12           (3) 300 to 999 cattle other than mature dairy cows or  
13           veal calves. Cattle includes but is not limited  
14           to heifers, steers, bulls, and cow/calf pairs,
  - 15           (4) 750 to 2,499 swine each weighing fifty-five (55)  
16           pounds or more,
  - 17           (5) 3,000 to 9,999 swine each weighing less than  
18           fifty-five (55) pounds,
  - 19           (6) 150 to 499 horses,
  - 20           (7) 3,000 to 9,999 sheep or lambs,
  - 21           (8) 16,500 to 54,999 turkeys,

- 1 (9) 9,000 to 29,999 laying hens or broilers, if the  
2 animal feeding operation uses a liquid manure  
3 handling system,
- 4 (10) 37,500 to 124,999 chickens, other than laying  
5 hens, if the animal feeding operation uses other  
6 than a liquid manure handling system,
- 7 (11) 25,000 to 81,999 laying hens, if the animal  
8 feeding operation uses other than a liquid manure  
9 handling system,
- 10 (12) 10,000 to 29,999 ducks, if the animal feeding  
11 operation uses other than a liquid manure  
12 handling system, or
- 13 (13) 1,500 to 4,999 ducks, if the animal feeding  
14 operation uses a liquid manure handling system;  
15 and
- 16 b. Either one of the following conditions are met:
- 17 (1) pollutants are discharged into waters of the  
18 state through a man-made ditch, flushing system,  
19 or other similar man-made device, or
- 20 (2) pollutants are discharged directly into waters of  
21 the state which originate outside of and pass  
22 over, across, or through the facility or

1 otherwise come into direct contact with the  
2 animals confined in the operation;

3 7. "Process wastewater" means water directly or indirectly used  
4 in the operation of the animal feeding operation for any or all of  
5 the following: spillage or overflow from animal or poultry watering  
6 systems; washing, cleaning, or flushing pens, barns, manure pits, or  
7 other animal feeding operation facilities; direct contact swimming,  
8 washing, or spray cooling of animals; or dust control. Process  
9 wastewater also includes any water which comes into contact with any  
10 raw materials, products, or byproducts including manure, litter,  
11 feed, milk, eggs, or bedding;

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

17 a. the animal confinement area includes but is not  
18 limited to open lots, housed lots, feedlots,  
19 confinement houses, stall barns, free stall barns,  
20 milkrooms, milking centers, cowyards, barnyards,  
21 medication pens, walkers, animal walkways, and  
22 stables,

- 1           b.    the manure storage area includes but is not limited to  
2                    lagoons, runoff ponds, storage sheds, stockpiles,  
3                    under house or pit storages, liquid impoundments,  
4                    static piles, and composting piles,  
5            c.    the raw materials storage area includes but is not  
6                    limited to feed silos, silage bunkers, and bedding  
7                    materials,  
8            d.    the waste containment area includes but is not limited  
9                    to settling basins, and areas within berms and  
10                   diversions which segregate uncontaminated storm water;  
11                   and

12           9.    "Small concentrated animal feeding operation" means an  
13    animal feeding operation that is designated as a concentrated animal  
14    feeding operation and is not a medium concentrated animal feeding  
15    operation.

16           SECTION 6.        RECODIFICATION        2 O.S. 2001, Sections 9-200,  
17    9-201, and 9-202, as amended by Sections 1, 2, and 3 of this act,  
18    shall be recodified as Sections 20-1, 20-2, and 20-3 of Title 2 of  
19    the Oklahoma Statutes, unless there is created a duplication in  
20    numbering.

21           SECTION 7.    This act shall become effective July 1, 2004.

22           SECTION 8.    It being immediately necessary for the preservation  
23    of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.  
3 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,  
4 dated 2-17-04 - DO PASS, As Amended and Coauthored.