

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1397

By: Easley, Crain, Eason
McIntyre and Adelson of the
Senate

and

Sullivan of the House

COMMITTEE SUBSTITUTE

(agriculture - Best Management Practices - animal
waste -

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 8-90.1 of Title 2, unless there
is created a duplication in numbering, reads as follows:

Sections 1 through 3 of this act shall be known and may be cited
as the "Nutrient Management Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 8-90.2 of Title 2, unless there
is created a duplication in numbering, reads as follows:

As used in the Nutrient Management Act:

1. "Nutrient" means a substance or recognized plant nutrient,
element or compound that is used or sold for its plant nutritive
content or its claimed nutritive value, and includes but is not
limited to poultry or other animal waste, compost as fertilizer,
commercially manufactured chemical or organic fertilizer and any
combination thereof;

2. "Nutrient management unit" means the field, group of fields or other land units that collectively include all land area within any nutrient-limited watershed designated as such according to Section 1085.30a of Title 82 of the Oklahoma Statutes upon which nutrients may be applied and managed pursuant to a nutrient management plan subject to the jurisdiction of an environmental agency;

3. "Nutrient Limited Watershed" means a watershed identified by a hydrological Unit Code (HUC) as compiled by the United States Geological Survey, Natural Resources Conservation Services; and

4. "Nutrient Management Plan" means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state as required by the Oklahoma Department of Agriculture, Food, and Forestry. As used in this act the term Nutrient Management Plan includes plans that may be referred to as "Animal Waste Management Plans", "Comprehensive Nutrient Management Plans", or "Conservation Plans" and is intended to encompass any written plan, however denominated, that prescribes standards and conservation practices for the land application of nutrients.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-90.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. In the Eucha-Spavianw Watershed (HUC 11070206) the land application of nutrients shall follow the requirements of the Eucha-Spavinaw Phosphorus Index (ESPI) risk assessment tool adopted by the Court in the federal court proceeding styled the City of Tulsa et al. v Tyson Foods, Inc. et al., Case No. 01 CV0900EA(C) in the United States District Court for the Northern District of Oklahoma by court order entered on February 13, 2004, developed to govern the terms and conditions which nutrients may be land applied in the Eucha-Spavinaw Watershed.

2. The State Board of Agriculture may amend the ESPI by rule if it is determined that a more restrictive rate for nutrient application is necessary to protect water quality.

3. Prior to the application of nutrients within the Eucha-Spavinaw a soil test shall be performed annually to determine soil pH and plant available nutrients including at least nitrogen, phosphorus and potassium.

4. The environmental agencies within their areas of jurisdiction shall assist in updating and proceeding with the application of the Watershed Restoration Action Strategy plan prepared for the Eucha-Spavinaw watershed.

5. Where appropriate the agency's Water Quality Improvement Plan document shall be amended to reflect the goals of the Watershed Restoration Action Strategy.

B. 1. In Nutrient Limited Watersheds, except as provided in this act, the Oklahoma Department of Agriculture, Food, and Forestry within its area of environmental jurisdiction shall work cooperatively with the Oklahoma Conservation Commission when a Watershed Restoration Plan has been developed that has determined the need to restrict the land application of nutrients to protect water quality.

2. Each Nutrient Management Unit as defined by the Oklahoma Department of Agriculture, Food, and Forestry within their jurisdiction shall apply nutrients according to Natural Resources Conservation Service (NRCS) standards for land application of nutrients.

3. All governmental entities conducting water quality monitoring shall provide the Oklahoma Department of Agriculture, Food, and Forestry the stream flow and concentration data every six (6) months commencing on January 31, 2007. Provided that:

- a. historical water quality data shall be provided to the Oklahoma Department of Agriculture, Food, and Forestry upon request, and
- b. the Oklahoma Department of Agriculture, Food, and Forestry shall use water quality monitoring data to determine how best to regulate the land application of nutrients within the watershed to bring about compliance with water quality standards.

C. The Oklahoma Department of Agriculture, Food, and Forestry shall work cooperatively with interstate agencies to develop innovative strategies in order to expedite pollutant reductions.

SECTION 4. AMENDATORY 2 O.S. 2001, Section 10-9.1, is amended to read as follows:

Section 10-9.1 A. Sections ~~±~~ 10-9.1 through ~~±~~ 10-9.12 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Registered Poultry Feeding Operations Act".

