

CS for EHB 1467

1 THE STATE SENATE
2 Tuesday, April 12, 2005

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 1467

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1467 - By: DeWITT
7 of the House and SHURDEN of the Senate.

8 [agriculture - Oklahoma Agriculture Pollutant Discharge
9 Elimination System Act - codification - noncodification -
10 recodification - effective date -
11 emergency]

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

13 SECTION 1. AMENDATORY 2 O.S. 2001, Section 1-3, as last
14 amended by Section 1, Chapter 3, O.S.L. 2003 (2 O.S. Supp. 2004,
15 Section 1-3), is amended to read as follows:

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

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

- 1 2. "Board" means the State Board of Agriculture;
- 2 3. "Code" means the Oklahoma Agricultural Code;
- 3 4. "Department" means the Oklahoma Department of Agriculture,
4 Food, and Forestry and its employees, officers, and divisions.
5 Whenever the name "Department of Agriculture" appears in any law,
6 contract or other document, it shall be deemed to refer to the
7 Oklahoma Department of Agriculture, Food, and Forestry;
- 8 5. "Director" means the Director of a division established in
9 the Oklahoma Department of Agriculture, Food, and Forestry;
- 10 6. "License" means a written document issued by the Board
11 granting authority to a person to engage in a business, occupation,
12 or activity;
- 13 7. "Livestock" or "animals" means any cattle, bison, horses,
14 sheep, goats, asses, mules, swine, domesticated rabbits, and
15 chickens, turkeys, and other domesticated fowl, and any animal or
16 bird in captivity;
- 17 8. "Permit" means a written document issued by the Board giving
18 consent for a person to engage in an activity;
- 19 9. "Person" means the state, any municipality, political
20 subdivision, institution, individual, public or private corporation,
21 partnership, association, firm, company, public trust, joint-stock
22 company, trust, estate, state or federal agency, other governmental

1 entity, or any other legal entity or an agent, employee,
2 representative, assignee or successor thereof;

3 10. "President" means the President of the State Board of
4 Agriculture. The President of the State Board of Agriculture shall
5 also be designated as the Commissioner of Agriculture;

6 11. "Producer" means any person planting, raising, growing, or
7 harvesting agricultural products;

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

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

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

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

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

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

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

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

11 C. The provisions contained in the Oklahoma Agriculture
12 Pollutant Discharge Elimination System Act shall only apply to those
13 programs established pursuant to the environmental jurisdiction of
14 the Department as stated in Section 1-3-101 of Title 27A of the
15 Oklahoma Statutes and shall include, but not be limited to, the
16 Oklahoma Concentrated Animal Feeding Operations Act program.

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

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

21 2. Water protection; and

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

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

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

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

- 12 a. the Administrative Procedures Act,
- 13 b. the Oklahoma Agricultural Code, and
- 14 c. rules promulgated thereunder;

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

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

18 4. "Department" means the Oklahoma Department of Agriculture,
19 Food, and Forestry;

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

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

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

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

14 9. "Environment" includes the air, land, wildlife, and waters
15 of the state;

16 10. "Formal public meeting" means a formal public forum, held
17 by the Department when authorized by the provisions of the Oklahoma
18 Agricultural Code, and conducted by a presiding officer pursuant to
19 the requirements of the Oklahoma Agricultural Code and rules
20 promulgated thereunder, at which an opportunity is provided for the
21 presentation of oral comments made and written views submitted
22 within reasonable time limits as determined by the presiding
23 officer. Public meeting shall mean a "public hearing" when held

1 pursuant to requirements of the Code of Federal Regulations or the
2 Oklahoma Agriculture Pollutant Discharge Elimination System Act. A
3 public meeting shall not be a quasi-judicial proceeding;

4 11. "Nonpoint source" means the contamination of the
5 environment with a pollutant for which the specific point of origin
6 may not be well-defined and includes, but is not limited to,
7 agricultural storm water runoff and return flows from irrigated
8 agriculture;

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

17 13. "Pollutant" means dredged spoil, solid waste, incinerator
18 residue, sewage, garbage, sewage sludge, munitions, chemical wastes,
19 biological materials, radioactive materials, heat, wrecked or
20 discarded equipment, rock, sand, cellar dirt and industrial,
21 municipal, and agricultural waste discharged into waters of the
22 state;

1 14. "Pollution" means the presence or the release in the
2 environment of any substance, contaminant or pollutant, any other
3 alteration of the physical, chemical or biological properties of the
4 environment, the release of any liquid, gaseous or solid substance
5 into the environment:

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

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

15 15. "Schedule of compliance" means a schedule of remedial
16 measures including, but not limited to, an enforceable sequence of
17 actions or operations leading to compliance with an effluent
18 limitation, other limitation, prohibition, or standard;

19 16. "Serious bodily injury" means bodily injury which involves
20 a substantial risk of death, unconsciousness, extreme physical pain,
21 protracted and obvious disfigurement, or protracted loss or
22 impairment of the function of a bodily member, organ, or mental
23 faculty;

1 17. "Storm water" means rainwater runoff, snow melt runoff, and
2 surface runoff and drainage;

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

9 19. "Waters of the state" means all streams, lakes, ponds,
10 marshes, watercourses, waterways, wells, springs, irrigation
11 systems, drainage systems, storm sewers and all other bodies or
12 accumulations of water, surface and underground, natural or
13 artificial, public or private, which are contained within, flow
14 through or border upon this state or any portion thereof, and shall
15 include under all circumstances the waters of the United States
16 which are contained within the boundaries of, flow through or border
17 upon this state or any portion thereof. Provided, waste treatment
18 systems, including treatment ponds and lagoons designed to meet
19 federal and state requirements other than cooling ponds as defined
20 in the federal Clean Water Act or promulgated rules, are not waters
21 of the state.

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

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

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

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

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

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

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

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

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

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

16 B. The Department shall have authority to:

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

19 a. establish, maintain, and submit plans, specifications,
20 records, and other data relative to disposal systems
21 or any part thereof, in connection with the issuance
22 of discharge permits or in connection with any permit,

- 1 purposes, or requirements of the Oklahoma Agriculture
2 Pollutant Discharge Elimination System Act,
3 b. make reports, to install, calibrate, use, and maintain
4 monitoring equipment or methods including biological
5 monitoring methods,
6 c. take samples of effluents in the manner as may be
7 prescribed, and
8 d. provide other information as may be reasonably
9 required;

10 2. Take all actions that may be necessary or incidental to
11 implement and maintain a pollutant discharge permit program and
12 sludge program, including the authority to assume and obtain
13 authorization to implement and maintain a portion of the National
14 Pollutant Discharge Elimination System state permit program and a
15 state sludge program pursuant to Section 402 and other provisions of
16 the federal Clean Water Act and other applicable federal law. The
17 Director may issue permits for the discharge of pollutants and storm
18 water from facilities and activities within the areas of
19 environmental jurisdiction of the Department specified in Section 1-
20 3-101 of Title 27A of the Oklahoma Statutes;

21 3. Take necessary and appropriate actions to revoke, modify,
22 refuse to renew, suspend, place on probation, reinstate, or
23 otherwise administer and enforce discharge permits and sludge

1 permits issued by the United States Environmental Protection Agency
2 which are transferred to the Department upon federal authorization
3 of the Agriculture Pollutant Discharge Elimination System program of
4 the Department; and

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

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

14 Any employee of the Oklahoma Department of Agriculture, Food,
15 and Forestry in a technical, supervisory or administrative position
16 relating to the review, issuance, or enforcement of permits pursuant
17 to the Oklahoma Agricultural Code who is an owner, stockholder,
18 employee or officer of, or who receives compensation from, any
19 corporation, partnership, or other business or entity which is
20 subject to regulation by the Department shall disclose the interest
21 to the Commissioner of the Oklahoma Department of Agriculture, Food,
22 and Forestry. Disclosures shall be submitted for Board review and
23 shall be made a part of the Board minutes available to the public.

1 This section shall not apply to financial interests occurring by
2 reason of participation of an employee in the Oklahoma State
3 Employees Deferred Compensation Plan or publicly traded mutual
4 funds.

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

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

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

14 C. The Director shall not be an owner, stockholder, employee or
15 officer of, nor have any other business relationship with or receive
16 compensation from, any corporation, partnership, or other business
17 or entity which is subject to regulation by the Department and, with
18 regard to the exercise of powers and duties associated with the
19 Oklahoma Agriculture Pollutant Discharge Elimination System Act,
20 shall meet all requirements of Section 304 of the federal Clean
21 Water Act and applicable federal regulations promulgated thereunder
22 by the United States Environmental Protection Agency regarding
23 conflict of interest.

1 D. 1. The Director shall have the power and duty to:
2 a. issue, deny, modify, amend, renew, refuse to renew,
3 suspend, place on probation, reinstate or revoke
4 licenses or permits pursuant to the provisions of the
5 Oklahoma Agricultural Code, and rules promulgated by
6 the State Board of Agriculture, and
7 b. issue final orders and assess administrative penalties
8 according to the Administrative Procedures Act, the
9 Oklahoma Agricultural Code, and rules promulgated by
10 the Board.

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

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

1 exercise the powers and duties until a permanent Director is
2 employed.

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

7 5. All references in the Oklahoma Agricultural Code to the
8 Department with respect to the exercise of the powers and duties
9 specified in paragraph 1 of this subsection shall mean the exercise
10 of such powers and duties by the Director or authorized designee.

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

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

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

22 1. Prevent, control, or abate pollution, including water
23 quality-related and technology-based effluent limitations as are

1 necessary to protect the water quality and existing and designated
2 beneficial uses of the waters of the state;

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

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

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

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

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

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

20 C. The Director shall:

21 1. Have authority to issue individual permits and
22 authorizations under general permits for pollutants, storm water and

1 sludge as authorized by the Oklahoma Agriculture Pollutant Discharge
2 Elimination System Act;

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

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

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

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

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

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

1 4. Have the authority to ensure compliance with Sections
2 204(b), 307 and 308 and other provisions of the federal Clean Water
3 Act and with other applicable federal law;

4 5. Have all necessary and incidental authority to comply with
5 the requirements of the federal Clean Water Act and requirements of
6 the United States Environmental Protection Agency set forth in duly
7 promulgated federal regulations adopted under the federal Clean
8 Water Act;

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

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

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

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

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

22 8. Have all necessary or incidental authority to investigate
23 and abate violations of permits issued by the Director, violations

1 of administrative orders, violations of duly promulgated rules, and
2 violations of the Oklahoma Agriculture Pollutant Discharge
3 Elimination System Act; and

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

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2A-7 of Title 2, unless there is
13 created a duplication in numbering, reads as follows:

14 A. Any holder of a permit or applicant for a permit shall be
15 deemed to have given consent to any authorized officer, employee, or
16 agent of the Oklahoma Department of Agriculture, Food, and Forestry
17 to:

18 1. Enter and inspect the facility in accordance with the
19 provisions of the Oklahoma Agriculture Pollutant Discharge
20 Elimination System Act;

21 2. Investigate complaints;

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

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

3 5. Have access for the purpose of inspecting and sampling any
4 effluent streams or any discharge of pollutants to waters of the
5 state or for inspection and sampling of any sludge source, storage,
6 beneficial use, reuse, or disposal site; and

7 6. Obtain copies of records, plans, reports, or other
8 information required by the Department to be submitted upon request
9 and subject to and made available for inspection at reasonable times
10 to any authorized representative of the Department. Any authorized
11 representative of the Department may examine any records or
12 memoranda pertaining to discharges, treatment, or other limitations
13 set by permit, order, or duly promulgated rules of the Board.

