STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1467 By: DeWitt of the House

and

Shurden of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2001, Section 1-3, as last amended by Section 1, Chapter 3, O.S.L. 2003 (2 O.S. Supp. 2004, Section 1-3), which relates to the Oklahoma Agricultural Code; modifying definitions; creating the Oklahoma Agriculture Pollutant Discharge Elimination System Act; stating purpose; providing for jurisdiction; defining terms; authorizing the promulgation of rules; providing for content of rules; granting authority to Oklahoma Department of Agriculture, Food, and Forestry for certain purposes; providing for certain acts for certain permits; requiring disclosure of certain financial information by certain persons; providing for certain appointments; providing for certain qualifications and restrictions for certain employees; specifying powers and duties of Director and the Department; providing for certain jurisdiction over certain water programs; providing for compliance; establishing certain duties of Director; providing for renewal of certain license or permit; providing for sanctions; authorizing certain persons to enter certain property to obtain certain information; requiring certain recordkeeping; requiring promulgation of certain rules; providing for certain authority under the Administrative Procedures Act; granting opportunity for hearing to certain interested parties; allowing issuance of certain orders; authorizing the Department to serve notice of certain violation; stating penalty; providing for notice to be served; providing for administrative hearings; providing for assessment of certain penalties; allowing certain civil actions; providing for assessment of certain penalties; establishing jurisdiction of certain action; providing for certain violations of law and fines; providing for certain appeals; providing for filing of certain applications; providing for review of certain applications; creating the Oklahoma Agriculture Environmental Permitting Act; defining terms; authorizing promulgation of certain rules; providing for content of certain rules; authorizing Oklahoma Department of Agriculture, Food, and Forestry to enforce and implement certain laws; granting certain additional powers to Department; requiring certain applicants to provide notice;

providing for certain meetings; requiring preparation of certain reports; providing for certain notice; requiring certain formal public meeting; establishing certain public comment periods; granting opportunity for hearing; providing for certain hearing process; providing for default judgments; providing for appeals of certain orders; establishing expedited permitting processes; providing for promulgation of emergency rules; amending 2 O.S. 2001, Section 9-208, which relates to licensing requirements and jurisdiction; deleting jurisdiction provision for certain point source discharge; prohibiting the Oklahoma Department of Agriculture, Food, and Forestry from accepting or approving concentrated animal feeding operation permits located in certain area; amending Section 2, Chapter 94, O.S.L. 2002 (2 O.S. Supp. 2004, Section 10-9), which relates to certain poultry feeding operation permit prohibition; clarifying language; deleting reference to concentrated animal feeding operations; repealing Section 1, Chapter 31, O.S.L. 2004 (2 O.S. Supp. 2004, Section 20-24), which relates to licensed managed feeding operations and animal disease; 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 1-3, as last amended by Section 1, Chapter 3, O.S.L. 2003 (2 O.S. Supp. 2004, Section 1-3), is amended to read as follows:

Section 1-3. For the purposes of the Oklahoma Agricultural Code, unless the context indicates otherwise:

1. “Authorized agent” means a person who has been authorized by the State Board of Agriculture to act on behalf of the Board in making investigations, inspections, performing other services, or doing any particular act or acts which have been vested by the Oklahoma Agricultural Code in the Board. A written or printed commission signed by the President of the Board shall be proof that the holder has lawful authority to act on behalf of the Board in implementing the Oklahoma Agricultural Code;

2. “Board” means the State Board of Agriculture;

3. “Code” means the Oklahoma Agricultural Code;

4. “Department” means the Oklahoma Department of Agriculture, Food, and Forestry and its employees, officers, and divisions. Whenever the name “Department of Agriculture” appears in any law, contract or other document, it shall be deemed to refer to the Oklahoma Department of Agriculture, Food, and Forestry;

5. “Director” means the Director of a division established in the Oklahoma Department of Agriculture, Food, and Forestry;

6. “License” means a written document issued by the Board granting authority to a person to engage in a business, occupation, or activity;

7. “Livestock” or “animals” means any cattle, bison, horses, sheep, goats, asses, mules, swine, domesticated rabbits, and chickens, turkeys, and other domesticated fowl, and any animal or bird in captivity;

8. “Permit” means a written document issued by the Board giving consent for a person to engage in an activity;

9. “Person” means the state, any municipality, political subdivision, institution, individual, public or private corporation, partnership, <u>association, firm, company, public trust, joint-stock company, trust, estate, state or federal agency, other governmental entity,</u> or <u>any</u> other legal entity <u>or an agent, employee, representative, assignee or successor thereof</u>;

10. “President” means the President of the State Board of Agriculture. The President of the State Board of Agriculture shall also be designated as the Commissioner of Agriculture;

11. “Producer” means any person planting, raising, growing, or harvesting agricultural products;

12. “Quarantine” means a written document issued by the Board to restrict the movement of animals, birds, plants, or agricultural commodities into or out of a specified area for the control or prevention of diseases or pests; and

13. “Stop sale order” or “stop use order” means a written or printed order signed by the President or authorized agent of the Board, prohibiting the sale, offering for sale, exposure for sale, or use of any agricultural product, article, device, service, or commodity covered by the Oklahoma Agricultural Code.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Sections 2 through 11 of this act shall be known and may be cited as the “Oklahoma Agriculture Pollutant Discharge Elimination System Act”.

