ENROLLED HOUSE
BILL NO. 2604

By: DeWitt of the House

and

Shurden of the Senate

An Act relating to agriculture; amending 27A O.S. 2001, Section 1-3-103, as amended by Section 3, Chapter 100, O.S.L. 2004, and as renumbered by Section 4, Chapter 100, O.S.L. 2004 (2 O.S. Supp. 2005, Section 2-18.2), which relates to National Pollution Discharge Elimination System; modifying duty of the Oklahoma Department of Agriculture, Food, and Forestry; amending 2 O.S. 2001, Section 3-85, as amended by Section 1, Chapter 64, O.S.L. 2005 (2 O.S. Supp. 2005, Section 3-85), which relates to regulation of pesticides; amending 2 O.S. 2001, Section 8-41.16, which relates to the Oklahoma Commercial Feed Law; amending 2 O.S. 2001, Section 8-77.15, which relates to the Oklahoma Fertilizer Act; modifying the environmental jurisdiction of the Department of Environmental Quality; and providing an effective date.

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 1-3-103, as amended by Section 3, Chapter 100, O.S.L. 2004, and as renumbered by Section 4, Chapter 100, O.S.L. 2004 (2 O.S. Supp. 2005, Section 2-18.2), is amended to read as follows:

Section 2-18.2 The Oklahoma Department of Agriculture, Food, and Forestry is hereby designated as an official environmental regulatory agency for agricultural point source and nonpoint source pollution within its jurisdiction as specified in subsection D of Section 1-3-101 of Title 27A of the Oklahoma Statutes. The Department is hereby authorized and directed to ~~seek delegation~~ obtain authorization from the Environmental Protection Agency (EPA) to administer any and all of the National Pollution Discharge Elimination System (NPDES) programs for agricultural point and nonpoint source discharges within its specified jurisdiction.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 3-85, as amended by Section 1, Chapter 64, O.S.L. 2005 (2 O.S. Supp. 2005, Section 3-85), is amended to read as follows:

Section 3-85. A. 1. The State Board of Agriculture shall administer and enforce the provisions of this subarticle and shall promulgate rules and standards for the application, use or sale of pesticides, rules for pesticide registration, standards for contracts and recordkeeping, work performance, prescribe standards

for the licensing of application of pesticides, issuing pesticide dealer permits, certification, recertification procedures, and storing and disposal of pesticide and pesticide containers.

2. The rules and standards shall conform, at a minimum, to existing state law, and to the Federal Insecticide, Fungicide and Rodenticide Act.

3. The Board shall cooperate with and negotiate reciprocal agreements with the federal government or any state, or any department or agency of either for the purpose of fulfilling the intent of this subarticle and securing uniformity of rules.

4. The Board may inspect any work, records, or contracts of each applicator, manufacturer, or dealer to determine whether or not the work is performed according to the provisions of this subarticle.

5. For the purpose of securing uniformity of rules, no city, town, county, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or statute regarding pesticide sale or use that is more stringent than the rules of the Board, including, but not limited to, registration, notification, posting, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information, or product composition.

6. The Board may take samples of pesticide materials in order to determine their concentration or residue level. If the Board finds that such samples are not within established standards, the Board's finding shall be considered prima facie evidence that a violation has occurred.

a. The concentration of an active ingredient for a pesticide concentrate, shall not exceed or be less than the concentration of active ingredient stated on the pesticide label by more or less than the tolerance for active ingredient concentration specified by this paragraph. Concentrations above or below the established tolerance shall be prima facie evidence that a pesticide is adulterated or misbranded:

(1) pesticides with a stated concentration of active ingredient less than 0.51% shall not exceed 150% or fail to meet 80% of the stated active ingredient on the pesticide label when analyzed,

(2) pesticides with a stated concentration of active ingredient not less than 0.51% and not more than 1.0% shall not exceed 140% or fail to meet 85% of the stated active ingredient on the pesticide label when analyzed,

(3) pesticides with a stated concentration of active ingredient not less than 1.01% and not more than 5.00% shall not exceed 140% or fail to meet 90% of the stated active ingredient on the pesticide label when analyzed,

