STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1467 By: DeWitt

COMMITTEE SUBSTITUTE

An Act relating to agriculture; 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; setting penalty for failure to renew; 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; providing for submission of certain applications; providing for review of certain applications; 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; amending 2 O.S. 2001, Sections 9-200, 9-201, 9-202, 9-203, 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, 9-211, 9-212.1 and 9-214, which relate to the Oklahoma Concentrated Animal Feeding Operations Act; modifying legislative intent; clarifying purpose of act; modifying definitions; clarifying language; revising composition of rule advisory committee; providing for termination of certain committee; adding duty to obtain certain permits; deleting obsolete language; establishing certain application requirements; establishing duty to obtain certain permit; providing exceptions; modifying certain application requirements; modifying certain deadlines; clarifying language; clarifying burden of proof for administrative hearing; clarifying notice requirements; modifying evidentiary standards; modifying certain burden of proof; establishing certain deadlines; requiring nutrient management plans; requiring certain approvals; clarifying language; modifying criteria for Best Management Practices; modifying new source requirements; modifying land application rates; modifying requirements for odor abatement plans; requiring certain data; deleting certain references relating to concentrated animal feeding operations; modifying irrigation system requirements; deleting references to concentrated animal feeding operations; authorizing certain inspections and access to certain facilities; providing for certain examinations of records; allowing certain employees who obtain warrants to perform certain inspections; clarifying certain jurisdiction; modifying annual fees for concentrated animal feeding operations; modifying surety requirements; clarifying language; providing for certain federal laws; modifying certain hydrologic connections; modifying certain setback requirements; providing for restrictions on operations at certain locations; modifying violation points system; establishing penalties for certain operations; clarifying language; amending Section 2, Chapter 94, O.S.L. 2002 (2 O.S. Supp. 2004, Section 10-9), which relates to acceptance or approval of concentrated animal feeding operations; modifying scope of restrictions; providing for promulgation of emergency rules; 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 Oklahoma Agricultural Code; modifying definitions; repealing 2 O.S. 2001, Section 9-212, which relates to penalties; 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. 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 1 through 10 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 and shall include, but not be limited to, the Oklahoma Concentrated Animal Feeding Operations Act program.

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

4. “Department” means the Oklahoma Department of Agriculture, Food, and Forestry;

5. “Director” means the individual appointed by the Commissioner to perform the duties identified in Section 5 of the Oklahoma Agriculture Pollutant Discharge Elimination System Act;

6. “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;

7. “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;

8. “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;

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

10. “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;

11. “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;

12. “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;

13. “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;

14. “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;

15. “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;

16. “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;

17. “Storm water” means rain water runoff, snow melt runoff, and surface runoff and drainage;

18. “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

19. “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 3. 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 4. 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 5. 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 6. 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 7. 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 the Oklahoma Concentrated Animal Feeding Operations Act requires the use of the standard precautions, Department employees shall observe the health standards and sanitary requirements of the facility.

SECTION 8. 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 9. 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 10. 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 11. 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 11 through 20 of this act shall be known and may be cited as the “Oklahoma Agriculture Environmental Permitting Act”.

SECTION 12. 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 13. 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 Oklahoma Agriculture Environmental Permitting Act shall apply to applications filed with the Oklahoma Department of Agriculture, Food, and Forestry on or after July 1, 2005.

B. Applications subject to the Oklahoma Agriculture Environmental Permitting Act shall continue to be subject to additional or more comprehensive notice and public participation or hearing opportunities set forth in the rules of the State Board of Agriculture that shall be promulgated as necessary to ensure due process of law and pursuant to federal requirements for individual state permitting programs.

SECTION 14. 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 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-25 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-26 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-27 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-28 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-29 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 F 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 16 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-30 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. AMENDATORY 2 O.S. 2001, Section 9-200, is amended to read as follows:

Section 9-200. It is the intent of the Legislature that the ~~amendments and the new law~~ provisions effective on August 1, 1998, contained in ~~this act shall~~ the Oklahoma Concentrated Animal Feeding Operations Act only apply to swine and operations which house swine except as otherwise provided by ~~Sections 17, 18 and 19 of this act~~ law.

SECTION 22. AMENDATORY 2 O.S. 2001, Section 9-201, is amended to read as follows:

Section 9-201. A. Sections ~~9-201~~ 21 through ~~9-215~~ 47 of this ~~title~~ act shall be known and may be cited as the "Oklahoma Concentrated Animal Feeding Operations Act".

B. The purpose of ~~the Oklahoma Concentrated Animal Feeding Operations Act~~ this act is to ~~provide~~:

1. Provide for environmentally responsible construction and expansion of animal feeding operations and to protect the safety, welfare and quality of life of persons who live in the vicinity of an animal feeding operation;

2. Implement the federal National Pollutant Discharge Elimination System regulations for concentrated animal feeding operations; and

3. Issue permits to concentrated animal feeding operations.

C. The implementation and enforcement of the Oklahoma Concentrated Animal Feeding Operations Act shall be pursuant to the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the Oklahoma Agriculture Environmental Permitting Act.

SECTION 23. AMENDATORY 2 O.S. 2001, Section 9-202, is amended to read as follows:

Section 9-202. A. Concentrated animal feeding operations are point sources subject to the ~~license~~ permitting program established pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act, the Oklahoma Agriculture Pollutant Discharge Elimination System Act, and the Oklahoma Agriculture Environmental Permitting Act for discharges or potential discharges.

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~~ permit 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~~ forty-five (45) 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~~ using the following numbers: The number of ~~slaughter and feeder~~ cattle or veal calves multiplied by one (1), ~~plus~~ the number of mature dairy ~~cattle~~ cows multiplied by one and four-tenths (1.4), ~~plus~~ the number of swine weighing ~~over twenty-five (25) kilograms, approximately~~ fifty-five (55) pounds~~,~~ or more multiplied by four-tenths (0.4), ~~plus~~ the number of weaned swine weighing under ~~twenty-five (25) kilograms~~ fifty-five (55)

pounds multiplied by one-tenth (0.1), ~~plus~~ the number of sheep or lambs multiplied by one-tenth (0.1), ~~plus~~ the number of horses multiplied by two (2), the number of turkeys multiplied by eighteen-thousandths (0.018), the number of laying hens or broilers if the animal feeding operation uses a liquid manure handling system multiplied by thirty-three-thousandths (0.033), the number of chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system multiplied by eight-thousandths (0.008), the number of laying hens if the animal feeding operation uses other than a liquid manure handling system multiplied by twelve-thousandths (0.012), the number of ducks if the animal feeding operation uses other than a liquid manure handling system multiplied by thirty-three-thousandths (0.033), or the number of ducks if the animal feeding operation uses a liquid manure handling system multiplied by two-tenths (0.2);

4. "Animal waste" means animal excrement or manure, litter, animal carcasses, feed wastes, bedding, compost, raw materials commingled with animal waste or set aside for disposal, 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 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.~~ 6. "Artificially constructed" means constructed by humans;

~~8.~~ 7. "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 Department of Agriculture pursuant to Section 9-205.3 of this title~~ and includes treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage;

~~9.~~ 8. "Board" means the State Board of Agriculture;

~~10.~~ 9. "Common ownership" includes but is not limited to any corporation, partnership, or individual where the same ~~owner~~ operator has power or authority to manage, direct, restrict, regulate, or oversee the operation or has financial control of the facility;

~~11.~~ 10. "Concentrated animal feeding operation" ~~or "CAFO"~~ means an animal feeding operation that is defined as one of the following:

a. a licensed managed feeding operation~~, or~~ that is an animal feeding operation primarily using a liquid animal waste management system, where animals are primarily housed in a roof-covered structure and having as many or more than the number of animals specified in any of the following categories confined:

(1) 2,500 swine each weighing over fifty-five (55) pounds, or

(2) 10,000 weaned swine each weighing under fifty-five (55) pounds,

b. ~~an~~ a large concentrated animal feeding operation ~~which meets the following criteria~~ that is an animal feeding operation that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(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~~ cows, whether ~~milk~~ milked 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~~ 1,000 veal calves,

(3) 1,000 cattle other than mature dairy cows or veal calves, and cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs,

(4) 2,500 swine each weighing fifty-five (55) pounds or more, except for licensed managed feeding operations,

(5) 10,000 swine each weighing less than fifty-five (55) pounds, except for licensed managed feeding operations,

(6) 500 horses,

(7) 10,000 sheep or lambs,

(8) 55,000 turkeys,

(9) 30,000 laying hens or broilers if the animal feeding operation uses a liquid manure handling system,

(10) 125,000 chickens, other than laying hens, if the animal feeding operation uses anything other than a liquid manure handling system,

(11) 82,000 laying hens if the animal feeding operation uses anything other than a liquid manure handling system,

(12) 30,000 ducks if the animal feeding operation uses anything other than a liquid manure handling system, or

(13) 5,000 ducks if the animal feeding operation uses a liquid manure handling system,

c. ~~an~~ a medium concentrated animal feeding operation ~~which meets the following criteria~~ that is an animal feeding operation with the type and number of animals in any of the following ranges and is defined or designated as a concentrated animal feeding operation pursuant to the following:

(1) ~~more than~~ the type and number of animals ~~specified in any of the following categories are~~ stabled and confined falls within any of the following ranges:

(a) ~~300 slaughter or feeder cattle~~ 200 to 699 mature dairy cows, whether milked or dry,

(b) ~~200 mature dairy cattle, whether milk or dry cows~~ 300 to 999 veal calves,

(c) ~~750 swine each weighing over 25 kilograms or approximately 55 pounds~~ 300 to 999 cattle other than mature dairy cows or veal calves, and cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs,

(d) ~~3,000 weaned~~ 750 to 2,499 swine each weighing ~~under 25 kilograms~~ fifty-five (55) pounds or more,