B. The purpose of the Oklahoma Agriculture Pollutant Discharge Elimination System Act is to:

1. Implement the federal National Pollutant Discharge Elimination System requirements;

2. Assist the Oklahoma Department of Agriculture, Food, and Forestry in obtaining authorization to implement the federal Clean Water Act programs; and

3. Issue permits to the persons or organizations owning or operating facilities regulated within the areas of environmental jurisdiction of the Department.

C. The provisions contained in the Oklahoma Agriculture Pollutant Discharge Elimination System Act shall only apply to those programs established pursuant to the environmental jurisdiction of the Department as stated in Section 1-3-101 of Title 27A of the Oklahoma Statutes.

D. Water programs within the environmental jurisdiction of the Department are hereby established that shall be responsible for:

1. Water quality including, but not limited to, point source and nonpoint source pollution;

2. Water protection; and

3. Discharges and potential discharges to waters of the state.

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

As used in the Oklahoma Agriculture Pollutant Discharge Elimination System Act:

1. "Administrative hearing", "administrative permit hearing", "enforcement hearing" and "administrative enforcement hearing" mean a quasi-judicial individual proceeding, held by the Oklahoma Department of Agriculture, Food, and Forestry, when authorized by the provisions of the Oklahoma Agricultural Code, and conducted pursuant to:

a. the Administrative Procedures Act,

b. the Oklahoma Agricultural Code, and

c. rules promulgated thereunder;

2. "Administrative Procedures Act" means the Oklahoma Administrative Procedures Act;

3. "Director" means the individual appointed by the Commissioner to perform the duties identified in Section 6 of this act;

4. "Discharge" includes, but is not limited to, a discharge of a pollutant or pollutants and means any addition of any pollutant to waters of the state from any point or nonpoint source regulated by the Department within its areas of environmental jurisdiction;

5. "Disposal system" means pipelines or conduits, pumping stations and force mains, and all other devices, construction, appurtenances, and facilities used for collecting, conducting, or disposing of wastewater and treatment systems;

6. "Effluent limitation" means any established restriction imposed by the Department on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into waters of the state and includes schedules of compliance;

7. “Environment” includes the air, land, wildlife, and waters of the state;

8. “Formal public meeting” means a formal public forum, held by the Department when authorized by the provisions of the Oklahoma Agricultural Code, and conducted by a presiding officer pursuant to the requirements of the Oklahoma Agricultural Code and rules promulgated thereunder, at which an opportunity is provided for the presentation of oral comments made and written views submitted within reasonable time limits as determined by the presiding officer. Public meeting shall mean a “public hearing” when held pursuant to requirements of the Code of Federal Regulations or the Oklahoma Agriculture Pollutant Discharge Elimination System Act. A public meeting shall not be a quasi-judicial proceeding;

9. “Nonpoint source” means the contamination of the environment with a pollutant for which the specific point of origin may not be well-defined and includes, but is not limited to, agricultural storm water runoff and return flows from irrigated agriculture;

10. “Point source” means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants or wastes are or may be discharged and which is within the Department’s environmental jurisdiction. The term “point source” shall not include agricultural storm water discharges and return flows from irrigated agriculture;

11. “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into waters of the state;

12. “Pollution” means the presence or the release in the environment of any substance, contaminant or pollutant, any other alteration of the physical, chemical or biological properties of the environment, the release of any liquid, gaseous or solid substance into the environment:

a. in quantities which are or will likely create a nuisance, or

b. in quantities which render or will likely render the environment harmful, detrimental, or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

13. “Schedule of compliance” means a schedule of remedial measures including, but not limited to, an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard;

14. “Serious bodily injury” means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

15. “Storm water” means rainwater runoff, snow melt runoff, and surface runoff and drainage;

16. “Treatment works” means any facility within the Department’s jurisdictional areas of environmental responsibility, as specified in Section 1-3-101 of Title 27A of the Oklahoma Statutes used for the purpose of treating or stabilizing waste or waste water that does not discharge directly to a publicly owned treatment works; and

17. “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. Provided, waste treatment systems, including treatment ponds and lagoons designed to meet federal and state requirements other than cooling ponds as defined in the federal Clean Water Act or promulgated rules, are not waters of the state.