14 B. For unpermitted facilities, authorized employees or
15 representatives, upon presentation of a credential and, if
16 necessary, a proper warrant shall have:

17 1. A right of entry to, upon, or through any private or public
18 premises upon which an effluent or sludge source is or may be
19 located or in which any records are required to be maintained;

20 2. A right of entry for the purpose of investigating
21 complaints;

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

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

4 5. Access for the purpose of inspecting and sampling any
5 effluent streams or any discharge of pollutants to waters of the
6 state or for inspection and sampling of any sludge source, storage,
7 beneficial use, reuse, or disposal site.

8 C. The Director shall not issue a discharge permit if the
9 permit:

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

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

17 3. Is objected to in writing by the Administrator of the United
18 States Environmental Protection Agency or designee, pursuant to any
19 right to object which is granted to the Administrator under Section
20 402(d) of the federal Clean Water Act; or

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

1 D. 1. Any records, reports, or information obtained pursuant
2 to this section shall be available to the public, except that upon
3 submission of sufficient evidence showing that records, reports, or
4 information, or particular parts thereof, other than effluent data,
5 if made public, would divulge methods or processes entitled to
6 protection as trade secrets of that person, the record, report, or
7 information, or particular portion, shall be considered confidential
8 in accordance with the purposes of the federal Uniform Trade Secrets
9 Act.

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

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

1 E. 1. The Board shall promulgate standard precautions for the
2 prevention of the transmission of communicable diseases to humans
3 and animals to be used when inspecting animal feeding operations.

4 2. Except for emergency situations or when enforcement of the
5 Oklahoma Concentrated Animal Feeding Operations Act requires the use
6 of the standard precautions, Department employees shall observe the
7 health standards and sanitary requirements of the facility.

8 SECTION 9. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 2A-8 of Title 2, unless there is
10 created a duplication in numbering, reads as follows:

11 The State Board of Agriculture shall promulgate rules which
12 prescribe permit requirements applicable to discharges composed
13 entirely of storm water that shall at a minimum meet federal law.
14 The rules may require permits on a case-by-case basis, exempt
15 categories of discharges, or provide a schedule for obtaining the
16 permit. The Board shall have promulgated rules for storm water
17 discharges which comply with Environmental Protection Agency
18 requirements for approval of the state National Pollutant Discharge
19 Elimination Systems program no later than the date that the
20 Department is to receive authorization to administer a state
21 National Pollutant Discharge Elimination System program.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2A-9 of Title 2, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Whenever there are reasonable grounds to believe that there
5 has been a violation of any of the provisions of the Oklahoma
6 Agriculture Pollutant Discharge Elimination System Act, any permit,
7 any rule, or any order of the Director of the Agriculture Pollutant
8 Discharge Elimination System, the Director shall have the authority
9 and powers to proceed as specified in the Administrative Procedures
10 Act unless otherwise provided herein. However, provisions of this
11 section for written notice, enforcement hearing, and administrative
12 orders shall not be conditions precedent for seeking action in the
13 district court as provided by the Oklahoma Agriculture Pollutant
14 Discharge Elimination System Act or other applicable provisions of
15 law.

16 B. The Oklahoma Agriculture Pollutant Discharge Elimination
17 System Act shall not in any way impair or in any way affect the
18 right of a person to recover damages for pollution that are
19 otherwise allowed by law in a court of competent jurisdiction.

20 C. Any person having any interest connected with the geographic
21 area or waters or water system affected, including but not limited
22 to any health, environmental, pecuniary, or property interest, which
23 interest is or may be adversely affected, shall have the right to

1 intervene as a party in any administrative proceeding before the
2 Department, or in any civil proceeding, relating to violations of
3 the Oklahoma Agriculture Pollutant Discharge Elimination System Act
4 or rules, permits or orders issued hereunder.

5 D. Whenever, on the basis of any information available, the
6 Department finds that any person regulated by the Department is in
7 violation of any act, rule, order, permit, condition or limitation
8 implementing the Oklahoma Agriculture Pollutant Discharge
9 Elimination System Act, or any previously issued discharge permit,
10 the Director may issue an order requiring the person or entity to
11 comply with the provision or requirement, commence appropriate
12 administrative enforcement proceedings, or bring a civil action.
13 Provided, however, the issuance of a compliance order or denial,
14 placing on probation, reinstatement, suspension or revocation of a
15 permit shall not be considered a condition precedent to the accrual
16 or imposition of penalties or fines in any administrative, civil, or
17 criminal proceeding.

18 E. 1. A copy of any order issued pursuant to this section
19 shall be sent immediately to the violator. In any case in which an
20 order or notice to a violator is issued to a corporation, a copy of
21 the order shall be served on any appropriate individual officers or
22 service agents.

1 2. Any order issued pursuant to this section shall state with
2 reasonable specificity the nature of the violation, and shall
3 specify a time for compliance not to exceed thirty (30) days in the
4 case of a violation of an interim compliance schedule or operation
5 and maintenance requirement and not to exceed a reasonable time in
6 the case of a violation of a final deadline, taking into account the
7 seriousness of the violation and any good faith efforts to comply
8 with applicable requirements. Any order or notice issued by the
9 Director may be served in any manner allowed by Oklahoma Rules of
10 Civil Procedure applicable to a civil summons.

11 F. 1. Whenever on the basis of any information available the
12 Director finds that any person regulated by the Department has
13 violated any of the provisions of the Oklahoma Agriculture Pollutant
14 Discharge Elimination System Act, or any permit, rule, order or
15 condition or limitation implementing any of these sections, or
16 previously issued discharge permit or related order, the Director
17 may assess, after providing notice and opportunity for an
18 enforcement hearing to the alleged violator, an administrative fine
19 of not more than Ten Thousand Dollars (\$10,000.00) per day for each
20 violation.

21 2. The total amount of the administrative fine shall not exceed
22 One Hundred Twenty-five Thousand Dollars (\$125,000.00) per
23 violation. In determining the amount of any penalty assessed under

1 this subsection, the Director shall take into account the nature,
2 circumstances, extent and gravity of the violation, or violations,
3 and, with respect to the violator, the ability to pay, any prior
4 history of violations, the degree of culpability, the economic
5 benefit savings, if any, resulting from the violation, and any other
6 matters as justice may require. For purposes of this subsection, a
7 single operational upset which leads to simultaneous violations of
8 more than one pollutant parameter shall be treated as a single
9 violation.

10 3. Enforcement hearings shall be conducted in accordance with
11 the procedures set out in the Administrative Procedures Act.

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

16 2. Any person who violates any provision of the Oklahoma
17 Agriculture Pollutant Discharge Elimination System Act, any permit
18 condition or limitation implementing any of such provisions in a
19 permit issued under the Oklahoma Agriculture Pollutant Discharge
20 Elimination System Act, and any person who violates any order issued
21 by the Director under subsection D of this section, shall be subject
22 to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00)
23 per day for each violation.

1 3. In determining the amount of the civil penalty, the court
2 shall consider the seriousness of the violation or violations, the
3 economic benefit, if any, resulting from the violation, any history
4 of violations, any good faith efforts to comply with the applicable
5 requirements, the economic impact of the penalty on the violator,
6 and any other matters as justice may require. For purposes of this
7 subsection, a single operational upset which leads to simultaneous
8 violations of more than one pollutant parameter shall be treated as
9 a single violation.

10 4. Any action pursuant to this subsection may be brought in the
11 district court for the district in which the property or defendant
12 is located or defendant resides or is doing business, and the court
13 shall have jurisdiction to restrain any violation and to require
14 compliance.

15 5. The prior revocation of a permit shall not be a condition
16 precedent to the filing of a civil action under the Oklahoma
17 Agriculture Pollutant Discharge Elimination System Act.

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

1 2. Any person who knowingly makes any false material statement,
2 representation, or certification in, omits material data from, or
3 tampers with any application, notice, record, report, plan, or other
4 document filed or required to be maintained under the Oklahoma
5 Agriculture Pollutant Discharge Elimination System Act or who
6 knowingly falsifies, tampers with, or renders inaccurate any
7 monitoring device or method required to be maintained under the
8 Oklahoma Agriculture Pollutant Discharge Elimination System Act,
9 shall be punishable, upon conviction, by a fine of not more than Ten
10 Thousand Dollars (\$10,000.00) per day for each violation, or by
11 imprisonment for not more than two (2) years, or by both. If a
12 conviction of a person is for a violation committed after a first
13 conviction of that person under this paragraph, punishment shall be
14 by a fine of not more than Twenty Thousand Dollars (\$20,000.00) per
15 day for each violation, or by imprisonment for not more than four
16 (4) years, or by both. In addition, the Director shall deny
17 issuance of the permit or require submission of a new application.

18 3. For purposes of this subsection, a single operational upset
19 which leads to simultaneous violations of more than one pollutant
20 parameter shall be treated as a single violation.

21 I. 1. Whenever, on the basis of information available, the
22 Department finds that an owner or operator of any source is
23 introducing a pollutant into a treatment works in violation of the

1 Oklahoma Agriculture Pollutant Discharge Elimination System Act or
2 any requirement, rule, permit, or order issued under this act, the
3 Department shall notify the owner or operator of the treatment works
4 of the violation.

5 2. If the operator of the treatment works does not commence
6 appropriate enforcement action within thirty (30) days of the date
7 of the notification, the Department may commence a civil action for
8 appropriate relief, including but not limited to a permanent or
9 temporary injunction, against the owner or operator of the treatment
10 works.

11 3. In the civil action, the Department shall join the operator
12 of the source as a party to the action.

13 4. The action shall be brought in the district court in the
14 county in which the treatment works is located.

15 5. The court shall have jurisdiction to restrain the violation
16 and to require the operator of the treatment works and the operator
17 of the source to take any action as may be necessary to come into
18 compliance with the Oklahoma Agriculture Pollutant Discharge
19 Elimination System Act.

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

1 J. 1. Any person against whom an administrative compliance or
2 penalty order is issued under this section may obtain review of the
3 order by filing a petition for review in district court pursuant to
4 the Oklahoma Administrative Procedures Act. The court shall not
5 impose additional civil penalties for the same violation unless the
6 assessment of the penalty constitutes an abuse of discretion. No
7 stay of an administrative penalty order shall be granted until the
8 amount of penalty assessed has been deposited with the reviewing
9 district court pending resolution of the petition for review.

10 2. If any person fails to pay an assessment of an
11 administrative penalty:

- 12 a. after the order making the assessment has become final,
13 or
14 b. after a court in an action brought under paragraph 1 of
15 this subsection has entered a final judgment in favor
16 of the Department, as the case may be,

17 a civil action may be brought in an appropriate district court to
18 recover the amount assessed plus interest at currently prevailing
19 rates from the date of the final order or the date of the final
20 judgment, as the case may be. In such an action, the validity,
21 amount, and appropriateness of the penalty shall not be subject to
22 review.

