

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2706

By: McClain

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 2001, Sections 10-9.5, 10-9.7 and 10-9.19, which relate to the Oklahoma Registered Poultry Feeding Operations Act; providing for notice and hearing requirements; providing procedures; specifying time limits; requiring certain submissions; providing for contents; providing for testimony and evidence; making hearing comply with Article II of the Administrative Procedures Act; requiring posting; defining terms; modifying methodology of calculation of application rate; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 10-9.5, is amended to read as follows:

Section 10-9.5 A. The State Board of Agriculture shall cause to be prepared and available the necessary forms and applications for any person desiring or required to register a poultry operation or expanding operation.

B. The application to register to operate a new or previously unregistered poultry operation or expanding operation shall be under oath and shall contain, as a minimum, the following information:

1. Name and address of the owner and operator of the facility;
2. Name and address of the poultry operation;
3. Number and type of poultry housed or confined;
4. Name and address of the integrator whose poultry will be raised by the poultry feeding operation;

5. 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, poultry waste storage facilities and land application sites owned or leased by the applicant or which the applicant has contracted with for the application of poultry waste;

6. A copy of the Animal Waste Management Plan, or proof of application for such plan, Best Management Practices or any other plans authorized by the State Department of Agriculture; and

7. A statement of ownership.

a. If the applicant is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation shall be included in the application.

b. If the applicant is a partnership or other legal entity, the name and address of each partner and stockholder with an ownership interest of ten percent (10%) or more shall be included in the statement.

c. The information contained in the statement of ownership shall be public information and shall be available upon request from the Board;

8. The name and address of the person having day to day control of the operation, if such person is not the applicant and is acting as agent for the applicant;

9. a. An environmental history from the past three (3) years of any poultry feeding operation established and operated by the applicant or any other operation with common ownership in this state or any other state. Such environmental history shall include but not be limited to all citations, administrative orders or penalties, civil injunctions or other civil actions, criminal actions, past, current and ongoing, taken by any person, agency or court relating to noncompliance with any environmental law, rule, agency order, or

court action relating to the operation of a poultry feeding operation.

- b. A copy of all records relating to the environmental history required by this paragraph shall accompany the application.
- c. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this subsection;

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

11. Any other information or records to be required by the Department for purposes of implementing the Oklahoma Registered Poultry Feeding Operations Act or rules promulgated pursuant thereto.

C. 1. a. Any person applying for a license for a poultry feeding operation or expanding operation shall comply with the notice and hearing requirements as specified by this subsection and rules promulgated by the Board pursuant thereto.

b. Notice requirements shall include notice to affected property owners by certified mail, return receipt requested, pursuant to paragraph 2 of this subsection and public notice pursuant to paragraph 3 of this subsection.

2. a. After the applicant has submitted any required information to the Department, the Department shall require the applicant to notify all affected property owners of the proposed facility or expanding operations. Such notice shall be sent by certified

mail, return receipt requested. The notice shall identify that an application for a poultry feeding operation or expanding operation has been submitted to the Department, the location where the facility is to be located, that a hearing may be requested pursuant to this subsection, and the date the application will be available for public review, which shall begin no earlier than the day following the certified mailing of all the required notices and such other information required by the Department.

- b. Each affected property owner requesting a hearing shall submit, in writing, the following information:
- (1) the name and address of the interested party and proof of standing by showing that the interested party is an affected property owner,
 - (2) 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
 - (3) the relief sought by the interested party.
- c. If any of the affected property owners request an administrative hearing, such hearing shall be held by the Department within not less than thirty (30) days nor more than sixty (60) days after the close of the public review period pursuant to paragraph 3 of this subsection. All interested parties may be joined as parties to the hearing pursuant to rules promulgated by the State Board of Agriculture.
- d. In addition to any other information deemed necessary by the Department, at the hearing the Department shall hear testimony and accept evidence pertaining to the

physical and technical suitability of the proposed facility or expanding operations. In addition, any interested party may present specific allegations based on scientific and technical findings of fact showing that the proposed facility or expanding operations may have a direct, substantial and immediate effect upon a legally protected interest of the affected property owner.

e. 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.

3. a. In addition to the individual notice required by this subsection, the Department shall require the applicant to give public notice of the opportunity to comment on the granting of the license.

b. 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.