B. As used in Sections ~~±~~ 10-9.1 through ~~±~~ 10-9.23 of this ~~act~~ title:

1. "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 as required by the State Department of Agriculture pursuant to the provisions of Section ~~7~~ 10-9.7 of this ~~act~~ title. As used in the Oklahoma Registered Poultry Feeding Operations Act, the term AWMP shall include plans that may be referred to as "Nutrient Management Plans", "Comprehensive Nutrient Management Plans", or "Conservation Plans" and is intended to encompass any written plan, however denominated, that prescribes standards and conservation practices for the land application of poultry waste or other nutrients as defined herein. A plan that prescribes standards and conservation practices for land application of poultry waste or other nutrition's that is issued under or required by another federal or state law,

rule or regulation may qualify as an AWMP if it meets all the requirements of this act;

2. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices which prevent or reduce the pollution of waters of the state as established by the State Department of Agriculture pursuant to Section 7 10-9.7 of this ~~act~~ title;

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

4. "Certificate" means a written document issued to an individual by the Board pursuant to Section ~~17~~ 10-9.17 of this ~~act~~ title which indicates that the individual is authorized to land apply poultry waste by the Oklahoma Poultry Waste Applicators Certification Act;

5. "Certified poultry waste applicator" means a person who has been certified by the Board to land apply poultry waste and includes a commercial poultry waste applicator and a private poultry waste applicator;

6. "Commercial poultry waste applicator" means any person who engages in commercial land application of poultry waste. Any farmer while working for a neighbor in agricultural production, and not advertising, nor holding himself or herself out to be in the business of land applying poultry waste, shall not be classified as a commercial poultry waste applicator, but as a private poultry waste applicator;

7. "Contract growing arrangement" means any growout contract, marketing agreement, or other arrangement under which a contract poultry grower cares for or raises poultry;

8. "Contract poultry grower" means any person engaged in the business of caring for or raising poultry, under a contract growing arrangement;

9. "Common ownership" includes but is not limited to any person who has power or authority to manage, direct, restrict, regulate or

oversee the operation or has financial control of two or more poultry feeding operations;

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

11. "Expanding operation" means a registered poultry feeding operation that seeks to increase its registered capacity in excess of ten percent (10%) of the facility's original registered capacity;

12. "Eucha-Spavinaw Watershed" means the watershed for Lakes Eucha and Spavinaw located in Delaware and/or Mayes counties, as further defined in the federal court proceeding styled City of Tulsa et al. v. Tyson Foods, Inc. et al., No. 01 CV 0900 EA(C), filed in the United States District Court for the Northern District of Oklahoma in December, 2001, and by Hydrologic Unit Code (HUC) 11070206 as compiled by the United States Geological Survey, Natural Resources Conservation Services;

13. "Facility" means any place, site or location or part thereof where poultry are kept, handled, housed or otherwise maintained including but not limited to buildings, lots, pens and poultry waste management systems;

~~13.~~ 14. "Integrator" means an entity which unites the elements associated with the poultry industry, including but not limited to hatching, feeding, processing and marketing. It includes, but is not limited to, situations when growing is contracted out to others and when the integrator operates its own growing facilities;

~~14.~~ 15. "Land application" means the spreading on, or incorporation into, the soil mantle primarily for beneficial purposes;

16. "Nutrient" means a substance or recognized plant nutrient, element, or compound that is used or sold for the plant nutritive content or the claimed nutritive value, and includes, but is not limited to, poultry or other animal waste, compost as fertilizer,

commercially manufactured chemical and organic fertilizer, sewage sludge, and any combinations thereof;

~~15.~~ 17. "Operator" means the person who performs the daily management functions associated with the poultry feeding operation, waste facility or nutrient management unit, which term includes, but is not limited to, the owner thereof;

~~16.~~ 18. "Person" means an individual, association, partnership, firm, company, public trust, corporation, joint stock company, trust estate, any other legal entity, or any agent, employee, representative assignor or successor thereof;

~~17.~~ 19. "Nutrient-limited watershed" means a watershed of a water body which is designated as "nutrient-limited" in the most recent Oklahoma's Water Quality Standards;

20. "Nutrient management unit" means the field, group of fields, or other land units that collectively include all land area within any nutrient-limited watershed, as designated by the Oklahoma Water Resources Board, that has a designated beneficial use of public water supply and serves over two hundred fifty thousand (250,000) users, and on which poultry waste or other nutrients will or may be applied and managed pursuant to a AWMP, provided that areas less than two and one-half (2 1/2) acres located within the limits of any incorporated city are excluded from this definition;