1 3. Any person who fails to pay on a timely basis the amount of
2 an assessment of an administrative or civil penalty shall be
3 required to pay, in addition to the amount and interest, attorney
4 fees and costs for the collection proceeding and a quarterly
5 nonpayment penalty for each quarter during which the failure to pay
6 persists. The nonpayment penalty shall be in an amount equal to
7 twenty percent (20%) of the aggregate amount of the penalties of the
8 person and nonpayment penalties which are unpaid as of the beginning
9 of the quarter.

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

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

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

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

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

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

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

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

15 B. Permits and other authorizations required pursuant to the
16 Oklahoma Agriculture Pollutant Discharge Elimination System Act may
17 contain provisions requiring that operations shall be in compliance
18 with municipal and other local government ordinances, rules, and
19 requirements. A determination or certification that the operations
20 under the requested permit or authorization conform or comply with
21 those ordinances, rules, or requirements, the enforcement of which
22 is not within the jurisdiction or authority of the Department, shall

1 not be considered by the Department in its review and approval or
2 denial of a permit or authorization.

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

6 Sections 12 through 21 of this act shall be known and may be
7 cited as the "Oklahoma Agriculture Environmental Permitting Act".

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

11 For the purposes of the Oklahoma Agriculture Environmental
12 Permitting Act:

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

20 2. "Draft permit" means a draft document prepared by the
21 Department after it has found a Tier II or III application for a
22 permit to be administratively and technically complete and that the

1 application may warrant the issuance, modification, or renewal of
2 the permit;

3 3. "Permit" means a permission required by law and issued by
4 the Department, the application for which has been classified as
5 Tier I, II, or III by the State Board of Agriculture. The term
6 "permit" includes but is not limited to:

- 7 a. specific types of permits and other Department
8 authorizations including certifications,
9 registrations, licenses, and plan approvals,
- 10 b. general permits and notices of intent for coverage by
11 a general permit, and
- 12 c. an approved variance from a promulgated rule; however,
13 for existing facilities the Department may require
14 additional notice and public participation
15 opportunities for variances posing the potential for
16 increased risk;

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

21 5. "Proposed permit" means a document, based on a draft permit
22 and prepared by the Department after consideration of comments
23 received on the draft permit, that indicates the decision of the

1 Department to issue a final permit pending the outcome of an
2 administrative permit hearing, if any;

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

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

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

12 b. briefly describes and responds to all significant
13 comments raised during the public comment period or
14 any hearing regarding the draft denial or draft
15 permit;

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

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

23 a. the Tier I process,

- 1 b. published notice of application filing,
- 2 c. preparation of the draft permit or draft denial,
- 3 d. published notice of the draft permit or draft denial
- 4 and opportunity for a formal public meeting, and
- 5 e. public meeting, if any.

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

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

- 11 a. (1) the Tier II process, except the notice of filing,
- 12 shall also include an opportunity for a process
- 13 meeting,
- 14 (2) preparation of the response of the Department to
- 15 comments, and
- 16 (3) denial of application, or
- 17 b. preparation of a proposed permit, the published notice
- 18 of availability of the proposed permit and the
- 19 response to comments and of the opportunity for an
- 20 administrative permit hearing, and an administrative
- 21 permit hearing, if any.

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

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

4 A. The Oklahoma Agriculture Environmental Permitting Act shall
5 apply to applications filed with the Oklahoma Department of
6 Agriculture, Food, and Forestry on or after July 1, 2005.

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

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

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

21 1. Enable applicants to follow a consistent application
22 process;

1 2. Ensure that uniform public participation opportunities are
2 offered;

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

5 4. Set forth procedural application requirements.

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

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

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

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

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

19 5. Any other factors relevant to the determinations.

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

23 D. The rules for each tier shall:

- 1 1. Set forth uniform procedures for filing an application;
- 2 2. Contain specific uniform requirements for each type of
- 3 notice and public participation or hearing opportunities required by
- 4 the Oklahoma Agriculture Environmental Permitting Act;
- 5 3. Contain other provisions needed to implement and administer
- 6 the Oklahoma Agriculture Pollutant Discharge Elimination System Act;
- 7 and
- 8 4. Designate positions to which the Director may delegate, in
- 9 writing, the power and duty to issue, renew, amend, modify, and deny
- 10 permits.

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

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

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

- 20 1. Evaluate applications for administrative and technical
- 21 completeness pursuant to requirements of the Oklahoma Agricultural
- 22 Code and rules promulgated thereunder and, when necessary to

1 determine the completeness, request changes, revisions, corrections,
2 or supplemental submissions;

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

6 3. Consider timely and relevant comments received;

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

9 5. Cooperate with federal agencies;

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

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

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

19 A. Upon filing a Tier II or III application with the Oklahoma
20 Department of Agriculture, Food, and Forestry, the applicant shall
21 publish notice of the filing as legal notice in one newspaper of
22 general circulation local to the proposed new site or existing
23 facility. The publication shall identify public locations where the

1 application may be reviewed, including a public location in the
2 county where the proposed new site or existing facility is located.

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

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

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

21 A. Upon conclusion of its technical review of a Tier II or III
22 application within the permitting timeframes established by rules
23 promulgated by the State Board of Agriculture, the Oklahoma

1 Department of Agriculture, Food, and Forestry shall prepare a draft
2 denial or draft permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 B. For draft permits or draft denials for Tier II applications
9 on which comment or a public meeting request was received in a
10 timely manner or on which a public meeting was held, the Oklahoma
11 Department of Agriculture, Food, and Forestry, after considering the
12 comments, shall prepare a response to comments and issue the draft
13 permit as is or as amended or make final denial.

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

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

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

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

18 4. The opportunity to request a hearing shall be available to
19 the applicant and any person or qualified interest group that
20 alleges that the operation may have a direct, substantial, and
21 immediate effect upon the health, environmental, pecuniary, or
22 property interest or upon the legal interest of that person or
23 qualified interest group.

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

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

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

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

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

18 4. The Department shall move promptly to an evidentiary
19 proceeding in which parties shall have the right to present evidence
20 before the Department on whether the proposed permit and the
21 technical data, models and analyses, and information in the
22 application upon which the proposed permit is based are in
23 substantial compliance with applicable provisions of the Oklahoma

1 Agricultural Code and rules promulgated thereunder and whether the
2 proposed permit should be issued as is, amended and issued, or
3 denied.

4 5. Failure of any party to participate in the administrative
5 proceeding with good faith and diligence may result in a default
6 judgment with regard to that party; provided, however, that no final
7 permit shall be issued solely on the basis of any such judgment.

8 F. If the Department decides to reverse its initial draft
9 decision, it shall withdraw the draft denial or draft permit and
10 prepare a draft permit or draft denial, as appropriate. Notice of
11 the withdrawal of the original draft and preparation of the revised
12 draft shall be given as provided in Section 16 of this act. The
13 Department then shall reopen the comment period and provide
14 additional opportunity for a formal public meeting on the revised
15 draft as described in Section 19 of this act.

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

20 H. Any appeal of a Tier III final permit decision or any final
21 order connected to it shall be made in accordance with the
22 provisions of the Oklahoma Agricultural Code and the Administrative

1 Procedures Act. Any appeal shall be limited to the participants of
2 the administrative proceedings.

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

9 SECTION 21. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2A-30 of Title 2, unless there
11 is created a duplication in numbering, reads as follows:

12 For common and routine permit applications, the Oklahoma
13 Department of Agriculture, Food, and Forestry may expedite the
14 permitting process by issuing permits of general applicability,
15 hereafter identified as general permits. General permits shall be
16 subject to all the Tier II administrative procedures including the
17 public participation requirements. The administrative process for
18 rulemaking shall not be applicable to the issuance of general
19 permits. Individual applicants may obtain authorization through the
20 Tier I process to conduct an activity covered by a general permit.
21 General permits are limited to activities under the Tier I and Tier
22 II classifications.

1 SECTION 22. AMENDATORY 2 O.S. 2001, Section 9-200, is
2 amended to read as follows:

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

9 SECTION 23. AMENDATORY 2 O.S. 2001, Section 9-201, is
10 amended to read as follows:

11 Section 9-201. A. Sections ~~9-201 22~~ 22 through ~~9-215 48~~ 48 of this
12 ~~title act~~ shall be known and may be cited as the "Oklahoma
13 Concentrated Animal Feeding Operations Act".

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

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

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

23 3. Issue permits to concentrated animal feeding operations.

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

6 SECTION 24. AMENDATORY 2 O.S. 2001, Section 9-202, is
7 amended to read as follows:

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

14 B. As used in the Oklahoma Concentrated Animal Feeding
15 Operations Act:

- 16 1. "Affected property owner" means a surface landowner within:
- 17 a. one (1) mile of the designated perimeter of an animal
18 feeding operation which:
- 19 (1) does not meet the definition of a licensed
20 managed feeding operation, or
21 (2) is previously unlicensed or an expanding licensed
22 managed feeding operation with a capacity of two
23 thousand (2,000) or less animal units, or

1 by one and four-tenths (1.4), ~~plus~~ the number of swine weighing ~~over~~
2 ~~twenty-five (25) kilograms, approximately fifty-five (55) pounds, or~~
3 more multiplied by four-tenths (0.4), ~~plus~~ the number of weaned
4 swine weighing under ~~twenty-five (25) kilograms~~ fifty-five (55)
5 pounds multiplied by one-tenth (0.1), ~~plus~~ the number of sheep or
6 lambs multiplied by one-tenth (0.1), ~~plus~~ the number of horses
7 multiplied by two (2), the number of turkeys multiplied by eighteen-
8 thousandths (0.018), the number of laying hens or broilers if the
9 animal feeding operation uses a liquid manure handling system
10 multiplied by thirty-three-thousandths (0.033), the number of
11 chickens, other than laying hens, if the animal feeding operation
12 uses other than a liquid manure handling system multiplied by eight-
13 thousandths (0.008), the number of laying hens if the animal feeding
14 operation uses other than a liquid manure handling system multiplied
15 by twelve-thousandths (0.012), the number of ducks if the animal
16 feeding operation uses other than a liquid manure handling system
17 multiplied by thirty-three-thousandths (0.033), or the number of
18 ducks if the animal feeding operation uses a liquid manure handling
19 system multiplied by two-tenths (0.2);

20 4. "Animal waste" means animal excrement or manure, litter,
21 animal carcasses, feed wastes, bedding, compost, raw materials
22 commingled with animal waste or set aside for disposal, process

1 wastewaters, or any other waste associated with the confinement of
2 animals from an animal feeding operation;

3 ~~5. "Animal Waste Management Plan" or "AWMP" means a written~~
4 ~~plan that includes a combination of conservation and management~~
5 ~~practices designed to protect the natural resources of the state~~
6 ~~prepared by an owner or operator of an animal feeding operation as~~
7 ~~required by the Department pursuant to the provisions of Section 9-~~
8 ~~205.3 of this title;~~

9 ~~6. "Animal waste management system" means a combination of~~
10 ~~structures and nonstructural practices serving an animal feeding~~
11 ~~operation that provides for the collection, treatment, disposal,~~
12 ~~distribution, storage, and land application of animal waste;~~

13 ~~7. 6. "Artificially constructed" means constructed by humans;~~

14 ~~8. 7. "Best Management Practices" or "BMPs" means schedules of~~
15 ~~activities, prohibitions of practices, maintenance procedures, and~~
16 ~~other management practices to prevent or reduce the pollution of~~
17 ~~waters of the state as established by the State Department of~~
18 ~~Agriculture pursuant to Section 9-205.3 of this title and includes~~
19 treatment requirements, operating procedures, and practices to
20 control site runoff, spillage or leaks, sludge or waste disposal, or
21 drainage from raw material storage;