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

A. The State Board of Agriculture shall have the power and duty to promulgate rules implementing and effectuating the Oklahoma Agriculture Pollutant Discharge Elimination System Act. The rules may incorporate by reference any applicable rules, regulations, and policies of the United States Environmental Protection Agency adopted under the federal Clean Water Act. Any rules shall be at least as stringent as the United States Environmental Protection Agency regulations and policies, including, but not limited to, rules that:

1. Allow the inclusion of technology-based effluent limitations and require water-quality-related effluent limitations in Agriculture Pollutant Discharge Elimination System permits to the extent necessary to protect the designated and existing beneficial uses of the waters of the state and to comply with the requirements of the federal Clean Water Act;

2. Apply applicable national standards of performance promulgated pursuant to Section 306 of the federal Clean Water Act in establishing terms and conditions of Director-issued permits;

3. Develop or assist in development of any effluent limitation or other limitation, prohibition, or effluent regulation;

4. Ensure that the public and any other state whose waters may be affected receive notice of each application for a discharge permit;

5. Ensure that any state whose waters may be affected by the activities allowed by a proposed permit may submit written recommendations on the application to the Department. The rules shall provide that if the recommendations or any parts thereof are not incorporated, the Department will notify the affected state in writing and shall provide the reasons therefor;

6. Establish a fee schedule to implement the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act;

7. Establish management standards for sludge which are no less stringent than applicable federal regulations; and

8. Establish procedures and requirements necessary to ensure compliance with applicable federal laws.

B. The Department shall have authority to:

1. Require the owner or operator of any system for the treatment, storage, discharge, or transport of pollutants to:

a. establish, maintain, and submit plans, specifications, records, and other data relative to disposal systems or any part thereof, in connection with the issuance of discharge permits or in connection with any permit, purposes, or requirements of the Oklahoma Agriculture Pollutant Discharge Elimination System Act,

b. make reports, to install, calibrate, use, and maintain monitoring equipment or methods including biological monitoring methods,

c. take samples of effluents in the manner as may be prescribed, and

d. provide other information as may be reasonably required;

2. Take all actions that may be necessary or incidental to implement and maintain a pollutant discharge permit program and sludge program, including the authority to assume and obtain authorization to implement and maintain a portion of the National Pollutant Discharge Elimination System state permit program and a state sludge program pursuant to Section 402 and other provisions of the federal Clean Water Act and other applicable federal law. The Director may issue permits for the discharge of pollutants and storm water from facilities and activities within the areas of environmental jurisdiction of the Department specified in Section 1-3-101 of Title 27A of the Oklahoma Statutes;

3. Take necessary and appropriate actions to revoke, modify, refuse to renew, suspend, place on probation, reinstate, or otherwise administer and enforce discharge permits and sludge permits issued by the United States Environmental Protection Agency which are transferred to the Department upon federal authorization of the Agriculture Pollutant Discharge Elimination System program of the Department; and

4. Exercise all necessary incidental powers which are necessary and proper to carry out the purposes of the Oklahoma Agriculture Pollutant Discharge Elimination System Act and to comply with the requirements of the federal Clean Water Act and the requirements of the United States Environmental Protection Agency regulations promulgated thereunder.

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

Any employee of the Oklahoma Department of Agriculture, Food, and Forestry in a technical, supervisory or administrative position relating to the review, issuance, or enforcement of permits pursuant to the Oklahoma Agricultural Code who is an owner, stockholder, employee or officer of, or who receives compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department shall disclose the interest to the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry. Disclosures shall be submitted for Board review and shall be made a part of the Board minutes available to the public. This section shall not apply to financial interests occurring by reason of participation of an employee in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner of Agriculture shall appoint the Director of the Agriculture Pollutant Discharge Elimination System. The Director shall serve at the pleasure of the Commissioner.

B. The Director shall have experience in agriculture, forestry, conservation, environmental sciences, or other areas as may be required by the Commissioner.

C. The Director shall not be an owner, stockholder, employee or officer of, nor have any other business relationship with or receive compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department and, with regard to the exercise of powers and duties associated with the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall meet all requirements of Section 304 of the federal Clean Water Act and applicable federal regulations promulgated thereunder

by the United States Environmental Protection Agency regarding conflict of interest.

D. 1. The Director shall have the power and duty to:

a. issue, deny, modify, amend, renew, refuse to renew, suspend, place on probation, reinstate or revoke licenses or permits pursuant to the provisions of the Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture, and

b. issue final orders and assess administrative penalties according to the Administrative Procedures Act, the Oklahoma Agricultural Code, and rules promulgated by the Board.