(4) pesticides with a stated concentration of active ingredient not less than 5.01% and not more than 10.00% shall not exceed 130% or fail to meet 92% of the stated active ingredient on the pesticide label when analyzed,

(5) pesticides with a stated concentration of active ingredient not less than 10.01% and not more than 50.00% shall not exceed 125% or fail to meet 94% of the stated active ingredient on the pesticide label when analyzed, and

(6) pesticides with a stated concentration of active ingredient not less than 50.01% and more than 100.00% shall not exceed 115% or fail to meet 96% of the stated active ingredient on the pesticide label when analyzed~~;~~.

b. The concentration of an active ingredient for a pesticide concentrate in fertilizer and pesticide mixtures, pressed blocks and nonuniform baits shall not be less than the concentration of active ingredient stated on the pesticide label for the tolerance for active ingredient concentration specified by this paragraph. Concentrations below the established tolerance shall be prima facie evidence that a pesticide is adulterated or misbranded:

(1) when the stated concentration of active ingredient on the pesticide label is less than 1.26% the minimum amount of active ingredient shall be at least 67.0% of the stated concentration on the pesticide label when analyzed,

(2) when the stated concentration of active ingredient on the pesticide label is not less than 1.26% or more than 5.0% the minimum amount of active ingredient shall be at least 80.0% of the stated concentration on the pesticide label when analyzed, and

(3) when the stated concentration of active ingredient on the pesticide label is more than 5.0% the minimum amount of active ingredient shall be at least 85.0% of the stated concentration on the pesticide label when analyzed.

c. The concentration of an active ingredient for a pesticide concentrate in rotenone, pyrethrin and other natural product formulations shall not be less than the concentration of active ingredient stated on the pesticide label for the tolerance for active ingredient concentration specified by this paragraph. Concentrations below the established tolerance shall be prima facie evidence that a pesticide is adulterated or misbranded:

(1) when the stated concentration of active ingredient on the pesticide label is less than 0.51% the minimum amount of active ingredient shall be at least 70.0% of the state concentration on the pesticide label when analyzed,

(2) when the stated concentration of active ingredient on the pesticide label is not less than 0.51% or more than 1.25% the minimum amount of active ingredient shall be at least 80.0% of the stated concentration on the pesticide label when analyzed, and

(3) when the stated concentration of active ingredient on the pesticide label is more than 1.25% the minimum amount of active ingredient shall be at least 85.0% of the stated concentration on the pesticide label when analyzed~~;~~.

d. The concentration of an active ingredient for a pesticide tank mix, as stated by the applicator and allowed by the pesticide label, shall not exceed or be less than the concentration of active ingredient stated by more or less than the tolerance for active ingredient concentration specified by this paragraph. Concentrations above or below the established tolerance shall be prima facie evidence of a use unsuitable, unsafe or inconsistent with its label or labeling. No pesticide shall be formulated into a tank mix at a concentration in excess of or below that permitted by the pesticide label without written approval from an authorized agent of the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry:

(1) when the stated concentration or that allowed by the pesticide label is less than 0.51% the minimum amount of active ingredient in the tank mix shall be at least 60.0% and not more than 150.0% of the stated concentration or that allowed by the pesticide label when analyzed,

(2) when the stated concentration or that allowed by the pesticide label is not less than 0.51% and not more than 1.0% the minimum amount of active ingredient in the tank mix shall be at least 70.0% and not more than 140.0% of the stated concentration or that allowed by the pesticide label when analyzed,

(3) when the stated concentration or that allowed by the pesticide label is not less than 1.01% and not more than 5.0% the minimum amount of active ingredient in the tank mix shall be at least 80.0% and not more than 140.0% of the stated concentration or that allowed by the pesticide label when analyzed,

(4) when the stated concentration or that allowed by the pesticide label is not less than 5.01% and not more than 10.0% the minimum amount of active ingredient in the tank mix shall be at least 84.0% and not more than 130.0% of the stated concentration or that allowed by the pesticide label when analyzed,