22 ~~9. 8. "Board" means the State Board of Agriculture;~~

1 ~~10.~~ 9. "Common ownership" includes but is not limited to any
2 corporation, partnership, or individual where the same owner
3 operator has power or authority to manage, direct, restrict,
4 regulate, or oversee the operation or has financial control of the
5 facility;

6 ~~11.~~ 10. "Concentrated animal feeding operation" ~~or "CAFO"~~ means
7 an animal feeding operation that is defined as one of the following:

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

14 (1) 2,500 swine each weighing over fifty-five (55)
15 pounds, or

16 (2) 10,000 weaned swine each weighing under fifty-
17 five (55) pounds,

18 b. ~~an~~ a large concentrated animal feeding operation ~~which~~
19 ~~meets the following criteria~~ that is an animal feeding
20 operation that discharges to waters of the state and
21 stables or confines as many as or more than the
22 numbers of animals specified in any of the following
23 categories:

- 1 (1) ~~more than the number of animals specified in any~~
2 ~~of the following categories are confined:~~
- 3 ~~(a) 1,000 slaughter and feeder cattle,~~
 - 4 ~~(b) 700 mature dairy cattle cows, whether milk~~
5 ~~milked or dry eows,~~
 - 6 ~~(c) 500 horses,~~
 - 7 ~~(d) 10,000 sheep or lambs,~~
 - 8 ~~(e) 55,000 turkeys,~~
 - 9 ~~(f) 5,000 ducks, or~~
 - 10 ~~(g) 1,000 animal units, and~~
- 11 (2) ~~pollutants are discharged into waters of the~~
12 ~~state. Provided, no animal feeding operation~~
13 ~~pursuant to this subparagraph shall be construed~~
14 ~~to be a concentrated animal feeding operation if~~
15 ~~such animal feeding operation discharges only in~~
16 ~~the event of a twenty-five-year, twenty-four-hour~~
17 ~~storm event, or 1,000 veal calves,~~
- 18 (3) 1,000 cattle other than mature dairy cows or veal
19 calves, and cattle includes, but is not limited
20 to, heifers, steers, bulls, and cow/calf pairs,
- 21 (4) 2,500 swine each weighing fifty-five (55) pounds
22 or more, except for licensed managed feeding
23 operations,

- 1 (5) 10,000 swine each weighing less than fifty-five
2 (55) pounds, except for licensed managed feeding
3 operations,
4 (6) 500 horses,
5 (7) 10,000 sheep or lambs,
6 (8) 55,000 turkeys,
7 (9) 30,000 laying hens or broilers if the animal
8 feeding operation uses a liquid manure handling
9 system,
10 (10) 125,000 chickens, other than laying hens, if the
11 animal feeding operation uses anything other than
12 a liquid manure handling system,
13 (11) 82,000 laying hens if the animal feeding
14 operation uses anything other than a liquid
15 manure handling system,
16 (12) 30,000 ducks if the animal feeding operation uses
17 anything other than a liquid manure handling
18 system, or
19 (13) 5,000 ducks if the animal feeding operation uses
20 a liquid manure handling system,
21 c. ~~an~~ a medium concentrated animal feeding operation
22 ~~which meets the following criteria~~ that is an animal
23 feeding operation with the type and number of animals

1 in any of the following ranges and is defined or
2 designated as a concentrated animal feeding operation
3 pursuant to the following:

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

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

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

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

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

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

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

- 1 (g) ~~16,500 turkeys~~ 3,000 to 9,999 sheep or
2 lambs,
- 3 (h) ~~30,000 laying hens or broilers, if the~~
4 ~~facility has continuous overflow watering~~
5 16,500 to 54,999 turkeys,
- 6 (i) 9,000 to 29,999 laying hens or broilers, if
7 the facility has animal feeding operation
8 uses a liquid manure handling system,
- 9 (j) ~~1,500 ducks, or~~ 37,500 to 124,999 chickens,
10 other than laying hens, if the animal
11 feeding operation uses anything other than a
12 liquid manure handling system,
- 13 (k) ~~300~~ 25,000 to 81,999 laying hens if the
14 animal units, and feeding operation uses
15 anything other than a liquid manure handling
16 system,
- 17 (l) 10,000 to 29,999 ducks if the animal feeding
18 operation uses anything other than a liquid
19 manure handling system, or
- 20 (m) 1,500 to 4,999 ducks if the animal feeding
21 operation uses a liquid manure handling
22 system, and
- 23 (2) either one of the following conditions are met:

- 1 (a) pollutants are discharged into waters of the
2 state through an artificially constructed
3 ditch, flushing system or other similar
4 artificially constructed device, or
5 (b) pollutants are discharged directly into
6 navigable waters ~~which~~ of the state that
7 originate outside of and pass over, across
8 or through the facility or ~~otherwise~~ come
9 into direct contact with the animals
10 confined in the operation.

11 ~~Provided, however, that no animal feeding operation~~
12 ~~pursuant to this subparagraph is a concentrated animal~~
13 ~~feeding operation if such animal feeding operation~~
14 ~~discharges only in the event of a twenty-five-year,~~
15 ~~twenty-four-hour storm event, or~~

- 16 d. the ~~Board determines that~~ Director of Agriculture
17 Pollutant Discharge Elimination Systems designates the
18 operation ~~is~~ as a ~~significant contributor of pollution~~
19 ~~to waters of the state~~ concentrated animal feeding
20 operation pursuant to Section ~~9-204.1~~ 28 of this title
21 act;

22 ~~12.~~ 11. "Department" means the ~~State~~ Oklahoma Department of
23 Agriculture, Food, and Forestry;

- 1 d. ~~30,000 laying hens or broilers, if the facility has a~~
2 ~~liquid manure system, or~~
3 e. ~~any combination of swine weighing over twenty-five~~
4 ~~(25) kilograms or under twenty-five (25) kilograms~~
5 ~~which would equal one thousand (1,000) animal units;~~

6 19. "Liquid animal waste management system" means any animal
7 waste management system which uses water as the primary carrier of
8 ~~such~~ animal waste into a primary retention structure;

9 20. ~~"Managing operator" means the owner or one who is~~
10 ~~responsible for the management of each facility of a concentrated~~
11 ~~animal feeding operation or animal feeding operation;~~

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

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

21 21. "Nutrient management plan" means a written plan that
22 includes but is not limited to a combination of conservation and
23 management practices designed to prevent pollution and protect the

1 natural resources of the state and dealing with the amount, source,
2 placement, form, and timing of the treatment, storage, disposal,
3 reuse, and land application of animal waste, nutrients, and soil
4 amendments;

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

8 ~~22.~~ 23. "Nutrient-vulnerable groundwater" means groundwater
9 ~~which that~~ is designated "nutrient-vulnerable" in the most recent
10 Oklahoma Water Quality Standards;

11 ~~23.~~ 24. "Occupied residence" means a habitable structure
12 designed and constructed for full-time occupancy in all weather
13 conditions that:

- 14 a. is not readily mobile,
15 b. is connected to a public or permanent source of
16 electricity and a permanent waste disposal system or
17 public waste disposal system, and
18 c. is occupied as a residence;

19 25. "Odor Abatement Plan" ~~or "OAP"~~ means schedules of
20 activities, prohibitions of practices, maintenance procedures, and
21 other management practices to prevent or reduce odor ~~as established~~
22 ~~by the State Department of Agriculture pursuant to Section 10 of~~
23 ~~this act;~~

1 ~~24. "Occupied residence" means a habitable structure designed~~
2 ~~and constructed for full-time occupancy in all weather conditions~~
3 ~~which:~~

4 ~~a. is not readily mobile,~~

5 ~~b. is connected to a public or permanent source of~~
6 ~~electricity and a permanent waste disposal system or~~
7 ~~public waste disposal system, and~~

8 ~~c. is occupied as a residence;~~

9 ~~25. "Pollution Prevention Plan" or "PPP" means a written plan~~
10 ~~to control the discharge of pollutants which has been prepared in~~
11 ~~accordance with industry acceptable engineering and management~~
12 ~~practices by the owner or operator of an animal feeding operation as~~
13 ~~required pursuant to Section 9-205.2 of this title;~~

14 26. "Operator" means the owner and person responsible for the
15 management of each facility of a concentrated animal feeding
16 operation. The owner and person responsible for the management of
17 the facility shall be jointly and severally obligated to comply with
18 the provisions of the Oklahoma Concentrated Animal Feeding
19 Operations Act;

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

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

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

20 ~~27.~~ 30. "Retention structures" includes means, but is not
21 limited to, all collection ditches, conduits, and swales for the
22 collection of runoff water and process wastewater, and basins, ponds
23 and lagoons, or other structures used to store animal wastes;

1 ~~28.~~ 31. "Waste facility" means any structure or combination of
2 structures utilized to control animal waste until it can be disposed
3 of in an authorized manner. ~~Such~~ The structures shall include, but
4 not be limited to, pits, burial sites, barns or roof-covered
5 structures housing animals, ~~composters~~ composters, waste storage
6 sites, or retention structures or appurtenances or additions
7 thereto; and

8 ~~29.~~ 32. "Waters of the state" means all streams, lakes, ponds,
9 marshes, watercourses, waterways, wells, springs, irrigation
10 systems, drainage systems, storm sewers and all other bodies or
11 accumulations of water, surface and underground, natural or
12 artificial, public or private, which are contained within, flow
13 through or border upon this state or any portion thereof, and shall
14 include under all circumstances the waters of the United States
15 which are contained within the boundaries of, flow through or border
16 upon this state or any portion thereof. ~~Process wastewaters shall~~
17 Provided, waste treatment systems, including treatment ponds and
18 lagoons designed to meet federal and state requirements other than
19 cooling ponds as defined in the Clean Water Act or rules promulgated
20 thereto are not be considered as waters of the state if contaminated
21 at the site.

22 SECTION 25. AMENDATORY 2 O.S. 2001, Section 9-203, is
23 amended to read as follows:

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

7 SECTION 26. AMENDATORY 2 O.S. 2001, Section 9-204, is
8 amended to read as follows:

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

13 1. The committee shall consist of:

14 ~~1.—One~~

15 a. one member who shall represent the beef cattle
16 producers~~†~~†

17 ~~2.—One~~

18 b. one member who shall represent the dairy producers~~†~~†

19 ~~3.—One~~

20 c. one member who shall represent the pork producers~~†~~†

21 ~~4.—One~~

22 d. one member who shall represent the poultry producers~~†~~†

23 ~~5.—One~~

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

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

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

16 SECTION 27. NEW LAW A new section of law not to be
17 codified in the Oklahoma Statutes reads as follows:

18 The rule advisory committee existing on June 30, 2005, shall
19 terminate upon the effective date of this act and the members may be
20 reappointed to the rule advisory committee created by Section 26 of
21 this act.

22 SECTION 28. AMENDATORY 2 O.S. 2001, Section 9-204.1, is
23 amended to read as follows:

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

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

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

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

21 ~~3-~~ 5. Any animal feeding operation other than a concentrated
22 animal feeding operation, regardless of the number of animals, shall
23 only be required to be ~~licensed~~ permitted pursuant to the provisions

1 of the Oklahoma Concentrated Animal Feeding Operations Act and
2 promulgated rules ~~promulgated pursuant thereto~~ if the ~~State Board of~~
3 ~~Agriculture~~ Director determines the operation to be a significant
4 contributor of pollution to waters of the state pursuant to
5 ~~subsection D of~~ this section.