(e) ~~150 horses~~ 3,000 to 9,999 swine each weighing less than fifty-five (55) pounds,

(f) ~~3,000 sheep or lambs~~ 150 to 499 horses,

(g) ~~16,500 turkeys~~ 3,000 to 9,999 sheep or lambs,

(h) ~~30,000 laying hens or broilers, if the facility has continuous overflow watering~~ 16,500 to 54,999 turkeys,

(i) 9,000 to 29,999 laying hens or broilers~~,~~ if the ~~facility has~~ animal feeding operation uses a liquid manure handling system,

(j) ~~1,500 ducks, or~~ 37,500 to 124,999 chickens, other than laying hens, if the animal feeding operation uses anything other than a liquid manure handling system,

(k) ~~300~~ 25,000 to 81,999 laying hens if the animal ~~units, and~~ feeding operation uses anything other than a liquid manure handling system,

(l) 10,000 to 29,999 ducks if the animal feeding operation uses anything other than a liquid manure handling system, or

(m) 1,500 to 4,999 ducks if the animal feeding operation uses a liquid manure handling system, 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~~ of the state that 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~~ Director of Agriculture Pollutant Discharge Elimination Systems designates the operation ~~is~~ as a ~~significant contributor of pollution to waters of the state~~ concentrated animal feeding operation pursuant to Section 9-204.1 of this title;

~~12.~~ 11. "Department" means the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry;

~~13.~~ 12. "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~~ The 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;

13. "Director" means the Director of the Agriculture Pollutant Discharge Elimination System;

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~~ permitted capacity in excess of five percent (5%) of the original facility's ~~licensed~~ permitted 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~~ a concentrated animal feeding operation ~~license~~ permit and asserts rights to relief in respect to or arising out of the same ~~license~~ permit;

17. "Land application area" means ~~the spreading on,~~ land under the control of an animal feeding operation operator whether owned, rented, or ~~incorporation of~~ leased, to which animal waste ~~into the soil mantle primarily for beneficial purposes~~ from the production area is or may be applied;

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~~ animal 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;~~

19. "New source" means any building, structure, facility, or installation where there is or may be a discharge of pollutants and the construction commenced after April 14, 2003, when the federal Environmental Protection Agency promulgated effluent limitations guidelines and standards applicable to the source;

20. "No potential to discharge" means that there is no potential for any concentrated animal feeding operation animal waste to be added to waters of the state under any circumstances or climatic condition;

21. "Nutrient management plan" means a written plan that includes but is not limited to a combination of conservation and management practices designed to prevent pollution and protect the natural resources of the state and dealing with the amount, source, placement, form, and timing of the treatment, storage, disposal, reuse, and land application of animal waste, nutrients, and soil amendments;

22. "Nutrient-limited watershed" means a watershed of a ~~waterbody which~~ water body that is designated as "nutrient-limited" in the most recent Oklahoma Water Quality Standards;

~~22.~~ 23. "Nutrient-vulnerable groundwater" means groundwater ~~which~~ that is designated "nutrient-vulnerable" in the most recent Oklahoma Water Quality Standards;

~~23.~~ 24. "Occupied residence" means a habitable structure designed and constructed for full-time occupancy in all weather conditions that:

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. "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 Department of Agriculture 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 of this title~~;

26. "Operator" means the owner and person responsible for the management of each facility of a concentrated animal feeding operation. The owner and person responsible for the management of

the facility shall be jointly and severally obligated to comply with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act;

27. "Permit" means an authorization, permit, license, or equivalent control document issued to implement the Oklahoma Concentrated Animal Feeding Operations Act;

28. "Process wastewater" means any water directly or indirectly utilized in or produced by the ~~facility that~~ operation of the animal feeding operation for any or all of the following: comes into contact with any ~~manure, litter, bedding,~~ raw, intermediate, or final ~~material or product~~ materials, products, or byproducts directly or indirectly used in ~~or resulting from the production of animals and any products directly or indirectly used in the operation of a facility, such as~~ the operation, including but not limited to manure, litter, feed, milk, eggs, or bedding; spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact~~,~~ swimming, washing, or spray cooling of animals; ~~and~~ dust control; ~~and~~ or any precipitation ~~which~~ that comes into direct contact with animals or animal waste;

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

~~27.~~ 30. "Retention structures" ~~includes~~ means, 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.~~ 31. "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~~ The structures shall include, but

not be limited to, pits, burial sites, barns or roof-covered structures housing animals, ~~compostors~~ composters, waste storage sites, or retention structures or appurtenances or additions thereto; and

~~29.~~ 32. "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~~ Provided, waste treatment systems, including treatment ponds and lagoons designed to meet federal and state requirements other than cooling ponds as defined in the Clean Water Act or rules promulgated thereto are not ~~be considered as~~ waters of the state ~~if contaminated at the site~~.

SECTION 24. AMENDATORY 2 O.S. 2001, Section 9-203, is amended to read as follows:

Section 9-203. The State Board of Agriculture is authorized to promulgate rules for the administration, ~~and~~ implementation, and enforcement of the Oklahoma Concentrated Animal Feeding Operations Act. For the performance of its duties and responsibilities, the Board is authorized to employ ~~such~~ personnel and agents as may be required within the funds available.

SECTION 25. AMENDATORY 2 O.S. 2001, Section 9-204, is amended to read as follows:

Section 9-204. A. The State Board of Agriculture shall appoint a rule advisory committee who, without compensation, shall act as advisors to the Board in the formulation of the rules promulgated pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

1. The committee shall consist of:

~~1. One~~

a. one member who shall represent the beef cattle producers~~;~~,

~~2. One~~

b. one member who shall represent the dairy producers~~;~~,

~~3. One~~

c. one member who shall represent the pork producers~~;~~,

~~4. One~~

d. one member who shall represent the poultry producers~~;~~,

~~5. One~~

e. one member who shall represent the field of hydrogeology~~;~~,

~~6. One~~

f. one member who shall be a soil scientist~~;~~,

~~7. One~~

g. one member designated by the Secretary of the Environment~~;~~,

~~8. One~~

h. one member who shall be a ~~biological systems~~ professional engineer~~;~~,

~~9. One~~

i. one member who shall represent the field of water quality science~~;~~,

~~10. One~~

j. one member who shall represent the field of ecology~~;~~, and

~~11. Two~~

k. two members who shall represent the general public.

2. Of the initial members, four shall serve for one-year terms; four shall serve for two-year terms; and four shall serve for three-year terms. Thereafter, all members shall serve for three-year

terms; provided, all members shall serve at the pleasure of the Board.

3. At the initial meeting of the rule advisory committee, the membership shall appoint a chair, vice-chair, and secretary from its membership and thereafter as determined by the committee.

B. Except for emergency rules, the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry shall submit proposed rules to the rule advisory committee at the same time as the Department causes notice to be published in "The Oklahoma Register" pursuant to ~~subsection B of Section 303 of Title 75 of~~ the Oklahoma ~~Statutes~~ Administrative Procedures Act. Comments ~~of~~ prepared by the rule advisory committee shall be submitted to the members of the Board at least fifteen (15) days prior to any official action by the Board on the rules.

C. Proposed emergency rules shall be submitted ~~by the Department~~ to the rule advisory committee at least five (5) days prior to the rules being considered by the Board.

SECTION 26. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The rule advisory committee existing on June 30, 2005, shall terminate upon the effective date of this act and the members may be reappointed to the rule advisory committee created by Section 25 of this act.

SECTION 27. AMENDATORY 2 O.S. 2001, Section 9-204.1, is amended to read as follows:

Section 9-204.1 A. 1. Any animal feeding operation meeting the criteria defining a concentrated animal feeding operation shall ~~be~~ have a duty and is required to ~~obtain a license to operate pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto~~ apply for an Agriculture Pollutant Discharge Elimination System permit.

2. If a general permit is not available to the concentrated animal feeding operation, the operator shall submit an application for an individual permit.

3. An operator of a large concentrated animal feeding operation need not seek coverage under an Agriculture Pollutant Discharge Elimination System if the operator has received notification of a determination that the large concentrated animal feeding operation has no potential to discharge pursuant to rules promulgated by the State Board of Agriculture.

4. No animal feeding operation ~~which~~ that voluntarily obtains a ~~license~~ permit pursuant to the Concentrated Animal Feeding Operations Act shall be considered to be a concentrated animal feeding operation unless the operation meets the definition of concentrated animal feeding operation.

~~3.~~ 5. Any animal feeding operation other than a concentrated animal feeding operation, regardless of the number of animals, shall only be required to be ~~licensed~~ permitted pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and promulgated rules ~~promulgated pursuant thereto~~ if the ~~State Board of Agriculture~~ Director determines the operation to be a significant contributor of pollution to waters of the state pursuant to ~~subsection D of~~ this section.

B. 1. Two or more animal feeding operations under common ownership are considered, for the purposes of ~~licensure~~ determining the number of animals at an operation, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

2. ~~After September 1, 1997, any licensed managed feeding~~ Once an operation ~~shall be required to obtain a license for any increase in excess of five percent (5%) of the original facility's licensed capacity~~ is defined as a concentrated animal feeding operation, the requirements for concentrated animal feeding operations shall apply

to all animals in confinement at the operation and all animal waste generated by those animals or the production of those animals, regardless of the type of animal.

C. Expanding operations shall be required to seek a new ~~license~~ permit prior to expansion. ~~Change in species or ratio of species mix alone shall not be defined as an expanding operation as long as the increase in animal unit capacity does not exceed five percent (5%).~~

D. 1. ~~The State Board of Agriculture may make a case-by-case designation of concentrated animal feeding operations pursuant to this section.~~ Any animal feeding operation may be designated as a concentrated animal feeding operation ~~if~~ by the Director of the Agriculture Pollutant Discharge Elimination System upon a determination that it is ~~determined to be~~ a significant contributor of ~~pollution~~ pollutants to the waters of the state.