~~18.~~ 21. "Nutrient-vulnerable groundwater" means groundwater which is designated "nutrient-vulnerable" in the most recent Oklahoma's Water Quality Standards;

~~19.~~ 22. "Poultry" includes chickens, turkeys, ducks, geese and any other domesticated bird used for human food and/or animal feed;

~~20.~~ 23. "Poultry feeding operation" means a property or facility where the following conditions are met:

- a. poultry have been, are or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period,

- b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the property or facility, and
- c. producing over ten (10) tons of poultry waste per year;

~~21.~~ 24. "Poultry waste" means poultry excrement, poultry carcasses, feed wastes or any other waste associated with the confinement of poultry from a poultry feeding operation;

~~22.~~ 25. "Poultry waste utilization business" means a business at which poultry waste is collected, recycled, processed or recovered into reusable products including, but not limited to, fertilizer and animal feed;

~~23.~~ 26. "Poultry waste management system" means a combination of structures and practices serving a poultry feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of poultry waste;

~~24.~~ 27. "Private poultry waste applicator" means any person who is not a commercial poultry waste applicator but engages in the land application of poultry waste for purposes including, but not limited to, producing any agricultural commodity on property owned or rented by the person or such person's employer, or if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

~~25.~~ 28. "Waste facility" means any structure or combination of structures utilized to control poultry waste until it can be utilized in an authorized manner; and

~~26.~~ 29. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or

artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Process wastewaters shall not be considered as waters of the state if contaminated at the site.

SECTION 5. AMENDATORY 2 O.S. 2001, Section 10-9.7, is amended to read as follows:

Section 10-9.7 A. All poultry feeding operations, poultry waste utilization businesses, and nutrient management units shall utilize Best Management Practices and shall meet the conditions and requirements established by subsection B of this section and by rules promulgated by the State Board of Agriculture pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

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

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

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

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

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

- a. not create an environmental or a public health hazard,
- b. not result in the contamination of waters of the state, and
- c. conform to such other handling, treatment and management and removal requirements deemed necessary

by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry to implement the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

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

C. Every poultry feeding operation, poultry waste utilization business, and nutrient management unit shall have an Animal Waste Management Plan which shall include at a minimum:

1. A description of poultry waste handling procedures and availability of equipment and type of equipment to be used;
2. The calculations and assumptions used for determining land application rates;
3. All nutrient analysis data, for soil and poultry waste testing;
4. Legal description of lands to be used by an operation for land application;
5. Land application rates of poultry waste shall be based on the available nitrogen and phosphorous content of the poultry waste and shall provide controls for runoff and erosion as appropriate for site conditions;
6. The procedures documented in the Animal Waste Management Plan must ensure that the handling and utilization of poultry waste complies with the following requirements:
 - a. adequate poultry waste storage shall be provided consistent with rules promulgated by the ~~State~~

Oklahoma Department of Agriculture, Food, and Forestry

pursuant to subsection B of this section,

- b. poultry waste shall not be applied to land when the ground is saturated or during rainfall events.

Poultry waste shall not be applied to land when the ground is frozen except in conformance with the Animal Waste Management Plan,

- c. poultry waste shall only be applied to suitable land at appropriate times and rates. Discharge or runoff of waste from the application site is prohibited. Timing and rate of applications shall be based on assimilation capacity of the soil profile, assuming usual nutrient losses, expected precipitation, and soil conditions, and
- d. poultry waste application shall be prohibited on land subject to excessive erosion;

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

- a. if the poultry waste is sold or given to other persons for land application or other use, the poultry feeding operation shall maintain a log of: date of removal from the poultry feeding operation; name of recipient the poultry waste is sold or given to; and amount in wet tons, dry tons or cubic yards of poultry waste removed from the poultry feeding operation, and
- b. the poultry feeding operation shall make available to the recipient any nutrient sample analysis from that year;

8. Any analysis required by the provisions of the Oklahoma Registered Poultry Feeding Operations Act or rules promulgated thereto shall be performed by a qualified environmental testing

laboratory certified by the Department of Environmental Quality and approved by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry ; and

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

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

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

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

- a. soil pH and plant available nutrients including at least nitrogen, phosphorous and potassium,
- b. poultry or other animal waste nutrient concentrations and moisture, ~~and~~
- c. except as provided for in subparagraph d of this paragraph, application rate based upon current United