(5) when the stated concentration or that allowed by the pesticide label is not less than 10.01% and not more than 50.0% the minimum amount of active ingredient in the tank mix shall be at least 88.0% and not more than 125.0% of the stated concentration or that allowed by the pesticide label when analyzed, and

(6) when the stated concentration or that allowed by the pesticide label is not less than 50.01% and not more than 100.0% the minimum amount of active ingredient in the tank mix shall be at least 92.0% and not more than 115.0% of the stated concentration or that allowed by the pesticide label when analyzed~~;~~.

e. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for post construction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within one hundred eighty (180) days of treatment for vertical barriers. Soil residue concentration below the threshold level specified by this paragraph shall be prima facie evidence of a use unsuitable, unsafe or inconsistent with its label or labeling:

(1) the termiticide Torpedo shall have a soil residue threshold level of at least sixty-three (63) ppm,

(2) the termiticide Tribute shall have a soil residue threshold level of at least one hundred fifty (150) ppm,

(3) the termiticide Prevail FT shall have a soil residue threshold level of at least forty-six (46) ppm,

(4) the termiticide Demon TC shall have a soil residue threshold level of at least twenty-eight (28) ppm,

(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least eighty-five (85) ppm,

(6) the termiticide Dursban TC shall have a soil residue threshold level of at least fifty-one (51) ppm, and

(7) the termiticide Premise shall have a soil residue threshold level of at least ten (10) ppm~~;~~.

f. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for preconstruction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within thirty (30) days of treatment for vertical barriers. Soil residue concentration below the threshold level specified by this paragraph shall be prima facie evidence of a use unsuitable, unsafe or inconsistent with its label or labeling:

(1) the termiticide Torpedo shall have a soil residue threshold level of at least ninety (90) ppm,

(2) the termiticide Tribute shall have a soil residue threshold level of at least two hundred four (204) ppm,

(3) the termiticide Prevail FT shall have a soil residue threshold level of at least sixty-four (64) ppm,

(4) the termiticide Demon TC shall have a soil residue threshold level of at least forty-one (41) ppm,

(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least ninety-seven (97) ppm,

(6) the termiticide Dursban TC shall have a soil residue threshold level of at least one hundred (100) ppm, and

(7) the termiticide Premise shall have a soil residue threshold level of at least ten (10) ppm~~;~~.

g. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for preconstruction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within one hundred eighty (180) days of treatment for vertical barriers. Soil residue concentration below the threshold level specified by this paragraph shall be prima facie evidence of a use unsuitable, unsafe or inconsistent with its label or labeling:

(1) the termiticide Torpedo shall have a soil residue threshold level of at least sixty-three (63) ppm,

(2) the termiticide Tribute shall have a soil residue threshold level of at least one hundred fifty (150) ppm,

(3) the termiticide Prevail FT shall have a soil residue threshold level of at least forty-six (46) ppm,

(4) the termiticide Demon TC shall have a soil residue threshold level of at least twenty-eight (28) ppm,

(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least eighty-five (85) ppm,

(6) the termiticide Dursban TC shall have a soil residue threshold level of at least fifty-one (51) ppm, and

(7) the termiticide Premise shall have a soil residue threshold level of at least ten (10) ppm~~;~~.

h. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for preconstruction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within thirty (30) days of treatment for horizontal barriers. Soil residue concentration below the threshold level specified by this paragraph shall be prima facie evidence of a use unsuitable, unsafe or inconsistent with its label or labeling:

(1) the termiticide Torpedo shall have a soil residue threshold level of at least sixty-eight (68) ppm,

(2) the termiticide Tribute shall have a soil residue threshold level of at least one hundred fifty three (153) ppm,

(3) the termiticide Prevail FT shall have a soil residue threshold level of at least forty-eight (48) ppm,

(4) the termiticide Demon TC shall have a soil residue threshold level of at least thirty-one (31) ppm,

(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least seventy-three (73) ppm,

(6) the termiticide Dursban TC shall have a soil residue threshold level of at least seventy-five (75) ppm, and

(7) the termiticide Premise shall have a soil residue threshold level of at least five (5) ppm~~;~~.