2. The powers and duties specified in paragraph 1 of this subsection shall be exercised exclusively by the Director on behalf of the Oklahoma Department of Agriculture, Food, and Forestry and may not be delegated to other employees of the Department except as specifically provided in the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

3. In the event of the temporary absence of the Director, the Director may delegate the exercise of these powers and duties to an acting director during the absence of the Director subject to an organizational structure approved by the Commissioner. In the event of a vacancy in the position of Director, the Commissioner may designate an interim or acting Director who is authorized to exercise the powers and duties until a permanent Director is employed.

4. Any designee exercising the powers and duties of the Director as authorized or on a temporary, acting, or interim basis shall meet the requirements of subsection C of this section for the Director.

5. All references in the Oklahoma Agricultural Code to the Department with respect to the exercise of the powers and duties

specified in paragraph 1 of this subsection shall mean the exercise of such powers and duties by the Director or authorized designee.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person regulated by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to its environmental jurisdiction to discharge any pollutant into waters of the state except in accordance with a permit from the Director of the Agriculture Pollutant Discharge Elimination System.

B. Prior to issuing the pollutant discharge permits, the Director shall prescribe schedules of compliance and conditions as necessary that:

1. Prevent, control, or abate pollution, including water quality-related and technology-based effluent limitations as are necessary to protect the water quality and existing and designated beneficial uses of the waters of the state;

2. Require application of best practicable control technology currently available, best conventional pollutant control technology, or best available technology economically achievable, or other limitations as the Director may prescribe;

3. Require compliance with national standards of performance and toxicity;

4. Set limitations or prohibitions designed to prohibit the discharge of pollutants;

5. Set interim compliance dates which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality;

6. Set terms and conditions for sludge and land application of wastewater and for impoundments in accordance with rules promulgated by the Board; and

7. Comply with the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the requirements of the federal Clean Water Act.

C. The Director shall:

1. Have authority to issue individual permits and authorizations under general permits for pollutants, storm water and sludge as authorized by the Oklahoma Agriculture Pollutant Discharge Elimination System Act;

2. Issue permits for fixed terms not to exceed five (5) years;

3. Have the authority to require conditions in permits issued for facilities subject to the environmental jurisdiction of the Department requiring the permittee to give notice to the Department of:

a. new introductions into the treatment works of pollutants at a regulated facility from any source which would be a new source as defined in Section 306 of the federal Clean Water Act,

b. pollutants being introduced from a source which would be a point source subject to Section 301 of the federal Clean Water Act if it were discharging directly to waters of the state,

c. a substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the works at the time of issuance of the permit, or

d. other conditions as may be required under the federal Clean Water Act or state law;

4. Have the authority to ensure compliance with Sections 204(b), 307 and 308 and other provisions of the federal Clean Water Act and with other applicable federal law;

5. Have all necessary and incidental authority to comply with the requirements of the federal Clean Water Act and requirements of

the United States Environmental Protection Agency set forth in duly promulgated federal regulations adopted under the federal Clean Water Act;

6. Have the authority to terminate or modify permits issued by the Director for cause, including but not limited to:

a. violation of any condition of the permit, including but not limited to conditions related to limits, monitoring requirements, entry, and inspections,

b. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts, or

c. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

7. Have all necessary authority to implement and enforce Department programs and requirements established by the State Board of Agriculture in duly promulgated rules;

8. Have all necessary or incidental authority to investigate and abate violations of permits issued by the Director, violations of administrative orders, violations of duly promulgated rules, and violations of the Oklahoma Agriculture Pollutant Discharge Elimination System Act; and

9. Have all necessary and incidental authority to apply sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms, and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection, and sampling.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-7 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 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 the facility in accordance with the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act;

2. Investigate complaints;

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

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

5. 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

6. Obtain copies of records, plans, reports, or other information required by the Department to be submitted upon request and 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 a 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. A right of entry for the purpose of investigating complaints;

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

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

5. 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. The Director shall not issue a discharge permit if the permit:

1. Would authorize the discharge of a radiological, chemical, or biological warfare agent, or high-level radioactive waste;

2. Would result, in the judgment of the United States Secretary of the Army acting through the Chief of Engineers, in the substantial impairment of anchorage and navigation of any waters of the United States as those waters are defined in the federal Clean Water Act;

3. Is objected to in writing by the Administrator of the United States Environmental Protection Agency or designee, pursuant to any right to object which is granted to the Administrator under Section 402(d) of the federal Clean Water Act; or

4. Would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the federal Clean Water Act.

D. 1. Any records, reports, or information obtained pursuant to this section shall be available to the public, except that upon submission of sufficient evidence showing that records, reports, or information, or particular parts thereof, other than effluent data, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the record, report, or information, or particular portion, shall be considered confidential

in accordance with the purposes of the federal Uniform Trade Secrets Act.

2. Nothing in this section shall prohibit the Department or an authorized representative of the Department including, but not limited to, any authorized contractor, from disclosing records, reports, or information to other officers, employees, or authorized representatives of the State of Oklahoma or the United States concerned with carrying out provisions of state or federal law under their respective jurisdictions or within their respective authorities.