2. In making this designation, the ~~Board~~ Director shall consider the following factors:

a. the size of the animal feeding operation and the amount of wastes reaching waters of the state,

b. the location of the animal feeding operation relative to any waters of the state,

c. the means of conveyance of animal ~~waste and wastewater~~ wastes into waters of the state,

d. the method of disposal for animal waste and process wastewater disposal,

e. the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, manure, and process wastewaters into any of the waters of the state, and

f. other ~~such~~ relative factors ~~relative to the significance of the pollution problem sought to be regulated~~.

~~2. In no case shall an application for a license be required from an~~ 3. No animal feeding operation ~~pursuant to this subsection until there~~ shall be designated as a concentrated animal feeding operation unless the Oklahoma Department of Agriculture, Food, and Forestry has ~~been~~ conducted an on-site inspection of the operation ~~and a determination by the State Department of Agriculture that the operation is a concentrated animal feeding operation. Should the Department determine that the operation is a concentrated animal feeding operation, the Department shall notify the operation of such determination and of an opportunity for the owner or operator of the facility to request an administrative hearing on the issue.~~

~~3. Process wastewater in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a retention structure properly designed, constructed and operated to contain all process wastewaters plus the runoff from a twenty-five-year, twenty-four-hour rainfall event for the location of the point source. There~~, and determined that it should be regulated under the permit program.

4. No animal feeding operation with numbers of animals below those established by the definition of a medium concentrated animal feeding operation in Section 23 of this act may be designated as a concentrated animal feeding operation unless:

a. pollutants are discharged into any waters of the state through a human-made ditch, flushing system, or other similar manmade device, or

b. pollutants are discharged directly into any waters of the state which originate outside of the facility and pass over, across, or through the facility or come into direct contact with the animals confined in the operation.

E. Concentrated animal feeding operations shall ~~be no~~ comply with effluent ~~limitations on discharges from a waste facility constructed and properly maintained to contain the twenty-five-year, twenty-four-hour storm event; provided the proper design, construction and operation of the retention structure shall include but not be limited to one (1) foot of free board~~ guidelines and standards for concentrated animal feeding operations as provided in Part 412 of Title 40 of the United States Code of Federal Regulations.

~~E. After September 1, 1997, no new concentrated animal feeding operation or expansion of a concentrated animal feeding operation requiring a license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall be constructed or placed in operation unless final design plans, specifications and a Pollution Prevention Plan developed pursuant to Section 9-205.2 of this title have been approved by the Department.~~

F. ~~After the effective date of this act, no~~ 1. No new source that is a licensed managed feeding operation or expanding operation shall be constructed until a building ~~permit~~ authorization for ~~such~~ the facility or expansion has been issued by the ~~Department~~ Director.

2. No new source that is a licensed managed ~~animal~~ feeding operation or expanding operation shall be placed in operation until a ~~license~~ permit for ~~such~~ the facility or expansion has been issued by the ~~Department~~ Director.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. For animal feeding operations that were defined as concentrated animal feeding operations prior to April 14, 2003, and are not new sources, the operator shall have obtained or sought to obtain coverage under a permit prior to April 14, 2003, and complied

with all applicable Agriculture Pollutant Discharge Elimination System requirements including, but not limited to, the duty to maintain permit coverage.

B. For operations newly defined as concentrated animal feeding operations on and after April 14, 2003, which were not defined as concentrated animal feeding operations prior to that date, the operator of the concentrated animal feeding operation shall seek to obtain coverage under an Agriculture Pollutant Discharge Elimination System permit no later than February 13, 2006.

C. For operations that become defined as concentrated animal feeding operations on and after April 14, 2003, but are not new sources, the operator shall seek to obtain coverage under an Agriculture Pollutant Discharge Elimination System permit, as follows:

1. For newly constructed operations not subject to effluent limitations guidelines, thirty (30) days prior to the time the concentrated animal feeding operation commences operation; or

2. For other animal feeding operations, including those increasing the number of animals, no later than ninety (90) days after becoming defined as a concentrated animal feeding operation; except that, if an operational change that makes the operation a concentrated animal feeding operation would not have made it a concentrated animal feeding operation prior to April 14, 2003, the operation has until April 13, 2006, or ninety (90) days after becoming defined as a concentrated animal feeding operation, whichever is later.

D. For new sources, the operator shall seek to obtain coverage under a permit at least one hundred eighty (180) days prior to the time that the concentrated animal feeding operation commences operation, unless permission for a later date has been granted by the Director.

E. For operations designated as a concentrated animal feeding operation, the operator shall seek to obtain coverage under a permit no later than ninety (90) days after receiving notice of the designation.

F. 1. The operator of a concentrated animal feeding operation that has received a no potential to discharge determination is not required to seek coverage under an Agriculture Pollutant Discharge Elimination System permit that would otherwise be required by this section.

2. If circumstances materially change at a concentrated animal feeding operation that has received a no potential to discharge determination, and the concentrated animal feeding operation now has a potential for a discharge, the operator of the concentrated animal feeding operation has a duty to immediately notify the Director and seek coverage under an Agriculture Pollutant Discharge Elimination System permit within thirty (30) days after the change in circumstances.

G. As of July 1, 2005, all operators of concentrated animal feeding operations with an effective permit shall submit a new application one hundred eighty (180) days before the existing permit expires, unless permission for a later date has been granted by the Director, but in no case later than the permit expiration date.

H. 1. Except for general permits, the Director shall not issue a permit before receiving a complete application for a permit.

2. An application for a permit is complete when the Director receives an application form and any supplemental information which is satisfactorily completed.

3. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The operator of a concentrated animal feeding operation has a duty to maintain permit coverage and shall submit an application to renew its permit no later than one hundred eighty (180) days before the expiration of the permit.

B. It is not necessary for the operator to seek continued coverage under a permit or reapply for a permit if:

1. The facility has ceased operation or is no longer a concentrated animal feeding operation; and

2. The operator has demonstrated to the satisfaction of the Director that there is no remaining potential for a discharge of manure, litter, or process wastewater that was generated while the operation was a concentrated animal feeding operation, other than agricultural storm water from land application areas.

SECTION 30. AMENDATORY 2 O.S. 2001, Section 9-205, is amended to read as follows:

Section 9-205. A. The ~~State Board of Agriculture~~ Director of the Agriculture Pollutant Discharge Elimination System shall ~~cause to be prepared and available, for any person desiring or required to apply for a license to operate a new or previously unlicensed animal feeding operation or expanding operation,~~ provide for the necessary forms and applications to apply for a permit for the operation of a concentrated animal feeding operation.

B. The application for a ~~license to operate a new or previously unlicensed animal feeding operation or expanding operation~~ permit shall contain, as a minimum, the following information:

1. Name and address of the ~~owner and~~ operator of the facility. If the operator is not the owner of the facility, the name and address of the owner shall also be supplied;

2. Name and address of the animal feeding operation;

3. Capacity in ~~animal units, and~~ number and type of animals housed or confined;

4. A diagram or map and legal description showing geographical location of the facility on which the perimeters of the facility are designated, location of waters of the state, including, but not limited to, drainage from the facility, animal waste storage facilities and land application sites owned or leased by the ~~applicant~~ operator;

5. A copy of the ~~Pollution Prevention Plan containing an Animal Waste~~ Nutrient Management Plan, Best Management Practices, Odor Abatement Plan, or ~~such~~ any other plan ~~authorized~~ required by the Oklahoma Concentrated Animal Feeding Operations Act ~~and approved by the Department~~;

6. A copy of the written waiver by an adjacent property owner to the facility releasing ~~specified~~ setback requirements ~~as provided by Section 9-210.1 of this title~~; ~~and~~

7. Latitude and longitude of the entrance to the production areas; and

8. Any other information deemed necessary by the ~~State Department of Agriculture~~ Director to administer the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

C. 1. An application for renewal of a ~~license~~ permit to operate an animal feeding operation shall be considered to be properly filed when the Department has received a completed renewal application and payment of fees from the ~~applicant~~ operator by the date due.

2. If the application for renewal is denied, written notification of the denial and an opportunity for an administrative hearing on the denial shall be given to the ~~applicant~~ operator by the ~~Department~~ Director. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for

issuance of the renewal ~~license~~ permit, and the opportunity for the ~~applicant~~ operator to request an administrative hearing.

D. ~~No new licensed managed feeding operation or expanding operation shall be constructed until a building permit for such facility or expansion has been issued by the Department. No new licensed managed feeding operation shall be placed in operation until a license for such a facility or expansion has been issued by the Department.~~

~~E.~~ For transfer of a license to a new ~~owner or~~ operator, the following conditions shall be met:

1. The new ~~owner or~~ operator shall submit to the Department a transfer application, attaching any change of conditions resulting from the transfer of ownership or operation;

2. After receipt of the information required, the Department shall review the information, and within sixty (60) working days, issue approval or denial of the transfer. Transfer of a ~~license~~ permit shall be denied only if:

a. the new ~~owner or~~ operator cannot comply with the requirements of transfer,

b. the ~~Department~~ Director finds a material or substantial change in conditions since the issuance of the original ~~license~~ permit to operate the animal feeding operation,

c. ~~failure of~~ the new ~~owner or~~ operator fails to meet any other conditions or requirements for ~~compliance established by the Department~~ permitting pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto, or

d. the new ~~owner or~~ operator ~~has failed~~ fails to meet the requirements of Section ~~9-211~~ 46 of ~~this title~~ the Oklahoma Concentrated Animal Feeding Operations Act; and

3. If a transfer is denied, written notification of ~~such~~ the denial and an opportunity for an administrative hearing on the denial shall be given to the ~~applicant for a transfer license by the Department~~ operator. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for a transfer ~~license~~ permit, and the opportunity for the ~~applicant~~ operator to request an administrative hearing.