i. The threshold level for soil residue of pesticide concentration expressed in parts per million (ppm) for preconstruction termiticide treatment shall meet or exceed the established concentration specified by this paragraph in soils sampled within one hundred eighty (180) days of treatment for horizontal barriers. Soil residue concentration below the threshold level specified by this paragraph shall be prima facie

evidence of a use unsuitable, unsafe or inconsistent with its label or labeling:

(1) the termiticide Torpedo shall have a soil residue threshold level of at least forty-seven (47) ppm,

(2) the termiticide Tribute shall have a soil residue threshold level of at least one hundred thirteen (113) ppm,

(3) the termiticide Prevail FT shall have a soil residue threshold level of at least thirty-five (35) ppm,

(4) the termiticide Demon TC shall have a soil residue threshold level of at least twenty-one (21) ppm,

(5) the termiticide Dragnet FT shall have a soil residue threshold level of at least sixty-four (64) ppm,

(6) the termiticide Dursban TC shall have a soil residue threshold level of at least thirty-eight (38) ppm, and

(7) the termiticide Premise shall have a soil residue threshold level of at least five (5) ppm~~;~~.

j. The State Board of Agriculture may promulgate, by rule, interim maximum and minimum concentrations or thresholds for the other concentrate of pesticides in products, or soil residues.

B. Authorized agents of the Board shall have the authority to issue notices of violation, citations, compliance orders, stop sales, or stop work orders to those persons committing violations of the laws or rules relating to pesticides or pesticide application in this state.

C. 1. Examinations of pesticides or devices shall be made under the direction of the Board for the purpose of determining if there has been compliance with the requirements of this subarticle.

2. If it appears from examination that a pesticide or device fails to comply with the provisions of this subarticle, and the Board contemplates instituting administrative proceedings against any person, the Board shall cause notice and an opportunity for a hearing given to the person pursuant to the Administrative Procedures Act~~;~~.

D. 1. Any pesticide or device distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate or interstate commerce may be seized by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry in any county of the state where it may be found and if:

a. in the case of a pesticide, it is adulterated or misbranded, it has not been registered under the provisions of this subarticle, it fails to bear on its

label the information required by this subarticle, or it is a white powder pesticide and it is not colored as required under this subarticle, or

b. in the case of a device, it is misbranded.

2. If the pesticide or device is condemned it shall, after entry of decree or judgment of a district court, be disposed of by destruction or sale as the court may direct. If the article is sold, the proceeds, less court costs, shall be paid to the State Department of Agriculture Revolving Fund~~;~~.

3. The court shall not order the sale or disposal of a condemned pesticide or device in a manner which would be a violation of this subarticle or rules promulgated thereto~~;~~.

4. The person or entity directed to dispose or sell the condemned pesticide or device shall do so in a manner that complies with the order of the district court and this subarticle and rules promulgated thereto~~;~~.

5. The court may direct that the pesticide or article be delivered to the owner for relabeling or reprocessing~~;~~.

6. If there is a person who is successful in intervening as claimant of the pesticide or device, when a decree of judgment of condemnation is entered against the pesticide or device, court costs, fees, storage, and other proper expenses shall be awarded against such claimant.

E. The Board may, by publication in a manner as it may prescribe, give notice of all judgments entered in action, instituted under the authority of this subarticle.

F. All authority vested in the Board by the provisions of this subarticle shall with like force and effect be executed by its officers, employees, and authorized agents.

G. EXCEPTION – The fines provided for violations of this subarticle may not apply to:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if the carrier permits the Board upon request to copy all records showing the transaction in and movement of the pesticide and devices involved;

2. Public officials of this state and of the Federal Government engaged in the performance of official duties;

3. The manufacturer or shipper of a pesticide or device for experimental use only, by or under the supervision of an agency of this state or of the Federal Government authorized by law to conduct research in the field of pesticides or devices, or by others if the pesticide or the device is not sold or if the container is plainly and conspicuously marked "for experimental use only - not to be sold", together with the manufacturer's name and address, if a written permit has been obtained from the Board. Pesticides or devices may be sold for experimental purposes subject to restrictions set forth in the permit; and

4. Pesticides and devices intended solely for export to a foreign country, and prepared or packed according to the specifications or directions of the purchaser. If not exported, all of the provisions of this subarticle shall apply.