3. Any records, reports, or information required to be submitted for permitting, compliance, or review that would not be considered confidential by the Environmental Protection Agency shall not be kept confidential pursuant to this subsection.

E. 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 a permit requires the use of the standard precautions, Department employees shall observe the health standards and sanitary requirements of the facility.

SECTION 9. 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, reads as follows:

The State Board of Agriculture shall promulgate rules which prescribe permit requirements applicable to discharges composed entirely of storm water that shall at a minimum meet federal law. The rules may require permits on a case-by-case basis, exempt categories of discharges, or provide a schedule for obtaining the permit. The Board shall have promulgated rules for storm water discharges which comply with Environmental Protection Agency requirements for approval of the state National Pollutant Discharge

Elimination Systems program no later than the date that the Department is to receive authorization to administer a state National Pollutant Discharge Elimination System program.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-9 of Title 2, unless there is created a duplication in numbering, reads 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. However, provisions of this section for written notice, enforcement hearing, and administrative orders shall not be conditions precedent for seeking 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 that are otherwise allowed by law in a court of competent jurisdiction.

C. Any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any 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 Oklahoma Agriculture Pollutant Discharge Elimination System Act or rules, permits or orders issued hereunder.

D. Whenever, on the basis of any information available, the Department finds that any person regulated by the Department is in

violation of any act, rule, order, permit, condition or limitation implementing the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any previously issued discharge permit, the Director may issue an order requiring the 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 denial, placing on probation, reinstatement, 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.

E. 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 a corporation, 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 Procedure applicable to a civil summons.

F. 1. Whenever on the basis of any information available the Director finds that any person regulated by the Department has 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 assess, after providing notice and opportunity for an enforcement hearing to the alleged violator, an administrative fine of not more than Ten Thousand Dollars ($10,000.00) per day for each violation.

2. The total amount of the administrative 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, the ability to pay, any prior history of violations, the degree of culpability, the 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.

G. 1. The Director is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which the Director is authorized to issue a compliance order under subsection D of this section.

2. Any person who violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, any permit condition or limitation implementing any of such provisions in a permit issued under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, and any person who violates any order issued by the Director under subsection D 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 Oklahoma Agriculture Pollutant Discharge Elimination System Act.

H. 1. Any person who violates any provision of this act, any order of the Director, or any condition or limitation in a permit issued pursuant to this act may be punishable by a fine of not less than Five Hundred Dollars ($500.00) nor more than Ten Thousand Dollars ($10,000.00) per day for each violation, or by imprisonment for not more than six (6) months for each violation, or both.

2. Any person who knowingly makes any false material statement, representation, or certification in, omits material data from, or tampers with any application, notice, 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 Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall be punishable, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) per day for each violation, 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 for each violation, or by imprisonment for not more than four (4) years, or by both. In addition, the Director shall deny issuance of the permit or require submission of a new application.

3. 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.

I. 1. Whenever, on the basis of information available, the Department finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of the Oklahoma Agriculture Pollutant Discharge Elimination System Act or any requirement, rule, permit, or order issued under this act, the Department shall notify the owner or 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 owner or 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 operator of the source to take any action as may be necessary to come into compliance with the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

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

J. 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 Oklahoma Administrative Procedures Act. The court shall not impose additional civil 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, as the case may be,

a civil action may be brought 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, attorney fees and costs for the collection proceeding and a 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 penalties of the

person and nonpayment penalties which are unpaid as of the beginning of the quarter.

K. 1. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this act, any rule, any order of the Director, or any condition or limitation in a permit issued pursuant to this act.

2. Any action for injunctive relief to redress or restrain a violation of any person of a provision of this act, any rule, any order of the Director, or any condition or limitation in a permit issued pursuant to this act or recovery of any administrative or civil penalty assessed may be brought by:

a. the district attorney of the appropriate district court of the State of Oklahoma,

b. the Attorney General on behalf of the State of Oklahoma, or

c. the Department on behalf of the State of Oklahoma.

3. It shall be the duty of the Attorney General and district attorney if requested by the Director to bring such action.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-10 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. For permits or other authorizations required pursuant to the Oklahoma Agricultural Code, applicants shall file applications in the form and manner established by the Oklahoma Department of Agriculture, Food, and Forestry. The Department shall review the applications as filed and subsequently amended or supplemented. Any permit issued or authorization granted may include conditions.

B. Permits and other authorizations required pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act may contain provisions requiring that operations shall be in compliance

with municipal and other local government ordinances, rules, and requirements. A determination or certification that the operations under the requested permit or authorization conform or comply with those ordinances, rules, or requirements, the enforcement of which is not within the jurisdiction or authority of the Department, shall not be considered by the Department in its review and approval or denial of a permit or authorization.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-21 of Title 2, unless there is created a duplication in numbering, reads as follows:

Sections 12 through 20 of this act shall be known and may be cited as the "Oklahoma Agriculture Environmental Permitting Act".