~~F.~~ E. Any suspension, ~~or~~ revocation, or nonrenewal of a ~~license issued pursuant to the Oklahoma Concentrated Animal Feeding Operations Act by the Board~~ permit shall be made in accordance with Section ~~9-211~~ 46 of ~~this title~~ the Oklahoma Concentrated Animal Feeding Operations Act.

~~G.~~ F. In addition to other information required for issuance of a new or transfer ~~license~~ permit, an application for a new or transfer ~~license~~ permit for a concentrated animal feeding operation shall be under oath and shall contain the following information:

1. a. A statement of ownership.

(1) (a) If the ~~applicant~~ operator is a firm or partnership, the name and address of each member ~~thereof~~ shall be included in the application.

~~(2)~~ (b) If the ~~applicant~~ operator is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation shall be included in the application.

~~(3)~~ (2) If the ~~applicant~~ operator is a partnership or other legal entity, the name and address of each partner and stockholder with an ownership interest of ten percent (10%) or more shall be included in the statement.

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

2. The name and address of the management, if the management is not the ~~applicant~~ operator and is acting as agent for the ~~applicant~~ operator;

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

b. A copy of all records relating to the environmental history ~~required by this paragraph~~ shall accompany the application.

c. Noncompliance with a final agency order or final order or judgment of a court of record ~~which~~ that has been set aside by a court on appeal of ~~such~~ the final order or judgment shall not be considered a final order or judgment for the purposes of this subsection;

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

5. Any other information or records required by the Department for purposes of implementing the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated thereto.

~~H.~~ G. 1. ~~For licensed managed feeding operations licensed on or after August 1, 1998, all~~ All employees of a proposed licensed managed feeding operation whose duties include treatment, storage, or application of animal waste shall provide proof of certification of satisfactory completion of formal education or training in the areas of waste management and odor control ~~as specified by rules promulgated by the Board~~. Proof of certification of a minimum of nine (9) hours of training and education ~~must~~ shall be submitted either with the ~~license~~ permit application or within six (6) months of the date of the application for the ~~license~~ permit.

2. ~~All employees of a licensed managed feeding operation licensed before August 1, 1998, whose duties include treatment, storage or application of animal waste shall provide proof of certification of satisfactory completion of formal education or training in the areas of waste management and odor control. Proof of certification of a minimum of nine (9) hours of training and education must be submitted by June 1, 1999.~~

~~3.~~ The Department shall require a minimum of three (3) hours of annual refresher training for any employee of a licensed managed feeding operation whose duties include treatment, storage, or application of animal waste.

~~4.~~ 3. Appropriate curricula and course content shall be developed under the supervision of the Director and Oklahoma State University Cooperative Extension Service~~, which shall provide certification to the Department~~.

~~5.~~ 4. Failure to obtain the prerequisite and annual training and education as required in this subsection shall be deemed a violation of the Oklahoma Concentrated Animal Feeding Operations Act.

~~I. 1. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation, or certification in, omits material data from, or tampers with any application for a license, or notice relating to the determination of affected property owners, shall, upon conviction thereof, be guilty of a misdemeanor and may be subject to a fine of not more than Ten Thousand Dollars ($10,000.00) for each such violation. In addition, the Department shall deny licensure to the applicant or may require submission of a new application.~~

~~2.~~ H. The responsibility for ensuring that all affected property owners are notified ~~pursuant to the provisions of this section~~ shall be ~~upon~~ the responsibility of the ~~applicant~~ operator.

SECTION 31. AMENDATORY 2 O.S. 2001, Section 9-205.1, is amended to read as follows:

Section 9-205.1 A. ~~1.~~ Any person applying on or after July 1, 2005, for a ~~license~~ permit for an animal feeding operation shall comply with the notice and hearing requirements as specified by ~~this section and~~ the Oklahoma Agriculture Environmental Permitting Act, rules promulgated ~~pursuant thereto~~ by the State Board of Agriculture and notice to affected property owners as specified in this section.

~~2. Notice requirements~~ B. Any operator who submitted an application prior to July 1, 2005, shall comply with the notice and hearing requirements as specified in this section that shall include notice to affected property owners by certified mail, return-receipt requested ~~pursuant to subsection C of this section~~ and public notice ~~pursuant to subsection D of this section~~.

~~B.~~ C. After submission of a completed application as provided by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto, the ~~State~~ Oklahoma Department of Agriculture Food, and Forestry shall have sixty (60) working days to review the application for a new or expanding operation for physical and technical suitability.

~~C.~~ D. 1. After ~~such~~ review and after the ~~applicant~~ operator has submitted any additional required information to the Department, the Department shall require the ~~applicant~~ operator to notify all affected property owners of the proposed facility or expanding ~~operations~~ operation. ~~Such notice~~ Notice shall be sent by certified mail, return-receipt requested. The notice shall identify that an application for an animal feeding operation has been submitted to the Department, the location where the facility is to be located, that a hearing may be requested pursuant to this subsection, and the date the application will be available for public review~~, which shall begin~~ beginning no earlier than the day following the certified mailing of all the required notices, and ~~such~~ any other information required by the Department.

2. Each affected property owner requesting a hearing shall submit, in writing, the following information:

a. the name and address of the interested party and proof of standing by showing that the interested party is an affected property owner,

b. a statement of specific allegations showing that the proposed facility or expanding operation may have a direct, substantial, and immediate effect upon a legally protected interest of the interested party, and

c. the relief sought by the interested party.

3. If any of the affected property owners request an administrative hearing, ~~such hearing shall be held by the Department within not less than thirty (30) days nor more than sixty (60) days after the close of the public review period pursuant to subsection D of this section~~ they shall be in compliance with all requirements of paragraph 2 of this subsection as determined by the Department. The scheduling conference for the hearing shall be held by the Department within not less than thirty (30) calendar days or more

than sixty (60) calendar days after the close of the public review period. All interested parties may be joined as parties to the hearing ~~pursuant to rules promulgated by the State Board of Agriculture~~.

4. a. In addition to any other information deemed necessary by the Department, at the hearing the Department shall hear testimony and accept evidence pertaining to the physical and technical suitability of the proposed facility or expanding operations. ~~In addition, any~~ Any interested party may present specific allegations based on scientific and technical findings of fact showing that the proposed facility or expanding operations may have a direct, substantial, and immediate effect upon a legally protected interest of the affected property owner. The burden of proof shall be on the interested party.

b. For new applications submitted on and after ~~the effective date of this act~~ August 1, 1998, and on and after July 1, 2005, the Department shall deny the issuance of a ~~license~~ permit to an ~~applicant~~ operator for a licensed managed feeding operation if an interested party within:

(1) one (1) mile of the designated perimeter of the proposed licensed managed feeding operation or expansion thereof, or

(2) the setback distance of an occupied residence ~~as provided in subsection A of Section 16 of this act~~ if such setback distances are greater than one (1) mile,

proves that the granting of the ~~license~~ permit will cause significant harm to the property value of the interested party.

5. Any administrative hearing held pursuant to the provisions of this subsection shall comply with ~~Article II of~~ the Administrative Procedures Act and rules promulgated ~~pursuant thereto~~ by the ~~Department~~ Board.

6. Establishment of property usage ~~which~~ is the date the animal feeding operation application was made available~~, pursuant to this section,~~ for public review versus date of initial construction or placement of occupied residence and shall be given consideration when determining a contested matter between an ~~applicant~~ operator and an interested party on issues other than pollution of the waters of the state.

~~D.~~ E. 1. In addition to the individual notice ~~required by subsection C of this section~~, the Department shall require the ~~applicant~~ operator to give public notice of the opportunity to comment on the granting of the ~~license~~ permit.

2. The public notice for a new or expanding operation shall be published as a legal notice prior to the date the application is available for public viewing, in at least one newspaper of general circulation in the county where the proposed facility or expanding operation is to be located.

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

4. The application shall be available for public review during normal business hours. The copies of the application posted for public viewing shall be complete except for proprietary provisions otherwise protected by law and ~~must~~ shall remain posted during normal business hours for at least twenty (20) working days after notice is published.

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

~~E.~~ F. Prior to the issuance of any ~~license~~ permit for an animal feeding operation, or expanding operation, the Department shall require the ~~applicant~~ operator to submit:

1. Documentation certifying notice has been issued to all affected property owners. A map of all affected property owners and the corresponding mailing list shall be submitted with each application; and

2. Proof of publication notice of a new or expanding application for an animal feeding ~~license required by this section~~ operation permit.

~~F. Applicants for licenses for licensed managed feeding operations with a capacity of more than two thousand (2,000) animal units which have given the notice required by this section to all surface property owners within one (1) mile of the designated perimeter of the operation prior to March 9, 1998, shall not be required to provide notice by mail to owners of surface property more than one (1) mile but within two (2) miles of the designated perimeter of the operation.~~

SECTION 32. AMENDATORY 2 O.S. 2001, Section 9-205.2, is amended to read as follows:

Section 9-205.2 A. A ~~Pollution Prevention Plan shall be developed by each~~ licensed managed feeding operation ~~prior to the submission of an application pursuant to the provisions of this section and rules promulgated by the State Board of Agriculture pursuant thereto. The Pollution Prevention Plan~~ shall ~~include, but not be limited to, provisions for~~ develop and implement a Nutrient Management Plan and provide documentation of structural controls, documentation of Best Management Practices, ~~an approved plan for the~~

~~disposal of animal waste~~ pollution prevention, and recordkeeping provisions.

B. An animal feeding operation ~~licensed~~ permitted pursuant to the ~~provisions of the~~ Oklahoma Concentrated Animal Feeding Operations Act, other than a licensed managed feeding operation, shall develop a ~~Pollution Prevention~~ Nutrient Management Plan ~~or may substitute equivalent measures contained in a site-specific Animal Waste Management Plan prepared pursuant to Section 9-205.3 of this title~~. Design and construction criteria developed by the United States Department of Agriculture Natural Resources Conservation Service, may be substituted for the documentation of design capacity and construction requirements.

