

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 3015

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

and

Lerblance of the Senate

An Act relating to agriculture; 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 the Oklahoma Concentrated Animal Feeding Operations Act; updating language; limiting certain liability; and providing an effective date.

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

"An Act relating to the Oklahoma Concentrated Animal Feeding Operations Act; amending 2 O.S. 2001, Section 9-205.4, as renumbered by Section 25, Chapter 292, O.S.L. 2005, (2 O.S. Supp. 2005, Section 20-12), which relates to groundwater protection; defining certain water discharge; requiring certain liners be used in Concentrated Animal Feeding Operations; requiring certain approval by licensed engineer; removing authority of certain federal agency engineers to issue certain statements; authorizing the Board of Agriculture to establish standards for retention structures; requiring certain feeding operations to install and maintain leak detection systems; requiring testing by certain approved environmental laboratories; requiring sampling procedures for certain dry wells; stating procedures for baseline data requirements; modifying design and construction requirements for certain liners; stating requirements of liner maintenance; requiring certain site evaluation; requiring Department to establish certain compliance schedule for retrofitting certain liners; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 9-205.4, as renumbered by Section 25, Chapter 292, O.S.L. 2005, (2 O.S. Supp. 2005, Section 20-12), is amended to read as follows:

Section 20-12. A. Any hydrologic connection between wastewater and waters of the state outside that authorized by the provisions of the Oklahoma Concentrated Animal 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~~ 20-20 of ~~this title~~ the Oklahoma Concentrated Animal Feeding Operations Act, to prevent hydrologic connections between a retention structure and waters of the state, all swine 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~~ an environmental, agricultural, or other ~~Department~~-approved professional 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~~ 20-20 of ~~this title~~ the Oklahoma Concentrated Animal Feeding Operations 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~~ Board of Agriculture shall establish standards for retention structures ~~pursuant to the provisions of this section.~~

E. The Department 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 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~~ Board 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.~~

- a. Samples of water shall be collected by the State Oklahoma Department of Agriculture, Food, and Forestry and submitted for testing at least annually. The analysis of the water samples shall be performed by a qualified environmental laboratory ~~certified~~ approved by the Oklahoma Department of Environmental Quality or by the relevant certification agency for the state in which the laboratory is located and approved by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry; and the cost shall be the responsibility of the owner of the licensed managed feeding operation.
- b. The frequency of sampling set forth in subparagraph a of this paragraph may be reduced to once every three (3) years for those monitoring wells which have been sampled for at least three (3) consecutive years and have always been found to be dry. However, if any subsequent sampling event indicates the monitoring well is no longer dry, that monitoring well shall be sampled pursuant to subparagraph a of this paragraph.

~~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 shall be determined based on 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 United States Department of Agriculture Natural Resources Conservation Service or its current equivalent ~~or by the federal Environmental Protection Agency~~ so long as the facility is designed by a the 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~~ shall maintain the liner to inhibit infiltration of wastewaters. Documentation of liner maintenance shall be maintained ~~with at the Pollution Prevention Plan~~ facility.

2. ~~A professional~~ An environmental, agricultural, or other ~~Department-~~approved professional 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.

3. The Department 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 which~~ August 1, 1998, that 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 from the proper operation and maintenance of an animal feeding operation and the runoff from the animal 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 shall be determined based on the best information available.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

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