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

11 2. ~~After September 1, 1997, any licensed managed feeding~~ Once
12 an operation shall be required to obtain a license for any increase
13 in excess of five percent (5%) of the original facility's licensed
14 capacity is defined as a concentrated animal feeding operation, the
15 requirements for concentrated animal feeding operations shall apply
16 to all animals in confinement at the operation and all animal waste
17 generated by those animals or the production of those animals,
18 regardless of the type of animal.

19 C. Expanding operations shall be required to seek a new ~~license~~
20 permit prior to expansion. ~~Change in species or ratio of species~~
21 ~~mix alone shall not be defined as an expanding operation as long as~~
22 ~~the increase in animal unit capacity does not exceed five percent~~
23 ~~(5%).~~

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

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

- 10 a. the size of the animal feeding operation and the
11 amount of wastes reaching waters of the state,
12 b. the location of the animal feeding operation relative
13 to any waters of the state,
14 c. the means of conveyance of animal ~~waste and wastewater~~
15 wastes into waters of the state,
16 d. the method of disposal for animal waste and process
17 wastewater disposal,
18 e. the slope, vegetation, rainfall, and other factors
19 affecting the likelihood or frequency of discharge of
20 animal wastes, manure, and process wastewaters into
21 any of the waters of the state, and

1 4. No animal feeding operation with numbers of animals below
2 those established by the definition of a medium concentrated animal
3 feeding operation in Section 24 of this act may be designated as a
4 concentrated animal feeding operation unless:

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

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

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

22 ~~E. After September 1, 1997, no new concentrated animal feeding~~
23 ~~operation or expansion of a concentrated animal feeding operation~~

1 ~~requiring a license pursuant to the Oklahoma Concentrated Animal~~
2 ~~Feeding Operations Act shall be constructed or placed in operation~~
3 ~~unless final design plans, specifications and a Pollution Prevention~~
4 ~~Plan developed pursuant to Section 9-205.2 of this title have been~~
5 ~~approved by the Department.~~

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

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

15 SECTION 29. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 20-7 of Title 2, unless there is
17 created a duplication in numbering, reads as follows:

18 A. For animal feeding operations that were defined as
19 concentrated animal feeding operations prior to April 14, 2003, and
20 are not new sources, the operator shall have obtained or sought to
21 obtain coverage under a permit prior to April 14, 2003, and complied
22 with all applicable Agriculture Pollutant Discharge Elimination

1 System requirements including, but not limited to, the duty to
2 maintain permit coverage.

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

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

14 1. For newly constructed operations not subject to effluent
15 limitations guidelines, one hundred eighty (180) days prior to the
16 time the concentrated animal feeding operation commences operation;
17 or

18 2. For other animal feeding operations, including those
19 increasing the number of animals, no later than ninety (90) days
20 after becoming defined as a concentrated animal feeding operation;
21 except that, if an operational change that makes the operation a
22 concentrated animal feeding operation would not have made it a
23 concentrated animal feeding operation prior to April 14, 2003, the

1 operation has until April 13, 2006, or ninety (90) days after
2 becoming defined as a concentrated animal feeding operation,
3 whichever is later.

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

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

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

18 2. If circumstances materially change at a concentrated animal
19 feeding operation that has received a no-potential-to-discharge
20 determination, and the concentrated animal feeding operation now has
21 a potential for a discharge, the operator of the concentrated animal
22 feeding operation has a duty to immediately notify the Director and
23 seek coverage under an Agriculture Pollutant Discharge Elimination

1 System permit within thirty (30) days after the change in
2 circumstances.

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

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

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

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

16 SECTION 30. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 20-8 of Title 2, unless there is
18 created a duplication in numbering, reads as follows:

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

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

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

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

10 SECTION 31. AMENDATORY 2 O.S. 2001, Section 9-205, is
11 amended to read as follows:

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

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

- 1 1. Name and address of the ~~owner and~~ operator of the facility.
2 If the operator is not the owner of the facility, the name and
3 address of the owner shall also be supplied;
- 4 2. Name and address of the animal feeding operation;
- 5 3. Capacity in ~~animal units, and~~ number and type of animals
6 housed or confined;
- 7 4. A diagram or map and legal description showing geographical
8 location of the facility on which the perimeters of the facility are
9 designated, location of waters of the state, including, but not
10 limited to, drainage from the facility, animal waste storage
11 facilities and land application sites owned or leased by the
12 ~~applicant~~ operator;
- 13 5. A copy of the ~~Pollution Prevention Plan containing an Animal~~
14 ~~Waste~~ Nutrient Management Plan, Best Management Practices, Odor
15 Abatement Plan, or such any other plan authorized required by the
16 Oklahoma Concentrated Animal Feeding Operations Act ~~and approved by~~
17 ~~the Department;~~
- 18 6. A copy of the written waiver by an adjacent property owner
19 to the facility releasing ~~specified~~ setback requirements ~~as provided~~
20 ~~by Section 9-210.1 of this title; and~~
- 21 7. Latitude and longitude of the entrance to the production
22 areas; and

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

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

10 2. If the application for renewal is denied, written
11 notification of the denial and an opportunity for an administrative
12 hearing on the denial shall be given to the ~~applicant~~ operator by
13 the ~~Department~~ Director. The notification shall set forth the
14 reasons for the denial, steps necessary to meet the requirements for
15 issuance of the renewal ~~license~~ permit, and the opportunity for the
16 ~~applicant~~ operator to request an administrative hearing.

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

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

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

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

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

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

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

21 d. the new ~~owner or~~ operator ~~has failed~~ fails to meet the
22 requirements of Section ~~9-211~~ 47 of this ~~title~~ act;

23 and

1 registered agent of the corporation shall be
2 included in the application.

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

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

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

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

1 environmental law, rule, agency order, or court action
2 relating to the operation of an animal feeding
3 operation.

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

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

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

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

18 H. G. 1. ~~For licensed managed feeding operations licensed on~~
19 ~~or after August 1, 1998, all~~ All employees of a proposed licensed
20 managed feeding operation whose duties include treatment, storage,
21 or application of animal waste shall provide proof of certification
22 of satisfactory completion of formal education or training in the
23 areas of waste management and odor control ~~as specified by rules~~

1 ~~promulgated by the Board.~~ Proof of certification of a minimum of
2 nine (9) hours of training and education ~~must~~ shall be submitted
3 either with the ~~license~~ permit application or within six (6) months
4 of the date of the application for the ~~license~~ permit.

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

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

16 ~~4.~~ 3. Appropriate curricula and course content shall be
17 developed under the supervision of the Director and Oklahoma State
18 University Cooperative Extension Service, ~~which shall provide~~
19 ~~certification to the Department.~~

20 ~~5.~~ 4. Failure to obtain the prerequisite and annual training
21 and education as required in this subsection shall be deemed a
22 violation of the Oklahoma Concentrated Animal Feeding Operations
23 Act.

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

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

13 SECTION 32. AMENDATORY 2 O.S. 2001, Section 9-205.1, is
14 amended to read as follows:

15 Section 9-205.1 A. ~~1.~~ Any person applying on or after July 1,
16 2005, for a ~~license~~ permit for an animal feeding operation shall
17 comply with the notice and hearing requirements as specified by ~~this~~
18 ~~section and~~ the Oklahoma Agriculture Environmental Permitting Act,
19 rules promulgated pursuant thereto by the State Board of Agriculture
20 and notice to affected property owners as specified in this section.

21 ~~2. Notice requirements~~ B. Any operator who submitted an
22 application prior to July 1, 2005, shall comply with the notice and
23 hearing requirements as specified in this section that shall include

1 notice to affected property owners by certified mail, return-receipt
2 requested ~~pursuant to subsection C of this section~~ and public notice
3 ~~pursuant to subsection D of this section.~~

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

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

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

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

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

11 c. the relief sought by the interested party.

12 3. If any of the affected property owners request an
13 administrative hearing, ~~such hearing shall be held by the Department~~
14 ~~within not less than thirty (30) days nor more than sixty (60) days~~
15 ~~after the close of the public review period pursuant to subsection D~~
16 ~~of this section~~ they shall be in compliance with all requirements of
17 paragraph 2 of this subsection as determined by the Department. The
18 scheduling conference for the hearing shall be held by the
19 Department within not less than thirty (30) calendar days or more
20 than sixty (60) calendar days after the close of the public review
21 period. All interested parties may be joined as parties to the
22 hearing ~~pursuant to rules promulgated by the State Board of~~
23 ~~Agriculture.~~

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

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

- 19 (1) one (1) mile of the designated perimeter of the
20 proposed licensed managed feeding operation or
21 expansion thereof, or
22 (2) the setback distance of an occupied residence ~~as~~
23 ~~provided in subsection A of Section 16 of this~~

1 ~~act~~ if such setback distances are greater than
2 one (1) mile,
3 proves that the granting of the license permit will
4 cause significant harm to the property value of the
5 interested party.

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

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

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

21 2. The public notice for a new or expanding operation shall be
22 published as a legal notice prior to the date the application is
23 available for public viewing, in at least one newspaper of general

1 circulation in the county where the proposed facility or expanding
2 operation is to be located.

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

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

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

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

21 1. Documentation certifying notice has been issued to all
22 affected property owners. A map of all affected property owners and

1 the corresponding mailing list shall be submitted with each
2 application; and

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

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

14 SECTION 33. AMENDATORY 2 O.S. 2001, Section 9-205.2, is
15 amended to read as follows:

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

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

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

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

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

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

8 ~~E. D.~~ The ~~Pollution Prevention Plan~~ operator of an animal
9 feeding operation shall ~~provide and require~~ obtain presite approval
10 by ~~Departmental personnel~~ the Department prior to construction.
11 During construction, the Department shall monitor the construction
12 process as deemed necessary by the Department in an attempt to
13 verify the construction of the facility is done according to plans
14 and acceptable engineering standards to reduce or eliminate the
15 potential of pollution.

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

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

22 2. A map, and indicating an outline of the drainage area of the
23 facility, and each existing structural control measure designed to

1 reduce pollutants in wastewater and precipitation runoff in all
2 surface waters of the state;

3 3. A spill contingency plan for potential pollutants;

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

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

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

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

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

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

19 7. Training requirements for employees;

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

1 9. Requirements that all irrigation systems into which any
2 animal waste will be injected shall be equipped as specified by
3 Section ~~9-205.5~~ 37 of this ~~title~~ act.

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

6 1. Water level in the retention structure;

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

8 3. Incident reports such as spills and other discharges;

9 4. Inspection and maintenance reports;

10 5. Findings from annual inspections of the entire facility;

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

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

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

19 9. Copy of ~~general~~ any permit issued by the federal
20 Environmental Protection Agency, if applicable, a copy of ~~the~~
21 ~~completed Pollution Prevention Plan~~ all required plans, and other
22 specific records deemed necessary by the Department ~~to implement the~~

1 ~~provisions of the Oklahoma Concentrated Animal Feeding Operations~~
2 ~~Act and rules promulgated pursuant thereto; and~~

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

6 ~~H. G.~~ G. Any required analyses ~~required by the provisions of the~~
7 ~~Oklahoma Concentrated Animal Feeding Operations Act or rules~~
8 ~~promulgated thereto~~ shall be performed by a qualified independent
9 testing laboratory certified by the Oklahoma Department of
10 Environmental Quality and approved by the Oklahoma Department of of
11 Agriculture, Food, and Forestry. Any required soil analyses shall
12 be performed by a qualified independent testing laboratory certified
13 by the Oklahoma Department of Environmental Quality or approved by
14 the Oklahoma Department of Agriculture, Food, and Forestry.