~~C.~~ 1. The ~~Pollution Prevention~~ Nutrient Management Plan shall be signed by the ~~owner or~~ operator as ~~otherwise authorized~~ required by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry and a copy shall be retained on site.

2. ~~The animal feeding operation shall amend the Pollution Prevention Plan and obtain approval of the Department prior~~ Prior to any change in design, construction, operation, or maintenance~~, which~~ that has significant effect on the potential for the discharge of pollutants to the waters of the state, the animal feeding operation shall obtain written approval from the Director.

~~D.~~ C. If~~, after reviewing the Pollution Prevention Plan,~~ the ~~Department~~ Director determines that the ~~Plan~~ animal feeding operation does not meet one or more ~~of the~~ minimum requirements of this section, the animal feeding operation shall make and implement appropriate changes ~~to the Plan as required by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto~~.

~~E.~~ D. The ~~Pollution Prevention Plan~~ operator of an animal feeding operation shall ~~provide and require~~ obtain presite approval by ~~Departmental personnel~~ the Department prior to construction.

During construction, the Department shall monitor the construction process as deemed necessary by the Department in an attempt to verify the construction of the facility is done according to plans and acceptable engineering standards to reduce or eliminate the potential of pollution.

~~F.~~ E. In addition to other requirements specified by this section, the ~~Pollution Prevention Plan~~ application shall include but not be limited to:

1. A description of potential sources, activities, and materials ~~which~~ that may reasonably be expected to or could potentially add pollutants to runoff from the facility;

2. A map~~,~~ indicating an outline of the drainage area of the facility~~,~~ and each existing structural control measure designed to reduce pollutants in wastewater and precipitation runoff in all surface waters of the state;

3. A spill contingency plan for potential pollutants;

4. All existing sampling data of groundwater, nitrate and coliform bacteria levels, soil tests from land application sites, and animal waste nutrient sampling;

5. A description of management controls appropriate for the facility. The management controls shall include, but not be limited to:

a. the location and a description of existing structural and nonstructural controls,

b. documentation of retention structure capacity and the assumptions and calculations used in determining the appropriate volume capacity, and

c. a description of the design standards for the retention facility embankments;

6. A description of the design standards for any retention facilities;

7. Training requirements for employees;

8. Documentation relating to any hydrologic connection between the contained wastewater and waters of the state ~~which complies with Section 9-205.4 of this title~~; and

9. Requirements that all irrigation systems into which any animal waste will be injected shall be equipped as specified by Section ~~9-205.5~~ 36 of ~~this title~~ the Oklahoma Concentrated Animal Feeding Operations Act.

~~G.~~ F. The following records shall be maintained at the animal feeding operation site as long as the facility is in operation:

1. Water level in the retention structure;

2. Daily precipitation records from on-site rain gauge;

3. Incident reports such as spills and other discharges;

4. Inspection and maintenance reports;

5. Findings from annual inspections of the entire facility;

6. Log of preventive maintenance and employee training that was completed;

7. Log of removal of animal waste sold or given to other persons for disposal;

8. Other specific information deemed necessary by the Department ~~to implement the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto~~;

9. Copy of ~~general~~ any permit issued by the federal Environmental Protection Agency, if applicable, a copy of ~~the completed Pollution Prevention Plan~~ all required plans, and other specific records deemed necessary by the Department ~~to implement the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto~~; and

10. The notarized statement signed by the ~~applicant~~ operator accepting full responsibility for properly closing all waste retention structures pursuant to subsection ~~I~~ H of this section.

~~H.~~ G. Any required analyses ~~required by the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated thereto~~ shall be performed by a qualified independent testing laboratory ~~certified~~ approved by the Oklahoma Department of Environmental Quality ~~and~~ or approved by the Department.

~~I.~~ H. The ~~applicant~~ operator shall sign a notarized statement accepting full responsibility for properly closing all waste retention structures if the facility ceases to function or is ordered to close by action of the Department. When a ~~license~~ permit is transferred, the new ~~owner or lessee~~ operator shall submit a signed notarized statement accepting full responsibility for properly closing all waste retention structures if the facility ceases to function or is ordered to close by action of the ~~Department~~ Director.

SECTION 33. AMENDATORY 2 O.S. 2001, Section 9-205.3, is amended to read as follows:

Section 9-205.3 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~~ permitted 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~~ Nutrient 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~~ animal waste 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~~ as provided in Part 412 of Title 40 of the Code of Federal Regulations;

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~~ the 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~~ Plan 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~~ Department ~~of Agriculture 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, the ~~licensee is required to~~ operator shall 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~~ any other required parameters ~~as required by the Department which~~ that the Department has reason to believe could be in the discharge.

C. The ~~Animal Waste~~ concentrated animal feeding operation shall develop and implement a Nutrient Management Plan based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and addressing the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and

phosphorus movement to waters of the state. The Nutrient 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~~ operator;

4. Requirements including that:

a. (1) land application of animal waste to land under the ownership or operational control of the animal feeding operation shall not exceed the nitrogen uptake of the crop coverage or planned crop planting ~~with any land application of wastewater or manure~~ and shall minimize phosphorus transport from the field to waters of the state in compliance with the technical standards for nutrient management established by the Department. ~~Where local water quality is threatened by phosphorous, in~~ In no case shall the ~~applicant or licensee~~ operator exceed the application rates in the most current United States Department of Agriculture Natural Resources Conservation ~~publication~~ Service publications ~~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, animal waste ~~storage sites~~ management systems, ponds, pipes, ditches, pumps, diversion, and irrigation equipment shall be maintained to ensure ability to fully comply with the Oklahoma Concentrated Animal Feeding Operations Act, ~~and~~

d. adequate equipment and land application area shall be available for removal of ~~such~~ animal waste ~~and wastewater~~ as required to maintain the proper operating volume of the retention structure, and

e. unless the concentrated animal feeding operation exercises a compliance alternative pursuant to this section, animal waste shall not be applied closer than one hundred (100) feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural wellheads, or other conduits to surface waters.

(1) As a compliance alternative, the concentrated animal feeding operation may substitute the one-hundred-foot setback with a thirty-five-foot-wide vegetated buffer where applications of animal waste are prohibited.

(2) As a compliance alternative, the concentrated animal feeding operation may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better

than the reductions that would be achieved by the one-hundred-foot setback; and

5. ~~Such~~ Any 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~~ operator.

E. If the animal waste from a ~~licensed managed~~ large concentrated animal feeding operation is sold or given to other persons for land application or disposal, the ~~licensed managed~~ large concentrated animal feeding operation shall maintain a log of: date of removal from the large concentrated animal feeding operation; ~~names~~ name and address of ~~such other~~ persons purchasing or taking the waste; and amount, in wet tons, dry tons, or cubic yards, of animal waste removed from the large concentrated animal feeding operation.

F. 1. If the animal waste is to be land applied by other persons, a ~~licensed managed~~ large concentrated animal feeding operation shall make available ~~to such other person~~ the most current sample analysis of the animal waste.

2. In addition, ~~the~~ a 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~~ A 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~~ the disposal or application is performed by persons not employed or controlled by the licensed managed feeding operation.

G. Soils in areas ~~in which~~ where 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~~ The 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~~ operator.

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~~ that 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 34. AMENDATORY 2 O.S. 2001, Section 9-205.3a, is amended to read as follows:

Section 9-205.3a A. An Odor Abatement Plan shall be developed by each licensed managed feeding operation ~~prior to the submission of an application~~ pursuant to the provisions of this section and rules promulgated by the State Board of Agriculture ~~pursuant thereto~~. The Odor Abatement Plan shall include, but not be limited to, provisions for documentation of structural controls, documentation of Best Management Practices, odor abatement, and recordkeeping ~~provisions~~.

B. 1. The Odor Abatement Plan shall include specific methods of odor reduction ~~which~~ that shall be tailored to each facility and created to address each cause of odor listed in ~~paragraph 2 of~~ this subsection.

2. The Odor Abatement Plan shall address methods for reducing odors in relationship to animal maintenance, animal waste storage, land application, and carcass disposal.

3. The ~~applicant or licensee~~ operator shall examine the Odor Abatement Plan at least annually to evaluate the effectiveness of the plan, modify for changed conditions at the facility, and determine if economically feasible technological advances are available and appropriate for the facility.

C. If, after reviewing the Odor Abatement Plan, the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry determines that the plan does not adequately meet one or more of the minimum requirements, the licensed managed feeding operation shall make and implement appropriate changes to the Plan ~~which~~ that may include the utilization of economically feasible technology designed to abate odor ~~as required by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto~~.

D. In determining the adequacy of an ~~odor abatement plan~~ Odor Abatement Plan, the Department shall consider all relevant factors including but not limited to:

1. Design of the facilities;

2. Odor control technology to be utilized;

3. Prevailing wind direction in relation to occupied residences;

4. Size of operation;

5. Distance from facility to occupied residences; and

6. All information contained in the application.

SECTION 35. AMENDATORY 2 O.S. 2001, Section 9-205.4, is amended to read as follows:

Section 9-205.4 A. Any hydrologic connection between ~~wastewater~~ animal waste 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~~ 43 of ~~this title~~ the Oklahoma Concentrated Animal Feeding Operations Act, to prevent hydrologic connections between a retention structure and waters of the state, all concentrated animal feeding operations and swine feeding operations in this state primarily using a liquid animal waste management system whether or not such waste facilities are ~~licensed~~ permitted 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 environmental, agricultural, or other ~~Department-approved professional~~ approved 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~~ 43 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.~~ 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 ~~and~~ or approved by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry, and the cost shall be the responsibility of the ~~owner~~ operator of the licensed managed feeding operation.