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-22 of Title 2, unless there is created a duplication in numbering, reads as follows:

For the purposes of the Oklahoma Agriculture Environmental Permitting Act:

1. "Application" means a document or set of documents, filed with the Oklahoma Department of Agriculture, Food, and Forestry for the purpose of receiving a permit or the modification, amendment, or renewal thereof from the Department. The term "application" includes any subsequent additions, revisions, or modifications submitted to the Department that supplement, correct, or amend a pending application;

2. "Draft permit" means a draft document prepared by the Department after it has found a Tier II or III application for a permit to be administratively and technically complete and that the application may warrant the issuance, modification, or renewal of the permit;

3. "Permit" means a permission required by law and issued by the Department, the application for which has been classified as

Tier I, II, or III by the State Board of Agriculture. The term "permit" includes but is not limited to:

a. specific types of permits and other Department authorizations including certifications, registrations, licenses, and plan approvals,

b. general permits and notices of intent for coverage by a general permit, and

c. an approved variance from a promulgated rule; however, for existing facilities the Department may require additional notice and public participation opportunities for variances posing the potential for increased risk;

4. "Process meeting" means a meeting open to the public which is held by the Department to explain the permitting process and the public participation opportunities applicable to a specific Tier III application;

5. "Proposed permit" means a document, based on a draft permit and prepared by the Department after consideration of comments received on the draft permit, that indicates the decision of the Department to issue a final permit pending the outcome of an administrative permit hearing, if any;

6. "Qualified interest group" means any organization with twenty-five or more members who are Oklahoma residents;

7. "Response to comments" means a document prepared by the Department after its review of timely comments received on a draft denial or draft permit pursuant to public comment opportunities which:

a. specifies any provisions of the draft permit that were changed in the proposed or final permit and the reasons for the changes, and

b. briefly describes and responds to all significant comments raised during the public comment period or

any hearing regarding the draft denial or draft permit;

8. "Tier I" means a basic process of permitting that includes application, notice to the landowner, and Department review. For the Tier I process, a permit shall be issued or denied by a technical supervisor of the reviewing Division or local representative of the Department provided the authority has been delegated by the Director;

9. "Tier II" means a process of permitting which includes:

a. the Tier I process,

b. published notice of application filing,

c. preparation of the draft permit or draft denial,

d. published notice of the draft permit or draft denial and opportunity for a formal public meeting, and

e. public meeting, if any.

For the Tier II process, a permit shall be issued or denied by the supervisor of the reviewing Division provided the authority has been delegated thereto by the Director; and

10. "Tier III" means an expanded process of permitting which includes:

a. (1) the Tier II process, except the notice of filing, shall also include an opportunity for a process meeting,

(2) preparation of the response of the Department to comments, and

(3) denial of application, or

b. preparation of a proposed permit, the published notice of availability of the proposed permit and the response to comments and of the opportunity for an administrative permit hearing, and an administrative permit hearing, if any.

For the Tier III process, a permit shall be issued or denied by the Director.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-23 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Agriculture shall have the authority to promulgate rules to implement the Oklahoma Agriculture Environmental Permitting Act for each tier that will to the greatest extent possible:

1. Enable applicants to follow a consistent application process;

2. Ensure that uniform public participation opportunities are offered;

3. Provide for uniformity in notices required of applicants; and

4. Set forth procedural application requirements.

B. The rules shall designate applications as Tier I, II, or III and shall at a minimum be consistent with federal law. In making these determinations, the Board shall consider information and data offered on:

1. The significance of the potential impact of the type of activity on the environment;

2. The amount, volume, and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted, or land applied;

3. The degree of public concern traditionally connected with the type of activity;

4. The federal classification, if any, for the proposed activity, operation, or type of site or facility; and

5. Any other factors relevant to the determinations.

C. For purposes of this section, the Board shall ensure that designations are, at a minimum, consistent with any analogous classifications set forth in applicable federal programs.

D. The rules for each tier shall:

1. Set forth uniform procedures for filing an application;

2. Contain specific uniform requirements for each type of notice and public participation or hearing opportunities required by the Oklahoma Agriculture Environmental Permitting Act;

3. Contain other provisions needed to implement and administer the Oklahoma Agriculture Pollutant Discharge Elimination System Act; and

4. Designate positions to which the Director may delegate, in writing, the power and duty to issue, renew, amend, modify, and deny permits.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-24 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Department of Agriculture, Food, and Forestry is hereby authorized to implement and enforce the provisions of the Oklahoma Agriculture Environmental Permitting Act and rules promulgated thereunder.

