

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2603

By: DeWitt, Armes, Denney,
Blackwell, Billy, Ellis,
Glenn, Hickman, Pruett,
Roggow and Walker of the
House

and

Justice of the Senate

An Act relating to agriculture; enacting the CAFO Rural Economic Development Initiative Act; amending 2 O.S. 2001, Section 9-202, as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-3), which relates to the Oklahoma Concentrated Animal Feeding Operations Act; adding definition; providing for noncodification; and providing an effective date.

AMENDMENT NO. 1: Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to agriculture; enacting the CAFO Rural Economic Development Initiative Act; providing short title; amending 2 O.S. 2001, Section 9-202, as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-3), which relates to the Oklahoma Concentrated Animal Feeding Operations Act; adding definition; amending 2 O.S. 2001, Section 9-205.3, as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-10), which relates to Best Management Practices; providing for regulation of certain spills; requiring Oklahoma Department of Agriculture, Food, and Forestry to maintain certain records; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "CAFO Rural Economic Development Initiative Act".

SECTION 2. AMENDATORY 2 O.S. 2001, Section 9-202, as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-3), is amended to read as follows:

Section 20-3. A. Concentrated animal feeding operations are point sources subject to the license program established pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

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

1. "Affected property owner" means a surface landowner within:
 - a. one (1) mile of the designated perimeter of an animal feeding operation which:
 - (1) does not meet the definition of a licensed managed feeding operation, or
 - (2) 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 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 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. "Animal waste" means animal excrement, animal carcasses, feed wastes, process wastewaters or any other waste associated with the confinement of animals from an animal 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~~ 20-10 of this title;

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

7. "Artificially constructed" means constructed by humans;

8. "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~~ Oklahoma Department of Agriculture, Food, and Forestry pursuant to Section ~~9-205.3~~ 20-10 of this title;

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

10. "Common ownership" includes but is not limited to any corporation, partnership or individual where the same owner 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

- c. 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~~ 20-6 of this title;

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

13. "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 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. "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. "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. "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 feeding operation license and asserts rights to relief in respect to or arising out of the same license;

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

18. "Licensed managed feeding operations (LMFO)" means an animal feeding operation primarily using a liquid animal waste management system, where animals are primarily housed in a roof-covered structure and which 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 pounds,
- b. 10,000 weaned swine each weighing under 25 kilograms,
- 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 or under twenty-five (25) kilograms which would equal one thousand (1,000) animal units;

19. "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. "Nutrient-limited watershed" means a watershed of a waterbody 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. "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~~ Oklahoma Department of Agriculture, Food, and Forestry 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~~ 20-9 of this title;

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 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 comes into contact with animals or animal waste;

27. "Retention structures" includes 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. "Spill" means the release from a swine animal feeding operation of any process wastewater or manure that does not reach waters of the state;

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

~~29~~ 30. "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 not be considered as waters of the state if contaminated at the site.

SECTION 3. AMENDATORY 2 O.S. 2001, Section 9-205.3, as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-10), is amended to read as follows:

Section 20-10. 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 to waters of the state except in accordance with the provisions of the Oklahoma Concentrated Animal 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;

3. No waters of the state shall come into direct contact with the animals confined on the animal 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 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,
- g. conform to such other handling, treatment and management and removal requirements deemed necessary by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry to implement the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, and
- h. ensure that watersheds and groundwater are adequately protected; ~~and~~

5. If, for any reason, there is a discharge other than a spill of less than 100 gallons, the licensee is required to make immediate notification to the Department. 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 other parameters as required by the Department which the Department has reason to believe could be in the discharge-;

6. Notwithstanding the provisions of paragraph 5 of this subsection, any spill that leaves the property owned or controlled by the licensee shall be reported to the Department regardless of total number of gallons spilled; and

7. The Department shall maintain records of all discharges and shall separately maintain records of all spills.

C. The Animal Waste 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;
4. Requirements including that:
 - a. (1) land application of animal waste shall not exceed the nitrogen uptake of the crop coverage or planned crop planting with any land application of wastewater or manure. Where local water quality is threatened by phosphorous, in no case shall the applicant or licensee exceed the application rates in the most current Natural Resources Conservation publication titled Waste Utilization 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, waste storage sites, ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to ensure ability to fully comply with the terms of the Oklahoma Concentrated Animal 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

5. Such other information deemed necessary by the Department to administer the provisions of the Oklahoma Concentrated Animal 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.

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 feeding operation; names of such other persons; and amount, in wet tons, dry tons or cubic yards, of animal waste removed from the animal 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 disposal or application is performed by persons not employed or controlled by the licensed managed feeding operation.

G. Soils in areas in which animal waste is applied shall be analyzed, annually, for phosphates, nitrates 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 upon request by the Department. Such analysis shall be retained by the animal feeding operation as long as the facility is in operation.

H. Every animal 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.

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 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 4. This act shall become effective November 1, 2006."

Passed the Senate the 12th day of April, 2006.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2006.

Presiding Officer of the House
of Representatives