~~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 considered from 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~~ operator shall maintain the liner to inhibit infiltration of ~~wastewaters~~ animal waste. Documentation of liner maintenance shall be maintained ~~with~~ at the ~~Pollution Prevention Plan~~ facility.

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

3. The ~~Department~~ Director 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~~ animal waste 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 considered from the best information available.

SECTION 36. AMENDATORY 2 O.S. 2001, Section 9-205.5, is amended to read as follows:

Section 9-205.5 A. All irrigation systems into which any animal waste will be injected shall be equipped with one or both of the following systems:

1. An antipollution system~~, approved by the State Board of Agriculture,~~ capable of preventing the backflow of ~~such~~ animal waste into the groundwater. The system shall include a safety check valve with a removable inspection port, anti-syphon vent, and low-pressure escape drain. An interlock device shall be installed on pumps that pump the animal waste so that if a fresh water irrigation pump shuts down, the pump that pumps the animal waste will also immediately shut down, preventing the chance of leakage past the check valve; or

2. A system ~~which~~ that provides for a complete and total disconnection between the flow of fresh water and the flow of animal waste. ~~Such~~ The system shall be capable of a manual disconnection between fresh water and the animal waste.

B. The Oklahoma Department of Agriculture, Food, and Forestry shall make annual on-site inspections examining the operative status of the check valves and interlock devices.

C. The operator of ~~said~~ the irrigation system shall ~~be responsible to~~ ensure:

1. That the valves and interlock devices remain operative between annual inspections ~~by the Department of Agriculture~~; or

2. Complete disconnection from fresh water when introducing animal waste into the system.

SECTION 37. AMENDATORY 2 O.S. 2001, Section 9-206, is amended to read as follows:

Section 9-206. A. ~~The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of any animal feeding operation for the purpose of investigating complaints as to the operation or to determine whether there are any violations of the Oklahoma Concentrated Animal Feeding Operations Act.~~ The Oklahoma Department of Agriculture, Food, and Forestry shall make at least one unannounced inspection per year of every animal feeding operation ~~licensed~~ permitted pursuant to the Oklahoma Concentrated Animal Feeding Operations Act. Any holder of a permit or applicant

for a permit under the Oklahoma Concentrated Animal Feeding Operations Act shall be deemed to have given consent to any authorized officer, employee, or agent of the Department to:

1. Enter and inspect a facility in accordance with the provisions of the Oklahoma Concentrated Animal Feeding Operations 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. All records shall be submitted upon request and shall be 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 State Board of Agriculture.

B. For unpermitted facilities, authorized employees or representatives, upon presentation of 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. 1. The Board shall promulgate standard precautions for the prevention of the transmission of communicable diseases to humans and animals to be used ~~by employees of the Department of Agriculture~~ when inspecting animal feeding operations ~~pursuant to their official duties specified by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto~~.

2. Except for emergency situations or when enforcement of ~~the provisions of~~ the Oklahoma Concentrated Animal Feeding Operations Act requires the use of the standard precautions ~~as promulgated by the Board pursuant to paragraph 1 of this subsection~~, Department employees shall observe the health standards and sanitary requirements of the facility.

~~C.~~ D. The ~~Board~~ Department shall maintain necessary records and undertake ~~such~~ studies, investigations, and surveys for the proper administration of the Oklahoma Concentrated Animal Feeding Operations Act.

SECTION 38. 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~~ permit.

2. The owner or operator of an animal feeding operation not classified as a concentrated animal feeding operation may apply for a ~~license~~ permit if ~~such owner or~~ the 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 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 Board.~~

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 39. AMENDATORY 2 O.S. 2001, Section 9-209, is amended to read as follows:

Section 9-209. A. ~~Licenses issued pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~ The annual and animal unit fees set forth in this section shall ~~expire on~~ be due by June 30 of each year ~~and may be renewed upon payment of the license fee set forth in subsection B of this section and continued compliance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and the rules of the Board~~.

B. The application and annual fees for an animal feeding ~~operations license and annual renewal thereof~~ operation shall be:

~~Animal feeding operations capacity~~	~~Amount of Fee~~
~~Under two hundred fifty animal units~~	~~$15.00~~
~~Two hundred fifty to five hundred animal units~~	~~$37.50~~
~~Five hundred and one to three thousand animal units~~	~~$75.00~~
~~Three thousand and one to ten thousand animal units~~	~~$150.00~~
~~Over ten thousand animal units~~	~~$225.00~~

1. Fifteen Dollars ($15.00) for facilities with a capacity of less than two hundred fifty (250) animal units;

2. Thirty-seven Dollars and fifty cents ($37.50) for facilities with a capacity of two hundred fifty (250) to five hundred (500) animal units;

3. Seventy-five Dollars ($75.00) for facilities with a capacity of five hundred one (501) animal units to three thousand (3,000) animal units;

4. One Hundred Fifty Dollars ($150.00) for facilities with a capacity of three thousand one (3,001) animal units to ten thousand (10,000) animal units; and

5. Two Hundred Twenty-five Dollars ($225.00) for facilities with a capacity of more than ten thousand (10,000) animal units.

C. ~~For the license year ending June 30, 1999, all licensed managed feeding operations shall pay an additional license fee for original or renewal licenses in an amount equal to eighty cents ($0.80) per licensed animal unit capacity.~~

~~For original applications pending with the State Department of Agriculture on July 1, 1998, one-half of such amount shall be due and payable no later than September 1, 1998. For all other original applications for the license year ending June 30, 1999, one-half of such amount shall be due and payable with the application.~~

~~The other half of such amount shall be due thirty (30) days from the date such application is approved. In the event the application is not approved, any amount of such fee which is in excess of the costs incurred by the Department in processing the application pursuant to the requirements of the Oklahoma Concentrated Animal Feeding Operations Act shall be refunded to the applicant.~~

~~The fee imposed by this subsection for renewal applications shall be due by September 1, 1998.~~

~~D. For the license year ending June 30, 2000, and every year thereafter, all~~

1. All operators of licensed managed feeding operations shall pay an additional ~~license~~ application fee for an original ~~licenses~~ permit or new source in an amount equal to eighty cents ($0.80) per ~~licensed~~ animal unit capacity. One-half (1/2) of ~~such~~ the amount shall be due and payable with the application.

2. The other ~~half~~ one-half (1/2) of ~~such~~ the amount shall be due thirty (30) days from the date ~~such application~~ the permit is ~~approved~~ issued. In the event the ~~application~~ permit is not ~~approved~~ issued, any amount of ~~such~~ the fee ~~which is~~ in excess of the costs incurred by the Department in processing the application ~~pursuant to the requirements of the Oklahoma Concentrated Animal Feeding Operations Act~~ shall be refunded to the ~~applicant~~ operator.

~~For the license year ending June 30, 2000, and every year thereafter all~~

3. All licensed managed feeding operations shall pay an additional ~~license~~ annual animal unit fee ~~for renewal licenses~~ in an amount established by ~~the Department pursuant to~~ rules ~~promulgated under the Administrative Procedures Act and in accordance with subsection E of this section~~.

~~E.~~ D. The Department is directed to review ~~its~~ costs related to the administration, regulation, and enforcement of licensed managed feeding operations ~~required by the Oklahoma Concentrated Animal Feeding Operations Act~~. Based on ~~its~~ the review ~~the Department shall promulgate emergency~~, rules shall be promulgated pursuant to the Administrative Procedures Act ~~which will establish a renewal~~ establishing the annual animal unit fee for licensed managed feeding operations. ~~The Department is directed to promulgate such emergency rules on or before March 1, 1999.~~ The animal unit fee shall be based on the costs incurred by the Oklahoma Department of Agriculture, Food, and Forestry in salaries, travel claims, and other necessary expenses incurred in fulfilling its regulatory and administrative obligations with regard to licensed managed feeding

operations. Under no circumstances shall the fee exceed eighty cents ($0.80) per animal unit.

~~F.~~ E. All annual fees and permit application fees received ~~by the Board for licensure of~~ from animal feeding operations ~~pursuant to this section~~ shall be deposited in the Oklahoma Department of Agriculture, Food, and Forestry Revolving Fund.

SECTION 40. AMENDATORY 2 O.S. 2001, Section 9-209.1, is amended to read as follows:

Section 9-209.1 A. Any person who is ~~licensed~~ permitted to operate an animal feeding operation with a liquid animal waste management system within this state shall furnish ~~to the Department of Agriculture~~ evidence of financial ability to comply with the requirements for closure of retention structures and other waste facilities as established pursuant to the provisions of this section and rules promulgated by the State Board of Agriculture.

B. 1. To establish evidence of financial ability, the Department shall require:

a. Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with banks and other financial institutions. The financial statement shall be confidential and shall not be opened to public inspection. The statement shall prove a net worth of not less than:

(1) Ten Thousand Dollars ($10,000.00) for any permitted animal feeding operation ~~licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~ having a capacity of more than three hundred (300) animal units but having one thousand (1,000) animal units or less,

(2) Twenty-five Thousand Dollars ($25,000.00) for any permitted animal feeding operation ~~licensed~~

~~pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~ having a capacity of more than one thousand (1,000) animal units but ~~less than~~ having two thousand (2,000) animal units or less, or

(3) Fifty Thousand Dollars ($50,000.00) for any permitted animal feeding operation ~~licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~ having a capacity of more than two thousand (2,000) animal units, or

b. Category B surety which shall include an irrevocable commercial letter of credit, cash, a cashier's check, a Certificate of Deposit, Bank Joint Custody Receipt, other negotiable instrument or a blanket surety bond. Except as provided in paragraph 2 of this subsection, the amount of ~~such~~ the letter of credit, cash, check, certificate, bond, receipt or other negotiable instrument shall be in the amount of Twenty-five Thousand Dollars ($25,000.00). The Department is authorized to determine the amount of Category B surety based upon the past performance of the ~~owner or~~ operator regarding compliance with the laws of this state, and any rules promulgated pursuant thereto. Any instrument shall constitute an unconditional promise to pay and be in a form negotiable by the Oklahoma Department of Agriculture, Food, and Forestry.