B. In addition to authority under the Oklahoma Agricultural Code, the Department shall have the power and duty to:

1. Evaluate applications for administrative and technical completeness pursuant to requirements of the Oklahoma Agricultural Code and rules promulgated thereunder and, when necessary to determine the completeness, request changes, revisions, corrections, or supplemental submissions;

2. Evaluate notices related to applications for sufficiency of content and compliance and require that omissions or inaccuracies be cured;

3. Consider timely and relevant comments received;

4. Prepare responses to comments, draft and final denials, and draft, proposed, and final permits;

5. Cooperate with federal agencies;

6. Consolidate processes related to multiple, pending applications filed by the same applicant for the same facility or site in accordance with rules of the State Board of Agriculture; and

7. Otherwise exercise all incidental powers as necessary and proper to implement the provisions of the Oklahoma Agriculture Environmental Permitting Act and promulgate rules.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-25 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon filing a Tier II or III application with the Oklahoma Department of Agriculture, Food, and Forestry, the applicant shall publish notice of the filing as legal notice in one newspaper of general circulation local to the proposed new site or existing facility. The publication shall identify public locations where the application may be reviewed, including a public location in the county where the proposed new site or existing facility is located.

B. For Tier III applications, the publication shall also include notice of a thirty-day opportunity to request, or give the date, time and place for, a process meeting on the permitting process. If the Department receives a timely request and determines that a significant degree of public interest in the application exists pursuant to rules of the Department, it shall schedule and hold the meeting. The applicant shall be entitled to attend the meeting and may make a brief presentation on the permit request. Any local community meeting regarding the proposed facility or activity for which a permit is sought that is scheduled and held by the applicant may be combined, with the agreement of the Department and the applicant, with the process meeting authorized by this paragraph.

C. The provisions of this section shall not stay the review of the application by the Department.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-26 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon conclusion of its technical review of a Tier II or III application within the permitting timeframes established by rules promulgated by the State Board of Agriculture, the Oklahoma Department of Agriculture, Food, and Forestry shall prepare a draft denial or draft permit.

1. Notice of a draft denial shall be given by the Department and notice of a draft permit shall be given by the applicant.

2. Notice of the draft denial or draft permit shall be published as legal notice in one newspaper of general circulation local to the proposed new site or existing facility. The notice shall identify public locations where the draft denial or draft permit may be reviewed, including a public location in the county where the proposed new site or existing facility is located, and shall provide for a set time period for public comment and for the opportunity to request a formal public meeting on the respective draft denial or draft permit. The time period shall be set at least thirty (30) calendar days after the date the notice is published unless a longer time is required by federal regulations promulgated as rules by the Board. In lieu of the notice of opportunity to request a public meeting, notice of the date, time, and place of a public meeting may be given, if previously scheduled.

B. Upon the publication of notice of a draft permit, the applicant shall make the draft permit and the application, except for proprietary provisions otherwise protected by law, available for public review at a public location in the county where the proposed new site or existing facility is located.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-27 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the rules of the Oklahoma Department of Agriculture, Food, and Forestry, the Department shall promptly schedule and hold a formal public meeting if the Department receives timely written request for the meeting on the draft denial or draft permit.

B. Notice of the meeting shall be given to the public at least thirty (30) calendar days prior to the meeting date.

C. The public meeting shall be held at a location convenient to and near the proposed new site or existing facility not more than one hundred twenty (120) calendar days after the date notice of the draft denial or draft permit was published.

D. At the meeting, any person may submit oral or written statements and data concerning the draft denial or permit.

E. The public comment period shall automatically be extended to the close of the public meeting. Upon good cause shown, the presiding officer may extend the comment period further to a date certain by so stating at the meeting.

F. The meeting shall not be a quasi-judicial proceeding.

G. The applicant or a representative of the applicant may be present at the meeting to respond to questions.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-28 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. For draft permits or draft denials for Tier II applications on which no comment or public meeting request was received in a timely manner and on which no public meeting was held, the final permit shall be issued or denied.

B. For draft permits or draft denials for Tier II applications on which comment or a public meeting request was received in a

timely manner or on which a public meeting was held, the Oklahoma Department of Agriculture, Food, and Forestry, after considering the comments, shall prepare a response to comments and issue the draft permit as is or as amended or make final denial.

C. The response to comments shall be prepared within ninety (90) working days after the close of the public comment period unless extended by the Director upon a determination that additional time is required due to circumstances outside the control of the Department. Circumstances may include, but shall not be limited to, an act of God, a substantial and unexpected increase in the number of applications filed, additional review duties imposed on the Department from an outside source, or outside review by a federal agency.

D. 1. For a draft permit for a Tier III application, after the public comment period and the public meeting, if any, the Department shall prepare a response to any comments received in a timely manner and either issue a final denial in accordance with paragraph 5 of this subsection or prepare a proposed permit.