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

d. The application shall be available for public review during normal business hours. The copies of the application posted for public viewing shall be complete except for proprietary provisions otherwise

protected by law and must remain posted during normal business hours for at least twenty (20) working days after notice is published.

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

4. Prior to the issuance of any license for a poultry feeding operation or expanding operation, the Department shall require the applicant to submit:

- a. 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
- b. proof of publication notice of a new or expanding application for a poultry feeding operation or expanding operation required by this subsection.

5. For purposes of this subsection, the term "affected property owner" means a surface landowner within:

- a. one (1) mile of the designated perimeter of a poultry feeding operation or expanding operation, and
- b. any municipality, municipal utility, rural water district, public service corporation, public trust, or any other legal entity that operates a public water supply system located within the watershed area where the proposed poultry feeding operation or expanded operation is to be or is located.

6. "Designated perimeter" means the perimeter of any structure or combination of structures utilized to control poultry waste until it can be disposed of in an authorized manner. Such structures shall include, but not be limited to, pits, burial sites, barns or

roof-covered structures housing poultry, composters, waste storage sites, or retention structures or appurtenances or additions thereto.

D. 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 registration 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.

~~D.~~ E. The owner of a poultry feeding operation shall be responsible for sending written notification to the State Department of Agriculture upon changing integrators.

~~E.~~ F. For a transfer of registration to a new owner, the new owner must register the operation pursuant to the rules of the Department.

~~F.~~ G. 1. ~~After the effective date of this act, all~~ All operators of poultry feeding operations shall attend educational courses on poultry waste handling. All such operators shall attend educational training on poultry waste management as provided by Oklahoma State University through the Oklahoma Cooperative Extension Service. All current and new operators shall receive no less than nine (9) hours of training in the first year and no less than three (3) hours each year thereafter. The Oklahoma Cooperative Extension Service shall develop the educational training course to aid in certification. Curricula for the training course will include the Oklahoma Cooperative Extension Service Waste Management Facts series and record books or their current equivalent. Courses for poultry waste management shall include the following topics:

- a. environmental process relevant to protecting water quality in poultry production,
- b. basic handling systems to manage poultry waste from all types of poultry operations,

- c. nutrient management, including sampling procedures, application rate determination, equipment calibration, and record keeping systems,
- d. relevant laws and rules applicable to poultry waste management in the State of Oklahoma, and
- e. any other related subject as determined by Oklahoma State University in consultation with the Department.

2. At the completion of each course, the operator shall receive a certification verifying completion. The certificates shall be kept on site for five (5) years.

3. Failure to obtain the prerequisite and annual training and education as provided in this subsection shall be deemed a violation of the Oklahoma Registered Poultry Feeding Operations Act.

~~G. On and after March 1, 1999, no~~ H. No integrator shall enter into any contract with an operator of a poultry feeding operation who is not in compliance with the requirements of subsection ~~E~~ F of this section.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 10-9.7, is amended to read as follows:

Section 10-9.7 A. All poultry feeding operations shall utilize Best Management Practices and shall meet 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 Registered Poultry Feeding Operations Act.

B. The criteria for Best Management Practices shall be promulgated by rules by the Board and shall include, but not be limited to, the following:

1. There shall be no discharge of poultry waste to waters of the state;

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

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

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

- a. not create an environmental or a public health hazard,
- b. not result in the contamination of waters of the state, and
- c. conform to such other handling, treatment and management and removal requirements deemed necessary by the State Department of Agriculture to implement the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

The rules promulgated by the Board pursuant to this section shall provide for exceptions to the storage requirements for poultry waste in emergency situations. Such exceptions shall include but not be limited to allowing a contract poultry grower to take such actions as are necessary to meet requirements imposed on a grower by an integrator. In such situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.