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

1 SECTION 34. AMENDATORY 2 O.S. 2001, Section 9-205.3, is
2 amended to read as follows:

3 Section 9-205.3 A. 1. All licensed managed feeding operations
4 shall utilize Best Management Practices meeting the conditions and
5 requirements established by ~~subsection B~~ of this section and by
6 rules promulgated by the State Board of Agriculture pursuant to the
7 Oklahoma Concentrated Animal Feeding Operations Act.

8 2. Animal feeding operations ~~licensed~~ permitted pursuant to the
9 provisions of the Oklahoma Concentrated Animal Feeding Operations
10 Act other than licensed managed feeding operations shall utilize
11 Best Management Practices, or may substitute ~~for best management~~
12 ~~practice~~ equivalent measures contained in a site-specific ~~Animal~~
13 ~~Waste~~ Nutrient Management Plan meeting the conditions and
14 requirements established by ~~subsection C~~ of this section and by
15 rules promulgated by the Board pursuant to the Oklahoma Concentrated
16 Animal Feeding Operations Act.

17 B. The criteria for Best Management Practices shall be
18 promulgated by rule by the Board, based upon existing physical and
19 economic conditions, opportunities and constraints and shall
20 include, but not be limited to, the following:

21 1. There shall be no discharge of ~~process wastewater~~ animal
22 waste to waters of the state except in accordance with the

1 provisions of the Oklahoma Concentrated Animal Feeding Operations
2 Act;

3 2. Animal waste shall be isolated from outside surface drainage
4 by ditches, dikes, berms, terraces or other ~~such~~ structures except
5 ~~for a twenty-five-year, twenty-four-hour rainfall event~~ as provided
6 in Part 412 of Title 40 of the Code of Federal Regulations;

7 3. No waters of the state shall come into direct contact with
8 the animals confined on the animal feeding operation;

9 4. Animal waste handling, treatment, management, and removal
10 shall:

- 11 a. not create an environmental or a public health hazard,
- 12 b. not result in the contamination of public or private
13 drinking water supplies,
- 14 c. conform with Oklahoma Water Quality Standards,
- 15 d. comply with the Odor Abatement Plan for licensed
16 managed feeding operations and shall not ~~otherwise~~
17 create unnecessary and unreasonable odors. Odors are
18 unnecessary and unreasonable if ~~such~~ the odors may be
19 reduced by more efficient management practices at a
20 reasonable expense,
- 21 e. not violate any state or federal laws relating to
22 endangered or threatened species of plant, fish, or
23 wildlife or to migratory birds,

- 1 f. conform to the Pest Management ~~Plans~~ Plan for licensed
2 managed feeding operations as required by rules
3 promulgated by the ~~State Board of Agriculture,~~
4 g. conform to ~~such~~ other handling, treatment, and
5 management and removal requirements deemed necessary
6 by the ~~State Department of Agriculture to implement~~
7 ~~the Oklahoma Concentrated Animal Feeding Operations~~
8 ~~Act and rules promulgated pursuant thereto,~~ and
9 h. ensure that watersheds and groundwater are adequately
10 protected; and

11 5. If, for any reason, there is a discharge, the ~~licensee is~~
12 ~~required to~~ operator shall make immediate notification to the
13 Department. The report of the discharge shall include:

- 14 a. a description and cause of the discharge, including a
15 description of the flow path to the receiving water
16 body,
17 b. an estimation of the flow rate and volume discharged,
18 c. the period of discharge, including exact dates and
19 times, and if not already corrected, the anticipated
20 time the discharge is expected to continue,
21 d. steps taken to reduce, eliminate, and prevent
22 recurrence of the discharge, and

1 e. test results for fecal coliform bacteria, five-day
2 biochemical oxygen demand (BOD5), total suspended
3 solids (TSS), ammonia nitrogen, total Kjeldahl
4 nitrogen (TKN), any pesticides which the operator has
5 reason to believe could be in the discharge, or ~~such~~
6 any other required parameters ~~as required by the~~
7 ~~Department which~~ that the Department has reason to
8 believe could be in the discharge.

9 C. The ~~Animal Waste~~ concentrated animal feeding operation shall
10 develop and implement a Nutrient Management Plan based on a field-
11 specific assessment of the potential for nitrogen and phosphorus
12 transport from the field and addressing the form, source, amount,
13 timing, and method of application of nutrients on each field to
14 achieve realistic production goals, while minimizing nitrogen and
15 phosphorus movement to waters of the state. The Nutrient Management
16 Plan shall include at a minimum:

- 17 1. Animal waste removal procedures;
- 18 2. Records of inspections of retention structures, including,
19 but not limited to, specific measurement of wastewater level;
- 20 3. All calculations in determining land application rates,
21 acreage, and crops for the land application rate of both solid and
22 liquid animal wastes on land owned or controlled by the ~~licensee~~
23 operator;

1 4. Requirements including that:

- 2 a. (1) land application of animal waste to land under
3 the ownership or operational control of the
4 animal feeding operation shall not exceed the
5 nitrogen uptake of the crop coverage or planned
6 crop planting ~~with any land application of~~
7 ~~wastewater or manure~~ and shall minimize
8 phosphorus transport from the field to waters of
9 the state in compliance with the technical
10 standards for nutrient management established by
11 the Department. ~~Where local water quality is~~
12 ~~threatened by phosphorous,~~ In no case shall
13 the ~~applicant or licensee~~ operator exceed the
14 application rates in the most current United
15 States Department of Agriculture Natural
16 Resources Conservation ~~publication~~ Service
17 publications ~~titled Waste Utilization Standard,~~
18 and
19 (2) timing and rate of applications shall be in
20 response to crop needs, expected precipitation,
21 and soil conditions,
22 b. land application practices shall be managed so as to
23 reduce or minimize:

1 (1) the discharge of ~~process water or~~ animal waste to
2 waters of the state,
3 (2) contamination of waters of the state, and
4 (3) odor,
5 c. facilities including waste retention structures,
6 animal waste storage sites management systems, ponds,
7 pipes, ditches, pumps, diversion, and irrigation
8 equipment shall be maintained to ensure ability to
9 fully comply with the Oklahoma Concentrated Animal
10 Feeding Operations Act, ~~and~~
11 d. adequate equipment and land application area shall be
12 available for removal of ~~such animal waste and~~
13 ~~wastewater~~ as required to maintain the proper
14 operating volume of the retention structure, and
15 e. unless the concentrated animal feeding operation
16 exercises a compliance alternative pursuant to this
17 section, animal waste shall not be applied closer than
18 one hundred (100) feet to any down-gradient surface
19 waters, open tile line intake structures, sinkholes,
20 agricultural wellheads, public water supply wells, or
21 other conduits to surface waters.
22 (1) As a compliance alternative, the concentrated
23 animal feeding operation may substitute the one-

1 hundred-foot setback with a thirty-five-foot-wide
2 vegetated buffer where applications of animal
3 waste are prohibited.

4 (2) As a compliance alternative, the concentrated
5 animal feeding operation may demonstrate that a
6 setback or buffer is not necessary because
7 implementation of alternative conservation
8 practices or field-specific conditions will
9 provide pollutant reductions equivalent or better
10 than the reductions that would be achieved by the
11 one-hundred-foot setback; and

12 5. ~~Such~~ Any other information deemed necessary by the
13 Department to administer ~~the provisions of~~ the Oklahoma Concentrated
14 Animal Feeding Operations Act ~~and rules promulgated pursuant~~
15 ~~thereto.~~

16 D. Records shall be maintained of all animal wastes applied on
17 land owned or controlled by the licensee, ~~and sold or given to other~~
18 ~~persons for disposal~~ operator.

19 E. If the animal waste from a ~~licensed managed~~ large
20 concentrated animal feeding operation is sold or given to other
21 persons for land application or disposal, the ~~licensed managed~~ large
22 concentrated animal feeding operation shall maintain a log of: date
23 of removal from the large concentrated animal feeding operation;

1 ~~names~~ name and address of ~~such other~~ persons purchasing or taking
2 the waste; and amount, in wet tons, dry tons, or cubic yards, of
3 animal waste removed from the large concentrated animal feeding
4 operation.

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

9 2. In addition, ~~the~~ a licensed managed feeding operation shall
10 notify, in writing, any person to whom the animal waste is sold or
11 given of the land application disposal requirements for animal waste
12 as specified by the Oklahoma Concentrated Animal Feeding Operations
13 Act and rules promulgated thereto.

14 3. ~~The~~ A licensed managed feeding operation shall remain liable
15 and responsible for compliance with all rules promulgated by the
16 Board regarding proper handling and disposing of animal waste even
17 if ~~such~~ the disposal or application is performed by persons not
18 employed or controlled by the licensed managed feeding operation.

19 G. Soils in areas ~~in which~~ where animal waste is applied shall
20 be analyzed, annually, for phosphates, nitrates, and soil pH prior
21 to the first application of the animal waste in the calendar year.
22 A copy of the results of the analysis shall be submitted to the
23 Department upon request ~~by the Department~~. ~~Such~~ The analysis shall

1 be retained by the animal feeding operation as long as the facility
2 is in operation.

3 H. Every animal feeding operation ~~licensed pursuant to the~~
4 ~~provisions of Oklahoma Concentrated Animal Feeding Operations Act~~
5 shall develop a plan ~~approved by the Department~~ for the disposal of
6 carcasses associated with normal mortality.

7 1. Dead animals shall be disposed of in accordance with a
8 carcass disposal plan developed by the ~~applicant or licensee and~~
9 ~~approved by the Department~~ operator.

10 2. The plan shall include provisions for the disposal of
11 carcasses associated with normal mortality, with emergency disposal
12 when a major disease outbreak or other emergency results in deaths
13 significantly higher than normal mortality rates, and other
14 provisions ~~which~~ that will provide for a decrease in the possibility
15 of the spread of disease and prevent the contamination of waters of
16 the state. ~~The plan shall comply with rules promulgated by the~~
17 ~~Department.~~

18 SECTION 35. AMENDATORY 2 O.S. 2001, Section 9-205.3a, is
19 amended to read as follows:

20 Section 9-205.3a A. An Odor Abatement Plan shall be developed
21 by each licensed managed feeding operation ~~prior to the submission~~
22 ~~of an application~~ pursuant to the provisions of this section and
23 rules promulgated by the State Board of Agriculture ~~pursuant~~

1 ~~thereto~~. The Odor Abatement Plan shall include, but not be limited
2 to, provisions for documentation of structural controls,
3 documentation of Best Management Practices, odor abatement, and
4 recordkeeping provisions.