2. When a proposed permit is prepared, the applicant shall publish notice, as legal notice in one newspaper of general circulation local to the proposed new site or existing facility, of the tentative decision of the Department to issue the permit. The notice shall identify the locations where the proposed permit and the response of the Department to comments may be reviewed, including a public location in the county where the proposed new site or existing facility is located and shall offer a twenty-working-day opportunity to request an administrative hearing to participate in as a party.

3. The Department shall ensure that any additional notice requirements as otherwise provided by law are followed.

4. The opportunity to request a hearing shall be available to the applicant and any person or qualified interest group that

alleges that the operation may have a direct, substantial, and immediate effect upon the health, environmental, pecuniary, or property interest or upon the legal interest of that person or qualified interest group.

5. If no written administrative hearing request is received by the Department by the end of twenty (20) working days after the publication date of the notice, the final permit shall be issued.

6. If the final decision of the Department is to deny the permit, it shall give notice to the applicant and issue a final denial in accordance with subsection G of this section.

E. 1. When an administrative hearing is requested in a timely manner on a proposed permit in accordance with subsection C of this section, all timely requests shall be combined in a single hearing. The hearing shall be a quasi-judicial proceeding and shall be conducted by an administrative law judge in accordance with the Administrative Procedures Act, the Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture.

2. The applicant shall be a party to the hearing.

3. The Department shall hold a scheduling conference within sixty (60) calendar days after the end of the hearing request period.

4. The Department shall move promptly to an evidentiary proceeding in which parties shall have the right to present evidence before the Department on whether the proposed permit and the technical data, models and analyses, and information in the application upon which the proposed permit is based are in substantial compliance with applicable provisions of the Oklahoma Agricultural Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

5. Failure of any party to participate in the administrative proceeding with good faith and diligence may result in a default

judgment with regard to that party; provided, however, that no final permit shall be issued solely on the basis of any such judgment.

F. If the Department decides to reverse its initial draft decision, it shall withdraw the draft denial or draft permit and prepare a draft permit or draft denial, as appropriate. Notice of the withdrawal of the original draft and preparation of the revised draft shall be given as provided in Section 15 of this act. The Department then shall reopen the comment period and provide additional opportunity for a formal public meeting on the revised draft as described in Section 18 of this act.

G. Upon final issuance or denial of a permit for a Tier III application, the Department shall provide public notice of the final permit decision and the availability of the response to comments, if any.

H. Any appeal of a Tier III final permit decision or any final order connected to it shall be made in accordance with the provisions of the Oklahoma Agricultural Code and the Administrative Procedures Act. Any appeal shall be limited to the participants of the administrative proceedings.

I. Any applicant, within ten (10) days after final denial of the application for a new original permit on which no final order was issued, may petition the Department for reconsideration on the grounds stated in the Administrative Procedures Act as if the denial was an order. Disposition of the petition shall be by order of the Director according to the Administrative Procedures Act.

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

For common and routine permit applications, the Oklahoma Department of Agriculture, Food, and Forestry may expedite the permitting process by issuing permits of general applicability, hereafter identified as general permits. General permits shall be

subject to all the Tier II administrative procedures including the public participation requirements. The administrative process for rulemaking shall not be applicable to the issuance of general permits. Individual applicants may obtain authorization through the Tier I process to conduct an activity covered by a general permit. General permits are limited to activities under the Tier I and Tier II classifications.

SECTION 21. 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 2 through 20 of this act.

SECTION 22. 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 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~~ the owner or operator elects to come under the provision of the Oklahoma Concentrated Animal Feeding Operations Act and the rules of the State Board of Agriculture.

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~~ the 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 State Board of Agriculture.

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 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-22 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 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 operation authorized or permitted prior to April 17, 2002, shall not be affected by the provisions of this section.

SECTION 24. AMENDATORY Section 2, Chapter 94, O.S.L. 2002 (2 O.S. Supp. 2004, 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~~ this title, 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 25. RECODIFICATION 2 O.S. 2001, Sections 9-200, 9-201, 9-202 and 9-203, 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, 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 20-25 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering. Section 2, Chapter 31, O.S.L. 2004 (2 O.S. Supp. 2004, Section 20-49), shall be recodified as Section 20-23 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering. 2 O.S. 2001, Sections 9-212 and 9-212.1, shall be recodified as Sections 20-26 and 20-27 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering. 2 O.S. 2001, Section 9-214, shall be recodified as Section 20-28 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 20-29 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 26. REPEALER Section 1, Chapter 31, O.S.L. 2004 (2 O.S. Supp. 2004, Section 20-24), is hereby repealed.

SECTION 27. This act shall become effective July 1, 2005.

SECTION 28. 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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