C. Every poultry feeding operation shall have an Animal Waste Management Plan which shall include at a minimum:

1. A description of poultry waste handling procedures and availability of equipment and type of equipment to be used;

2. The calculations and assumptions used for determining land application rates;

3. All nutrient analysis data, for soil and poultry waste testing;

4. Legal description of lands to be used by an operation for land application;

5. Land application rates of poultry waste shall be based on the available nitrogen and phosphorous content of the poultry waste

and shall provide controls for runoff and erosion as appropriate for site conditions;

6. The procedures documented in the Animal Waste Management Plan must ensure that the handling and utilization of poultry waste complies with the following requirements:

- a. adequate poultry waste storage shall be provided consistent with rules promulgated by the State Department of Agriculture pursuant to subsection B of this section,
- b. poultry waste shall not be applied to land when the ground is saturated or during rainfall events.
Poultry waste shall not be applied to land when the ground is frozen except in conformance with the Animal Waste Management Plan,
- c. poultry waste shall only be applied to suitable land at appropriate times and rates. Discharge or runoff of waste from the application site is prohibited. Timing and rate of applications shall be based on assimilation capacity of the soil profile, assuming usual nutrient losses, expected precipitation, and soil conditions, and
- d. poultry waste application shall be prohibited on land subject to excessive erosion;

7. Records shall be maintained of all poultry wastes applied on land owned or controlled by the operator, and sold or given to other persons:

- a. if the poultry waste is sold or given to other persons for land application or other use, the poultry feeding operation shall maintain a log of: date of removal from the poultry feeding operation; name of recipient the poultry waste is sold or given to; and amount in

wet tons, dry tons or cubic yards of poultry waste removed from the poultry feeding operation, and

- b. the poultry feeding operation shall make available to the recipient any nutrient sample analysis from that year;

8. Any analysis required by the provisions of the Oklahoma Registered Poultry Feeding Operations Act or rules promulgated thereto shall be performed by a qualified environmental testing laboratory certified by the Department of Environmental Quality and approved by the State Department of Agriculture; and

9. Such other information deemed necessary by the State Department of Agriculture to administer the provisions of the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

D. Every poultry feeding operation located in a non-nutrient-limited watershed and non-nutrient-vulnerable groundwaters shall perform soil testing on each land application and poultry waste testing at least once every three (3) years to determine:

1. Soil pH and plant available nutrients including, at a minimum, nitrogen, phosphorous and potassium;
2. Poultry waste nutrient concentrations and moisture; and
3. Application rate based upon current United States Department of Agriculture Natural Resources Conservation Service Waste Utilization Standards, unless the State Department of Agriculture approves other standards.

E. 1. Every poultry feeding operation located in a nutrient-limited watershed and nutrient-vulnerable groundwater shall perform an annual soil test on each land application area prior to the first application of the calendar year. Poultry waste testing shall be performed annually prior to the first application of the calendar year. Soil and poultry waste testing shall be performed to determine:

- a. soil pH and plant available nutrients including at least nitrogen, phosphorous and potassium,
- b. poultry waste nutrient concentrations and moisture, and
- c. application rate based upon ~~current United States Department of Agriculture Natural Resources Conservation Service Waste Utilization Standards,~~ unless the State Department of Agriculture approves other standards:

(1) the actual agronomic needs of the plants which are to be grown or are growing upon the application sites as established by Oklahoma State University, and

(2) the risk to the water quality of the watershed as determined by the Department pursuant to Oklahoma Water Quality Standards.

2. Soil and poultry waste analysis data shall be retained by the poultry feeding operation for as long as the site is in operation.

F. 1. Poultry feeding operations shall develop a plan for the disposal of carcasses associated with normal mortality.

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

SECTION 3. AMENDATORY 2 O.S. 2001, Section 10-9.19, is amended to read as follows:

Section 10-9.19 ~~4.~~ A. Prior to any land application of poultry waste by a certified poultry waste applicator, the applicator shall obtain the most recent soil and poultry waste tests as required by the Oklahoma Poultry Waste Applicators Certification Act.

~~2.~~ B. Land application of poultry waste in a non-nutrient-limited watershed and non-nutrient-vulnerable groundwaters shall not be made at any rate which exceeds the most recently published United States Department of Agriculture Natural Resources Conservation Service Waste Utilization Standards.

~~3. The State Department of Agriculture may promulgate rules pursuant to the Administrative Procedures Act which will prohibit~~
~~the land~~ C. Land application of poultry waste in nutrient-limited watersheds and nutrient-vulnerable groundwaters shall be based upon ~~lower soil phosphorous levels than are allowed in this section for non-nutrient-limited watersheds and non-nutrient-vulnerable~~
groundwaters:

1. The actual agronomic needs of the plants which are to be grown or which are growing on the application sites; and

2. The risk to the water quality of the watershed as determined by the Department pursuant to Oklahoma Water Quality Standards.

SECTION 4. This act shall become effective November 1, 2004.

49-2-7388

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