2. ~~The Department upon~~ Upon certification by any animal feeding operation subject to Category B surety that its liability statewide is less than the twenty-five-thousand-dollar standard specified in this section, the Director may allow ~~said owner or~~ the operator to provide Category B type surety in an amount less than the required

Twenty-five Thousand Dollars ($25,000.00), but at least sufficient to cover the estimated cost of all closure and removal operations currently the responsibility of that ~~owner or~~ operator.

C. 1. Any permitted animal feeding operation ~~licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act which~~ that does not have any outstanding contempt citations or fines may post Category A surety.

2. Any permitted animal feeding operation ~~licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act which~~ that does have outstanding fines or contempt citations shall be required to post Category B surety. Animal feeding operations ~~which have posted~~ that post and operate under Category B surety and ~~have operated under this type surety and~~ have no outstanding fines at the end of three (3) years may post Category A surety.

D. For good cause shown concerning pollution by the animal feeding operations posting either Category A or B surety, the Department, after notice and hearing, may require the filing of additional Category B surety in an amount greater than Twenty-five Thousand Dollars ($25,000.00) but not to exceed Five Dollars ($5.00) times the number of animal units for the permitted facility ~~being licensed~~.

E. 1. If the Department, after notice and an opportunity for hearing, determines that the animal feeding operation ~~licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act~~ has neglected, failed, or refused to close any surface impoundment, or remove or cause to be removed any equipment, or has abandoned the facility, then the animal feeding operation shall be deemed to have forfeited the letter of credit or negotiable instrument required by this section or shall pay to this state, for deposit in the State Treasury, a sum equal to the cost of closure of any surface impoundment or removal of equipment.

2. The Department may cause the remedial work to be done, issuing a warrant in payment of the cost ~~thereof~~ drawn against the monies accruing in the State Treasury from the forfeiture or payment.

3. The Department shall also recover any costs arising from litigation to enforce this provision. Provided, before an animal feeding operation is required to forfeit or pay any monies to the state pursuant to this section, the Department shall notify the animal feeding operation at the last-known address of the determination of neglect, failure, or refusal to close any surface impoundment or remove equipment and the animal feeding operation shall have ten (10) days from the date of notification within which to commence remedial operations. Failure to commence remedial operations shall result in forfeiture or payment as provided in this subsection.

F. If title to an animal feeding operation is transferred, the ~~transferee~~ new operator shall furnish the evidence of financial ability to close surface impoundments required by the provisions of this section, prior to the transfer.

SECTION 41. AMENDATORY 2 O.S. 2001, Section 9-210, is amended to read as follows:

Section 9-210. A. In addition to any other requirement of the Oklahoma Concentrated Animal Feeding Operations Act, operators of animal feeding operations ~~owners and operators who are granted an animal feeding operations license~~ shall:

1. Provide adequate veterinarian services for detection, control, and elimination of livestock diseases;

2. Have available for use at all necessary times mechanical means of scraping, cleaning, and grading ~~feed yards~~ concentrated animal feeding operation premises; and

3. Provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks, and feeding devices.

B. 1. Any animal feeding operation ~~licensed~~ permitted pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with the rules promulgated by the Board, shall be deemed to be prima facie evidence that a nuisance does not exist; provided, no animal feeding operation shall be located or operated in violation of any zoning regulations.

2. Any animal feeding operation ~~licensed~~ permitted pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with rules promulgated by the Board, that is located on land more than three (3) miles outside the incorporated limits of any municipality and ~~which~~ is not located within one (1) mile of ten or more occupied residences shall not be deemed a nuisance unless it is shown by a preponderance of the evidence that the operation endangers the health or safety of others.

SECTION 42. AMENDATORY 2 O.S. 2001, Section 9-210.1, is amended to read as follows:

Section 9-210.1 A. Except as otherwise provided by Section 9-210.2 of this title, the state shall be divided east and west based on the Indian Meridian for the purpose of determining setback requirements from occupied residences for animal feeding operations using a liquid animal waste management system where swine are primarily housed in a roof-covered structure and which were established between September 1, 1997, and June 1, 1998:

1. No new or expanding licensed managed feeding operation with a capacity of two thousand (2,000) or more animal units:

a. located in the eastern half of the state shall be constructed where its closest waste facility is within a distance of one-half (1/2) mile of any occupied residence not owned or leased by the ~~owner or~~ operator of the licensed managed feeding operation, or

b. located in the western half of the state shall be constructed where its closest waste facility is within a distance of three-fourths (3/4) mile of any occupied residence not owned or leased by the ~~owner or~~ operator of the licensed managed feeding operation.

2. No new or expanding animal feeding operation with a capacity of less than two thousand (2,000) animal units but more than one thousand (1,000) animal units:

a. located in the eastern half of the state shall be constructed where its closest waste facility is located within a distance of one-fourth (1/4) mile of any occupied residence not owned or leased by the ~~owner~~ operator of the animal feeding operation, or

b. located in the western half of the state shall be constructed where its closest waste facility is located within a distance of one-half (1/2) mile of any occupied residence not owned or leased by the ~~owner~~ operator of the animal feeding operation.

3. No new or expanding animal feeding operation with a capacity of more than three hundred (300) animal units but having one thousand (1,000) animal units or less shall be constructed where its closest waste facility is located within a distance of one-fourth (1/4) mile of any occupied residence not owned or leased by the ~~owner~~ operator of the animal feeding operation.

B. Except as ~~otherwise~~ authorized by this subsection, no liquid animal waste shall be land applied within five hundred (500) feet of the nearest corner of an occupied residence not owned or leased by the ~~owner~~ operator of the animal feeding operation.

C. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ 43 of this ~~title~~ act, no new concentrated animal feeding operation or expanding operation shall be established ~~after September 1, 1997, which is~~ within one (1) mile of ten or more residences ~~which~~ that are

occupied residences at the time of the establishment of the concentrated animal feeding operation.

D. The proscription contained in subsections A, B and C of this section shall not apply if the applicable property owner executes a written waiver with the ~~owner or~~ operator of the animal feeding operation, under ~~such~~ terms and conditions that the parties negotiate. The written waiver becomes effective upon recording of the waiver in the offices of the recorder of deeds in the county ~~in which such~~ where the property is located. The filed waiver shall preclude enforcement of the setback requirements contained in subsections A, B and C of this section. A change in ownership of the applicable property or change in the ownership of the property on which the animal feeding operation is located shall not affect the validity of the waiver.

E. ~~No~~ In addition to federal requirements, no liquid animal waste shall be land applied within three hundred (300) feet of an existing public or private drinking water well.

F. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ 43 of this ~~title~~ act, no new concentrated animal feeding operation or expanding operation shall be established ~~after September 1, 1997, which is~~ if located:

1. Within three (3) miles of a state park or resort;

2. On land within three (3) miles of the incorporated limits of any municipality; or

3. Within three (3) miles of the high water mark of a surface public water supply if the new concentrated animal feeding operation or expanding operation is proposed to be located within the drainage basin for the public water supply.

G. All distances between occupied residences and animal feeding operations shall be measured from the closest corner of the walls of the occupied residence to the closest point of the nearest waste facility, as determined by the ~~State~~ Department ~~of Agriculture~~. The

property boundary line of the real property is not used unless it coincides with the closest point of the waste facility or occupied residence.

SECTION 43. AMENDATORY 2 O.S. 2001, Section 9-210.2, is amended to read as follows:

Section 9-210.2 A. ~~1. Any concentrated animal feeding operation which is licensed by or which has submitted a substantially completed application to the State Department of Agriculture on or before September 1, 1997, shall be required to comply with all applicable provisions within one (1) year of such date or may enter into a compliance schedule with the Department to come into compliance.~~

~~2.~~ The provisions of Section ~~9-210.1~~ 42 of this ~~title~~ act relating to setback requirements and the provisions of subsections B and C of Section ~~9-205.4~~ 35 of this ~~title~~ act relating to utilization of liners in retention structures or documentation of no hydrologic connection and to a minimum separation of ~~four (4)~~ ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to ~~the facilities specified by this subsection~~ any concentrated animal feeding operation that was permitted by or submitted a substantially complete application on or before September 1, 1997.

B. ~~1. Any animal feeding operation, other than a concentrated animal feeding operation, which is licensed by or which has submitted a substantially completed application to the State Department of Agriculture on or before September 1, 1997, and desiring to retain such licensure, shall be required to comply with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act within one (1) year of such date or may enter into a compliance schedule with the Department to come into compliance.~~

~~2.~~ The provisions of Section ~~9-210.1~~ 42 of this ~~title~~ act relating to setback requirements and the provisions of subsections B

and C of Section ~~9-205.4~~ 35 of this ~~title~~ act relating to utilization of liners in retention structures or documentation of no hydrologic connection and to a minimum separation of ~~four (4)~~ ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to ~~the facilities specified~~ any animal feeding operation, other than a concentrated animal feeding operation, that was permitted by ~~this subsection~~ or submitted a substantially complete application on or before September 1, 1997.

C. 1. Animal feeding operations, other than a concentrated animal feeding operation, not ~~licensed~~ permitted pursuant to the provisions of the Oklahoma ~~Feed Yards~~ Concentrated Animal Feeding Operations Act in operation on ~~the effective date of this act~~ September 1, 1997, shall not be subject to any setback requirements not in effect on the date of past construction.