H. 1. The Department of Environmental Quality shall have environmental jurisdiction over:

~~1. Commercial~~

a. commercial manufacturers of fertilizers, grain~~,~~ and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile ~~mills,~~ mill and other agricultural products~~;~~

~~2. Slaughterhouses~~,

b. slaughterhouses, but not including feedlots at ~~slaughterhouses;~~ these facilities, and

~~3. Animal aquaculture~~

c. aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface ~~impoundment~~ impoundments and land application of wastes and sludge, and other pollution originating at these facilities; and

~~4.~~ 2. Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal National Pollutant Discharge Elimination Systems (NPDES) regulations to obtain a 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~~; and~~

~~5. Any point source and nonpoint source discharges related to agriculture as specified in paragraph 1 of subsection D of Section 6 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under 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 the permit~~.

I. This section shall not prevent any political subdivision from complying with any applicable federal law or regulation. A political subdivision which takes any action prohibited by this title in order to comply with federal requirements shall notify the Board of its compliance plan prior to taking any action. The Board may assist the political subdivision in complying with federal requirements necessary to carry out the policy of this section. The Board may permit a political subdivision to impose standards more stringent than required by the Board if necessary for the political subdivision to comply with federal requirements.

SECTION 3. AMENDATORY 2 O.S. 2001, Section 8-41.16, is amended to read as follows:

Section 8-41.16 A. The Department of Environmental Quality shall have environmental jurisdiction over:

1. ~~a.~~ ~~commercial~~ Commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile ~~mills,~~ mill and other agricultural products~~,~~;

~~b. slaughterhouses~~

2. Slaughterhouses, but not including feedlots at ~~such~~ these facilities~~,~~; and

~~c. aquaculture~~

3. 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 ~~the~~ these facilities~~; and~~.

~~2.~~ B. Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal National Pollutant Discharge Elimination System (NPDES) regulations to obtain a ~~federal National Pollutant Discharge Elimination System~~ permit for storm water ~~runoff. Storm water runoff~~ discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

~~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 permit and which are not specified under paragraphs 1 and 2 of this section 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 this permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.~~

SECTION 4. AMENDATORY 2 O.S. 2001, Section 8-77.15, is amended to read as follows:

Section 8-77.15 A. No person owning or operating a fertilizer storage facility or a commercial fertilizer facility shall discharge or release or place or cause to be placed any fertilizer material in a location where it is likely to cause contamination of any surface water or groundwater of this state. The provisions of this subsection shall not prohibit or restrict the land application of fertilizer for agriculture purposes or plant growth.

B. Preventive measures designed to minimize the possibility of fertilizer substances being introduced into waters of the state shall be subject to State Board of Agriculture jurisdiction including regulatory response.

C. 1. The Department of Environmental Quality shall have environmental jurisdiction over:

a. ~~(1)~~ commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile ~~mills,~~ mill and other agricultural products,

~~(2) slaughterhouses~~

b. slaughterhouses, but not including feedlots at ~~such~~ these facilities, and

~~(3) aquaculture~~

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 ~~the~~ these facilities~~, and~~.

~~b. facilities~~

2. Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal National Pollutant Discharge Elimination System (NPDES) regulations to obtain a ~~federal National Pollutant Discharge Elimination System~~ permit for storm water discharges~~. Storm water discharges~~ shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

~~2. 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 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 this permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.~~

D. Bulk fertilizers shall be stored in a manner that minimizes the release of fertilizers and protects the environment. Fertilizer use and application may be established in rules to protect the environment.

SECTION 5. This act shall become effective November 1, 2006.

Passed the House of Representatives the 18th day of May, 2006.

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Presiding Officer of the House of Representatives

Passed the Senate the 23rd day of May, 2006.

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Presiding Officer of the Senate