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

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

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

17 C. If, after reviewing the Odor Abatement Plan, the ~~State~~
18 Oklahoma Department of Agriculture, Food, and Forestry determines
19 that the plan does not adequately meet one or more of the minimum
20 requirements, the licensed managed feeding operation shall make and
21 implement appropriate changes to the Plan ~~which~~ that may include the
22 utilization of economically feasible technology designed to abate
23 odor ~~as required by the Department pursuant to the Oklahoma~~

1 ~~Concentrated Animal Feeding Operations Act and rules promulgated~~
2 ~~pursuant thereto.~~

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

- 6 1. Design of the facilities;
- 7 2. Odor control technology to be utilized;
- 8 3. Prevailing wind direction in relation to occupied
9 residences;
- 10 4. Size of operation;
- 11 5. Distance from facility to occupied residences; and
- 12 6. All information contained in the application.

13 SECTION 36. AMENDATORY 2 O.S. 2001, Section 9-205.4, is
14 amended to read as follows:

15 Section 9-205.4 A. Any hydrologic connection between
16 ~~wastewater~~ animal waste and waters of the state outside that
17 authorized by the provisions of the Oklahoma Concentrated Animal
18 Feeding Operations Act ~~and rules promulgated pursuant thereto~~ shall
19 constitute a discharge to waters of the state.

20 B. Except as otherwise provided by Section ~~9-210.2~~ 44 of this
21 ~~title act~~, to prevent hydrologic connections between a retention
22 structure and waters of the state, all concentrated animal feeding
23 operations and swine feeding operations in this state primarily

1 using a liquid animal waste management system whether or not such
2 waste facilities are ~~licensed~~ permitted pursuant to the Oklahoma
3 Concentrated Animal Feeding Operations Act shall:

4 1. Utilize, ~~as required by the Oklahoma Concentrated Animal~~
5 ~~Feeding Operations Act and rules promulgated pursuant thereto,~~ a
6 natural or geomembrane liner or other liner constructed of synthetic
7 materials in any retention structure containing liquid animal waste;
8 and

9 2. Provide documentation that there is no hydrologic connection
10 between the waters of the state and the retention structure. This
11 documentation shall be certified by a professional environmental,
12 agricultural, or other ~~Department-approved professional~~ approved
13 engineer licensed pursuant to Section 475.12 of Title 59 of the
14 Oklahoma Statutes or a United States Department of Agriculture
15 Natural Resources Conservation Service engineer and shall include
16 information on the hydraulic conductivity and thickness of the
17 natural materials underlying and forming the walls of the
18 containment structure up to the maximum operating level.

19 C. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ 44 of ~~this~~
20 ~~title~~ the Oklahoma Concentrated Animal Feeding Operations Act and
21 subsection E of this section, all retention structures of licensed
22 managed feeding operations shall maintain a minimum separation of
23 ten (10) feet between the bottom of the retention structure and the

1 maximum historical groundwater elevation ~~which~~ that is measured from
2 the bottom of the retention structure and the highest point of the
3 seasonal groundwater table. Documentation of a ten-foot separation
4 shall be established by submission of a soil log from a soil boring
5 extending a minimum of ten (10) feet below the bottom of all
6 retention structures to ascertain the presence of groundwater or
7 bedrock and a statement from a professional engineer ~~or a United~~
8 ~~States Department of Agriculture Natural Resources Conservation~~
9 ~~Service engineer~~ certifying the existence of the ten-foot separation
10 distance.

11 D. The State ~~Department~~ Board of Agriculture shall establish
12 standards for retention structures ~~pursuant to the provisions of~~
13 ~~this section.~~

14 E. The Department may allow a separation of less than ten (10)
15 feet but in no event less than four (4) feet between the bottom of
16 the retention structure and the maximum historical groundwater
17 elevation. In determining the minimum separation to be required,
18 the Department shall consider the following factors:

- 19 1. Soil type at the retention structure;
- 20 2. Soil tests per American Standards Testing Methods (ASTM)
21 standards on all soils to be used as liner material;
- 22 3. Retention structure capacity;
- 23 4. Retention structure design;

- 1 5. Documentation of lack of hydrologic connection between the
2 waters of the state and the retention structure;
- 3 6. Depth of retention structure;
- 4 7. Type and characteristics of liner to be used; and
- 5 8. Any other relevant information.

6 F. 1. Licensed managed feeding operations ~~initially licensed~~
7 ~~on or after August 1, 1998,~~ shall install and maintain in good
8 working order a leak detection system or sufficient monitoring wells
9 both upgradient and downgradient around the perimeter of each
10 retention structure prior to using the retention structure for
11 storage of liquid waste pursuant to rules promulgated by the State
12 ~~Department~~ Board of Agriculture.

13 2. ~~By September 1, 1999, licensed managed feeding operations~~
14 ~~licensed prior to August 1, 1998, shall install and maintain in~~
15 ~~working order a leak detection system or sufficient monitoring wells~~
16 ~~both upgradient and downgradient around the perimeter of each~~
17 ~~retention structure.~~

18 ~~3.~~ Samples of water shall be collected by the ~~State~~ Oklahoma
19 Department of Agriculture, Food, and Forestry and submitted for
20 testing at least annually. The analysis of the water samples shall
21 be performed by a qualified environmental laboratory certified by
22 the Oklahoma Department of Environmental Quality and approved by the
23 ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry, and

1 the cost shall be the responsibility of the ~~owner~~ operator of the
2 licensed managed feeding operation.

3 ~~4.~~ 3. Documentation, sampling data, and any other records
4 required by this section shall be maintained on site for the life of
5 the facility ~~with the Pollution Prevention Plan.~~

6 ~~5.~~ 4. Analysis from the sampling taken prior to the operation
7 of the facility ~~shall~~ may be considered the baseline data and ~~must~~
8 shall be retained on site for the life of the facility. If no
9 sampling or other baseline data is available prior to the operation
10 of the facility, the samples taken during the first year ~~shall~~ may
11 be considered the baseline data and shall be retained on site for
12 the life of the facility. Baseline data for the facility shall be
13 considered from the best information available.

14 ~~6.~~ 5. The Oklahoma Water Resources Board shall promulgate rules
15 providing for plugging of monitoring wells as appropriate.

16 G. Site-specific conditions shall be considered in the design
17 and construction of liners. Liners for retention structures shall
18 be designed and constructed in accordance with the provisions of
19 this section and generally accepted engineering practices
20 established by rules of the ~~State Board of Agriculture~~ or as
21 ~~otherwise~~ required by the federal Environmental Protection Agency.
22 Liners for lagoons owned or operated by an animal feeding operation
23 with less than one thousand (1,000) animal units may be designed and

1 constructed pursuant to Technical Note 716 of the United States
2 Department of Agriculture Natural Resources Conservation Service or
3 its current equivalent ~~or by the federal Environmental Protection~~
4 ~~Agency~~ so long as the facility is designed by a the United States
5 Department of Agriculture Natural Resources Conservation Service
6 engineer.

7 H. 1. When a liner is installed to prevent hydrologic
8 connection, the ~~licensee or the owner of such operation if~~
9 ~~unlicensed must~~ operator shall maintain the liner to inhibit
10 infiltration of ~~wastewaters~~ animal waste. Documentation of liner
11 maintenance shall be maintained ~~with~~ at the ~~Pollution Prevention~~
12 ~~Plan~~ facility.

13 2. A professional environmental, agricultural, or other
14 ~~Department-approved professional~~ approved engineer licensed pursuant
15 to Section 475.12 of Title 59 of the Oklahoma Statutes ~~or a United~~
16 ~~States Department of Agriculture Natural Resources Conservation~~
17 ~~Service engineer,~~ shall conduct a site evaluation every five (5)
18 years on the retention structure of every concentrated animal
19 feeding operation with such a structure and annually on every
20 licensed managed feeding operation to ensure liner integrity. If
21 the ~~owner or~~ operator suspects that a retention structure is
22 leaking, the ~~owner or~~ operator shall report ~~such~~ suspected leakage
23 to the ~~Department~~ Director.

1 3. The ~~Department~~ Director shall establish a compliance
2 schedule ~~of~~ for retrofitting ~~of~~ liners ~~for~~ of waste retention
3 structures for licensed managed feeding operations constructed prior
4 to ~~the effective date of this act which~~ August 1, 1998, that are
5 located in nutrient-limited watersheds or nutrient-vulnerable
6 groundwaters as designated by the Oklahoma Water Resources Board
7 ~~pursuant to Section 3 of this act,~~ and ~~which~~ do not have liners
8 meeting the specifications established in this section.

9 I. All substances entering the retention structures shall be
10 composed entirely of ~~wastewaters~~ animal waste from the proper
11 operation and maintenance of an animal feeding operation and the
12 runoff from the animal feeding operation area. The disposal of any
13 materials, other than substances associated with proper operation
14 and maintenance of the facility into the containment structures,
15 including but not limited to human waste, is prohibited.

16 J. All new retention structures of licensed managed feeding
17 operations shall be designed for odor abatement, groundwater
18 protection, and nutrient conservation.

19 K. Documentation, sampling data, and any other records required
20 by this section shall be maintained on site for as long as the
21 facility is in operation. Samples collected during the first year
22 of the retention structure ~~shall~~ may be considered the baseline data
23 and ~~must~~ shall be retained on site as long as the facility is in

1 operation. Baseline data for the facility shall be considered from
2 the best information available.

3 SECTION 37. AMENDATORY 2 O.S. 2001, Section 9-205.5, is
4 amended to read as follows:

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

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

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

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

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

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

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

7 SECTION 38. AMENDATORY 2 O.S. 2001, Section 9-206, is
8 amended to read as follows:

9 Section 9-206. A. ~~The State Board of Agriculture or its~~
10 ~~authorized agents are empowered to enter upon the premises of any~~
11 ~~animal feeding operation for the purpose of investigating complaints~~
12 ~~as to the operation or to determine whether there are any violations~~
13 ~~of the Oklahoma Concentrated Animal Feeding Operations Act. The~~
14 Oklahoma Department of Agriculture, Food, and Forestry shall make at
15 least one unannounced inspection per year of every animal feeding
16 operation ~~licensed~~ permitted pursuant to the Oklahoma Concentrated
17 Animal Feeding Operations Act. Any holder of a permit or applicant
18 for a permit under the Oklahoma Concentrated Animal Feeding
19 Operations Act shall be deemed to have given consent to any
20 authorized officer, employee, or agent of the Department to:

21 1. Enter and inspect a facility in accordance with the
22 provisions of the Oklahoma Concentrated Animal Feeding Operations
23 Act;

1 2. Investigate complaints;

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

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

6 5. Have access for the purpose of inspecting and sampling any
7 effluent streams or any discharge of pollutants to waters of the
8 state or for inspection and sampling of any sludge source, storage,
9 beneficial use, reuse, or disposal site; and

10 6. Obtain copies of records, plans, reports, or other
11 information required by the Department. All records shall be
12 submitted upon request and shall be subject to and made available
13 for inspection at reasonable times to any authorized representative
14 of the Department. Any authorized representative of the Department
15 may examine any records or memoranda pertaining to discharges,
16 treatment, or other limitations set by permit, order, or duly
17 promulgated rules of the State Board of Agriculture.

18 B. For unpermitted facilities, authorized employees or
19 representatives, upon presentation of a credential and, if
20 necessary, a proper warrant shall have:

21 1. A right of entry to, upon, or through any private or public
22 premises upon which an effluent or sludge source is or may be
23 located or in which any records are required to be maintained;

1 2. A right of entry for the purpose of investigating
2 complaints;

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

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

8 5. Access for the purpose of inspecting and sampling any
9 effluent streams or any discharge of pollutants to waters of the
10 state or for inspection and sampling of any sludge source, storage,
11 beneficial use, reuse, or disposal site.