2. Provided, that the provisions of subsections B and C of Section ~~9-205.4~~ 35 of this ~~title~~ act relating to utilization of liners in retention structures or documentation of no hydrologic connection and to a minimum separation of ~~four (4)~~ ten (10) feet between the bottom of the retention structure and the maximum groundwater elevation shall not apply to facilities specified by this subsection except as a condition to the issuance of a ~~license~~ permit pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

~~D. On or after September 1, 1997, any~~ Any expanding operations shall be in accordance with the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

SECTION 44. AMENDATORY 2 O.S. 2001, Section 9-210.3, is amended to read as follows:

Section 9-210.3 A. Except as ~~otherwise~~ provided by Section ~~14~~ 43 of this act and subsection F of this section, animal feeding operations using liquid animal waste management systems where swine

are housed in roof-covered structures shall not be located within the following applicable distances from an occupied residence:

1. More than 4000 animal units..... 2 miles;

2. 2001 to 4000 animal units.....1 1/4 miles;

3. 1001 to 2000 animal units..... 3/4 mile;

4. 601 to 1000 animal units..... 1/2 mile;

5. 300 to 600 animal units.....1/4 mile; and

6. Less than 300 animal units.....no setback.

B. Except as ~~otherwise~~ provided by this section, no licensed managed feeding operation ~~which applies for~~ that is a new or expanding ~~concentrated animal feeding~~ operation ~~license~~ after March 9, 1998, shall be located within three (3) miles of the outside boundary of any area or facility owned or operated as a camp or recreational site by a nonprofit organization established prior to application of the concentrated animal feeding operation. In determining whether any such area or facility is a camp or recreational site, the Board shall consider:

a. whether a reasonable person, after considering the totality of the circumstances, would determine that the area or facility is predominately used for camping or recreational purposes,

b. the type of permanent structures or fixtures of a recreational nature located on the land,

c. the frequency with which the site is used for recreational purposes,

d. the types of activities which are conducted or engaged in on the site, and

e. any other factors the decision-making body deems directly relevant to the question of whether a site is recreational in nature.

C. The setback requirements contained in subsections A and B of this section shall not apply to any property owner who executes a

written waiver with the ~~owner or~~ operator of the animal feeding operation, under ~~such~~ terms and conditions as are agreed to by the parties. The written waiver shall be effective upon recording of the waiver in the office of the county clerk in the county ~~in which such~~ where the property is located. The filed waiver shall preclude enforcement of the setback requirements of ~~subsections~~ subsection A or B of this section with regard to property described in the waiver and owned by the person executing ~~such~~ the waiver. A change in ownership of the applicable property or change in ownership of the property ~~on which~~ where the animal feeding operation is located shall not affect the validity of the waiver.

D. No licensed managed feeding operation established after ~~the effective date of this act~~ August 1, 1998, which applies for a new or expanding license after March 9, 1998, shall be located:

1. Within three (3) miles of any designated scenic river area as specified by the Scenic Rivers Act;

2. Within three (3) miles of the outside boundary of any historic property or museum owned by the State of Oklahoma;

3. Within three (3) miles of a public drinking water well;

4. Within one (1) mile of a waterbody specified as Outstanding Resource Waters that has recreational or ecological significance as outlined by the most current Water Quality Standards promulgated by the Oklahoma Water Resources Board; or

5. Within three (3) miles of a national park designated by the United States Department of the Interior National Park Service.

E. All distances between occupied residences and animal feeding operations shall be measured from the closest corner of the walls of the occupied residence to the closest point of the nearest waste facility, as determined by the ~~State~~ Department ~~of Agriculture~~. The property boundary line of the real property is not used unless it coincides with the closest point of the waste facility or occupied residence.

F. The provisions of this section shall not apply to any animal feeding operation ~~which~~ that has been ~~licensed~~ permitted by or which had submitted an application ~~to the State Department of Agriculture~~ on or prior to March 9, 1998. In addition, the provisions of this section shall not apply to any animal feeding operation with a capacity of 2,000 animal units or less ~~which~~ that was established prior to June 1, 1998.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20-21.1 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, as defined in Section 22 of this act, 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 46. AMENDATORY 2 O.S. 2001, Section 9-211, is amended to read as follows:

Section 9-211. A. 1. The State Board of Agriculture is authorized and directed to promulgate a violation points system for violating the Oklahoma Concentrated Animal Feeding Operations Act, ~~which provides~~ providing greater punishment for intentional violations ~~which are intentional~~ and for violations ~~which pose~~ posing a greater threat to the environment. The Board may assess violation points for violations pursuant to this section.

2. The ~~State Board of Agriculture~~ Director of the Agriculture Pollutant Discharge Elimination System shall have the power to suspend, revoke, or not renew the ~~license~~ permit of any animal feeding operation ~~based on such point system~~ after a hearing, and

after an administrative determination that ~~such~~ the animal feeding operation has violated or has failed to comply with any of the provisions of the Oklahoma Concentrated Animal Feeding Operations Act, or any promulgated rule ~~promulgated pursuant thereto~~ except as otherwise provided by the Oklahoma Agriculture Pollutant Discharge Elimination System Act or the Oklahoma Agriculture Environmental Permitting Act.

3. The ~~Board~~ Director shall have the power and duty to reinstate or renew any ~~such~~ suspended or revoked ~~licenses, or renew such licenses,~~ permit upon a satisfactory and acceptable showing and assurance that ~~such~~ the animal feeding operation conducted ~~animal feeding~~ operations in conformity with~~,~~ and in compliance with~~,~~ the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, and that ~~such~~ conformity and compliance will be continuous. Any determination made by the Director pursuant to this subsection shall be in compliance with the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the Oklahoma Agriculture Environmental Permitting Act.

B. In order to protect the public health and safety and the environment of this state, the ~~Board, pursuant to the Oklahoma Concentrated Animal Feeding Operations Act,~~ Director may deny issuance of a ~~license~~ permit or transfer of a ~~license~~ permit to establish and operate an animal feeding operation ~~on and after September 1, 1997,~~ to any person ~~or other legal entity which~~ that:

1. Is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any state or federal agency relating to animal feeding operations; or

2. Has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of noncompliance with environmental laws and rules resulting in endangerment of human health or the environment.

C. Any action taken in regard to the denial, suspension, or revocation of a ~~license~~ permit shall be in conformity with the ~~rules of the Board governing Administrative Procedures~~ Oklahoma Agriculture Environmental Permitting Act and the Administrative Procedures Act.

SECTION 47. AMENDATORY 2 O.S. 2001, Section 9-212.1, is amended to read as follows:

Section 9-212.1 A. Due to the inherently unique nature of poultry-laying operations, and the increased propensity for vector propagation at ~~such~~ those facilities, poultry-laying operations ~~licensed~~ permitted pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~,~~ shall be conducted only in a manner ~~as~~ prescribed ~~by the State Department of Agriculture~~ by ~~rule~~ rules promulgated pursuant to this section and the Oklahoma Concentrated Animal Feeding Operations Act.

B. If three valid complaints are received by the Department against a poultry-laying operation~~, licensed~~ permitted pursuant to the Oklahoma Concentrated Animal Feeding Operations Act~~,~~ within a period of sixty (60) calendar days, the ~~Department~~ Director of the Agriculture Pollutant Discharge Elimination System, upon inspection and verification of the complaint, shall declare that an emergency exists.

C. Whenever the ~~Department~~ Director finds that an emergency exists requiring immediate action to protect the public health or welfare or the environment pursuant to this subsection, the ~~Department~~ Director may without notice or hearing issue an order, effective upon issuance, reciting the existence of ~~such~~ an emergency and requiring that ~~such~~ action be taken as deemed necessary by the Director to meet the emergency. Any person to whom ~~such~~ an order is directed shall comply ~~therewith~~ immediately but may request an administrative enforcement hearing ~~thereon~~ within fifteen (15) working days after the order is served. ~~Such~~ The hearing shall be

held ~~by the Department~~ within ten (10) working days after receipt of the request. On the basis of the hearing record, the ~~Department~~ Director shall sustain or modify ~~such~~ the order.

D. If, at the hearing, it is determined that the operator is in violation of the provisions of this section and rules promulgated pursuant thereto, in addition to other administrative penalties authorized by law, the ~~Department~~ Director may order that the operator be prohibited from land applying waste for one hundred sixty (160) calendar days after determination that the facility is in violation.

E. Any party aggrieved by a final order may petition ~~the Department~~ for rehearing, reopening, or reconsideration within ten (10) working days from the date of the entry of the final order. Any party aggrieved by a final order, including the Attorney General on behalf of the state, may, pursuant to the Administrative Procedures Act, petition for ~~a~~ judicial review ~~thereof~~.

F. The provisions of this section may be enforced pursuant to the provisions of Section ~~9-212 of Title 2 of the Oklahoma Statutes~~ 46 of this act.

SECTION 48. AMENDATORY Section 2, Chapter 94, O.S.L. 2002 (2 O.S. Supp. 2003, 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 49. 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 1 through 47 of this act.

SECTION 50. 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, association, firm, company, public trust, joint-stock company, trust, estate, state or federal agency, other governmental entity, or any other legal entity or an agent, employee, representative, assignee or successor thereof;

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 51. RECODIFICATION 2 O.S. 2001, Sections 9-200, 9-201, 9-202 and 9-203, as amended by Sections 21, 22, 23 and 24 of this act, 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, as amended by Sections 25, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 46 of this act, shall be recodified as Sections 20-5, 20-6, 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, 20-22, 20-23 and 20-26 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 20-25 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering. 2 O.S. 2001, Section 9-212.1, as amended by Section 47 of this act, shall be recodified as Section 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 20-29 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 20-30 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 52. REPEALER 2 O.S. 2001, Section 9-212 and Section 1, Chapter 31, O.S.L. 2004 (2 O.S. Supp. 2004, Section 20-24), are hereby repealed.

SECTION 53. This act shall become effective July 1, 2005.

SECTION 54. 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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