States Department of Agriculture Natural Resources Conservation Service Waste Utilization Standards, unless the State Department of Agriculture approves other standards, and

d. in the Eucha-Spavinaw Watershed, Best Management Practices and the AWMP shall address the handling and land application of poultry waste and all other nutrients at all poultry feeding operations, waste utilization businesses, and nutrient management units. The land application rate for poultry waste and all other nutrients at such facilities specified in any AWMP shall follow the requirements of the Eucha-Spavinaw Phosphorus Index risk assessment tool (ESPI) adopted by the Court in the federal court proceeding styled City of Tulsa et al. v. Tyson Foods, Inc. et al., No. 01 CV 0900 EA(C), filed in the United States District Court for the Northern District of Oklahoma by Court Order entered on February 13, 2004, developed to govern the terms and conditions under which nutrients may be land applied in the Eucha-Spavinaw Watershed. The ESPI shall include any modifications thereof whenever approved and adopted by the Court in the above referenced case so long as it retains jurisdiction to do so, and shall apply to all poultry feeding operations, poultry waste utilization businesses, and nutrient management units in the watershed, regardless of whether such entities were a party in the court proceeding, unless a more restrictive or protective application rate is prescribed by some other state or federal law, rule, or court order, in which case the more restrictive or protective rate shall be followed. The Board may

adopt by rule any revisions to the ESPI that it deems necessary to further the purposes of this act, provided however, that the Board may not revise the ESPI to make it any less protective or restrictive than existed immediately prior to adopting the rule.

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

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

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

G. Nothing in this section or any rule promulgated by the Board shall be construed to permit any act or practice that is otherwise prohibited under the Oklahoma Registered Poultry Feeding Operations Act, or any other applicable law, rule, regulation, or court order.

SECTION 6. AMENDATORY 2 O.S. 2001, Section 10-9.10, is amended to read as follows:

Section 10-9.10 A. 1. a. The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of any poultry feeding operation, poultry waste utilization business, or nutrient management unit for the purpose of investigating complaints as to the operation or to determine whether there are any violations of the Oklahoma Registered Poultry Feeding Operations Act.

b. This section shall not be construed to authorize the Board or its agents to violate any provision of the United States Constitution or the Oklahoma Constitution relating to unlawful search or seizure.

2. a. Registration of a poultry feeding operation or issuance of an AWMP to a nutrient management unit pursuant to the Oklahoma Registered Poultry Feeding Operations Act shall be deemed to constitute consent by the owner or operator for entry upon the premises of such operation by the Board or its agents for the purpose of implementing the provisions of this subsection.

b. The ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry shall make at least one inspection per calendar year of every poultry feeding operation or poultry waste utilization business registered pursuant to the Oklahoma Registered Poultry Feeding Operations Act and every nutrient management unit that is issued an AWMP pursuant to the act.

B. 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 when inspecting poultry feeding operations pursuant to their official duties specified by the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

2. Except for emergency situations or when enforcement of the provisions of the Oklahoma Registered Poultry 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. The Board shall maintain necessary records and undertake such studies, investigations and surveys for the proper administration of the Oklahoma Registered Poultry Feeding Operations Act.

SECTION 7. AMENDATORY Section 2, Chapter 65, O.S.L. 2002 (2 O.S. Supp. 2005, Section 10-9.19a), is amended to read as follows:

Section 10-9.19a A. Land application of poultry waste or other nutrients, whether performed by a private or commercial poultry waste applicator, shall comply at all times with the provisions set forth in:

1. The Animal Waste Management Plan, if application is conducted on land operated by a registered poultry operation or on a nutrient management unit; and

2. The Conservation Plan or any other plan, however denominated, if application is conducted on land operated by entities not regulated pursuant to the Registered Poultry Feeding Operations Act and is located in a nutrient-limited watershed, provided that such plans shall comply with the requirements of the Oklahoma Poultry Waste Applicators Certification Act.

B. The poultry waste applicator shall certify in writing at the time of application that the applicator has received and read a copy of the AWMP or other applicable plan and that the poultry waste or other nutrients have been applied in accordance therewith, and has provided a copy of the certification to the operator or owner of the application site and to the Oklahoma Department of Agriculture, Food, and Forestry upon filing the annual report for the applicator.

SECTION 8. 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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