12 C. 1. The Board shall promulgate standard precautions for the
13 prevention of the transmission of communicable diseases to humans
14 and animals to be used by employees of the Department of Agriculture
15 when inspecting animal feeding operations pursuant to their official
16 duties specified by the Oklahoma Concentrated Animal Feeding
17 Operations Act and rules promulgated pursuant thereto.

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

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

5 SECTION 39. AMENDATORY 2 O.S. 2001, Section 9-208, is
6 amended to read as follows:

7 Section 9-208. A. 1. It shall be unlawful for any person to
8 operate a concentrated animal feeding operation, without ~~having~~
9 first ~~obtained~~ obtaining a license ~~from the State Board of~~
10 ~~Agriculture~~ permit.

11 2. The owner or operator of an animal feeding operation not
12 classified as a concentrated animal feeding operation may apply for
13 a license permit if ~~such owner or~~ the operator elects to come under
14 the provision of the Oklahoma Concentrated Animal Feeding Operations
15 Act and the rules of the State Board of Agriculture.

16 ~~3. The owner or operator of an animal feeding operation which~~
17 ~~houses swine and primarily uses a liquid animal waste management~~
18 ~~system not classified as a licensed managed feeding operation may~~
19 ~~apply for a license if such owner or operator voluntarily elects to~~
20 ~~come under the provisions of the Oklahoma Concentrated Animal~~
21 ~~Feeding Operations Act relating to licensed managed feeding~~
22 ~~operations and the rules of the Board.~~

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

- 3 a. commercial manufacturers of fertilizers, grain and
4 feed products, and chemicals, and over manufacturing
5 of food and kindred products, tobacco, paper, lumber,
6 wood, textile mill and other agricultural products,
7 b. slaughterhouses, but not including feedlots at ~~such~~
8 these facilities, and
9 c. aquaculture and fish hatcheries, including, but not
10 limited to, discharges of pollutants and storm water
11 to waters of the state, surface impoundments and land
12 application of wastes and sludge, and other pollution
13 originating at ~~such~~ these facilities.

14 2. Facilities ~~which store~~ storing grain, feed, seed,
15 fertilizer, and agricultural chemicals that are required by federal
16 National Pollutant Discharge Elimination System regulations to
17 obtain a ~~federal National Pollutant Discharge Elimination System~~
18 permit for storm water discharges shall only be subject to the
19 jurisdiction of the Department of Environmental Quality with respect
20 to ~~such~~ storm water discharges.

21 3. ~~Any point source discharge related to agriculture, as~~
22 ~~specified in paragraph 1 of subsection D of Section 1-3-101 of Title~~
23 ~~27A of the Oklahoma Statutes, which require a federal National~~

1 ~~Pollutant Discharge Elimination Systems individual permit and which~~
2 ~~are not specified under paragraph 1 of this subsection as being~~
3 ~~subject to the jurisdiction of the Department of Environmental~~
4 ~~Quality shall continue to be subject to the direct jurisdiction of~~
5 ~~the federal Environmental Protection Agency for issuance and~~
6 ~~enforcement of such permit and shall not be required to be permitted~~
7 ~~by the Department of Environmental Quality or the State Department~~
8 ~~of Agriculture.~~

9 SECTION 40. AMENDATORY 2 O.S. 2001, Section 9-209, is
10 amended to read as follows:

11 Section 9-209. A. ~~Licenses issued pursuant to the Oklahoma~~
12 ~~Concentrated Animal Feeding Operations Act~~ The annual and animal
13 unit fees set forth in this section shall ~~expire on~~ be due by June
14 30 of each year and ~~may be renewed upon payment of the license fee~~
15 ~~set forth in subsection B of this section and continued compliance~~
16 ~~with the provisions of the Oklahoma Concentrated Animal Feeding~~
17 ~~Operations Act and the rules of the Board.~~

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

20	Animal feeding	Amount
21	operations capacity	of Fee
22	Under two hundred fifty animal units	\$15.00

~~1 Two hundred fifty to five hundred~~
~~2 animal units \$37.50~~
~~3 Five hundred and one to three thousand~~
~~4 animal units \$75.00~~
~~5 Three thousand and one to ten thousand~~
~~6 animal units \$150.00~~
~~7 Over ten thousand animal units \$225.00~~
~~8 1. Fifteen Dollars (\$15.00) for facilities with a capacity of~~
~~9 less than two hundred fifty (250) animal units;~~
~~10 2. Thirty-seven Dollars and fifty cents (\$37.50) for facilities~~
~~11 with a capacity of two hundred fifty (250) to five hundred (500)~~
~~12 animal units;~~
~~13 3. Seventy-five Dollars (\$75.00) for facilities with a capacity~~
~~14 of five hundred one (501) animal units to three thousand (3,000)~~
~~15 animal units;~~
~~16 4. One Hundred Fifty Dollars (\$150.00) for facilities with a~~
~~17 capacity of three thousand one (3,001) animal units to ten thousand~~
~~18 (10,000) animal units; and~~
~~19 5. Two Hundred Twenty-five Dollars (\$225.00) for facilities~~
~~20 with a capacity of more than ten thousand (10,000) animal units.~~
~~21 C. For the license year ending June 30, 1999, all licensed~~
~~22 managed feeding operations shall pay an additional license fee for~~

1 ~~original or renewal licenses in an amount equal to eighty cents~~
2 ~~(\$0.80) per licensed animal unit capacity.~~

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

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

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

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

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

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

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

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

15 ~~E. D.~~ The Department is directed to review ~~its~~ costs related to
16 the administration, regulation, and enforcement of licensed managed
17 feeding operations ~~required by the Oklahoma Concentrated Animal~~
18 ~~Feeding Operations Act.~~ Based on ~~its~~ the review ~~the Department~~
19 ~~shall promulgate emergency,~~ rules shall be promulgated pursuant to
20 the Administrative Procedures Act ~~which will establish a renewal~~
21 establishing the annual animal unit fee for licensed managed feeding
22 operations. ~~The Department is directed to promulgate such emergency~~
23 ~~rules on or before March 1, 1999.~~ The animal unit fee shall be

1 based on the costs incurred by the Oklahoma Department of
2 Agriculture, Food, and Forestry in salaries, travel claims, and
3 other necessary expenses incurred in fulfilling its regulatory and
4 administrative obligations with regard to licensed managed feeding
5 operations. Under no circumstances shall the fee exceed eighty
6 cents (\$0.80) per animal unit.

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

11 SECTION 41. AMENDATORY 2 O.S. 2001, Section 9-209.1, is
12 amended to read as follows:

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

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

22 a. Category A surety which shall include a financial
23 statement listing assets and liabilities and including

1 a general release that the information may be verified
2 with banks and other financial institutions. The
3 financial statement shall be confidential and shall
4 not be opened to public inspection. The statement
5 shall prove a net worth of not less than:

- 6 (1) Ten Thousand Dollars (\$10,000.00) for any
7 permitted animal feeding operation ~~licensed~~
8 ~~pursuant to the Oklahoma Concentrated Animal~~
9 ~~Feeding Operations Act~~ having a capacity of more
10 than three hundred (300) animal units but having
11 one thousand (1,000) animal units or less,
12 (2) Twenty-five Thousand Dollars (\$25,000.00) for any
13 permitted animal feeding operation ~~licensed~~
14 ~~pursuant to the Oklahoma Concentrated Animal~~
15 ~~Feeding Operations Act~~ having a capacity of more
16 than one thousand (1,000) animal units but ~~less~~
17 ~~than~~ having two thousand (2,000) animal units or
18 less, or
19 (3) Fifty Thousand Dollars (\$50,000.00) for any
20 permitted animal feeding operation ~~licensed~~
21 ~~pursuant to the Oklahoma Concentrated Animal~~
22 ~~Feeding Operations Act~~ having a capacity of more
23 than two thousand (2,000) animal units, or

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

18 2. ~~The Department upon~~ Upon certification by any animal feeding
19 operation subject to Category B surety that its liability statewide
20 is less than the twenty-five-thousand-dollar standard specified in
21 this section, the Director may allow ~~said owner or~~ the operator to
22 provide Category B type surety in an amount less than the required
23 Twenty-five Thousand Dollars (\$25,000.00), but at least sufficient

1 to cover the estimated cost of all closure and removal operations
2 currently the responsibility of that ~~owner or~~ operator.

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

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

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

22 E. 1. If the Department, after notice and an opportunity for
23 hearing, determines that the animal feeding operation ~~licensed~~

1 ~~pursuant to the provisions of the Oklahoma Concentrated Animal~~
2 ~~Feeding Operations Act~~ has neglected, failed, or refused to close
3 any surface impoundment, or remove or cause to be removed any
4 equipment, or has abandoned the facility, then the animal feeding
5 operation shall be deemed to have forfeited the letter of credit or
6 negotiable instrument required by this section or shall pay to this
7 state, for deposit in the State Treasury, a sum equal to the cost of
8 closure of any surface impoundment or removal of equipment.

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

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

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

5 SECTION 42. AMENDATORY 2 O.S. 2001, Section 9-210, is
6 amended to read as follows:

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

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

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

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

18 B. 1. Any animal feeding operation ~~licensed~~ permitted pursuant
19 to the Oklahoma Concentrated Animal Feeding Operations Act, operated
20 in compliance with such standards, and in compliance with the rules
21 promulgated by the Board, shall be deemed to be prima facie evidence
22 that a nuisance does not exist; provided, no animal feeding

1 operation shall be located or operated in violation of any zoning
2 regulations.

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

12 SECTION 43. AMENDATORY 2 O.S. 2001, Section 9-210.1, is
13 amended to read as follows:

14 Section 9-210.1 A. Except as otherwise provided by Section 9-
15 210.2 of this title, the state shall be divided east and west based
16 on the Indian Meridian for the purpose of determining setback
17 requirements from occupied residences for animal feeding operations
18 using a liquid animal waste management system where swine are
19 primarily housed in a roof-covered structure and which were
20 established between September 1, 1997, and June 1, 1998:

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

- 1 a. located in the eastern half of the state shall be
2 constructed where its closest waste facility is within
3 a distance of one-half (1/2) mile of any occupied
4 residence not owned or leased by the ~~owner~~ or operator
5 of the licensed managed feeding operation, or
6 b. located in the western half of the state shall be
7 constructed where its closest waste facility is within
8 a distance of three-fourths (3/4) mile of any occupied
9 residence not owned or leased by the ~~owner~~ or operator
10 of the licensed managed feeding operation.

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

- 14 a. located in the eastern half of the state shall be
15 constructed where its closest waste facility is
16 located within a distance of one-fourth (1/4) mile of
17 any occupied residence not owned or leased by the
18 ~~owner~~ operator of the animal feeding operation, or
19 b. located in the western half of the state shall be
20 constructed where its closest waste facility is
21 located within a distance of one-half (1/2) mile of
22 any occupied residence not owned or leased by the
23 ~~owner~~ operator of the animal feeding operation.

1 3. No new or expanding animal feeding operation with a capacity
2 of more than three hundred (300) animal units but having one
3 thousand (1,000) animal units or less shall be constructed where its
4 closest waste facility is located within a distance of one-fourth
5 (1/4) mile of any occupied residence not owned or leased by the
6 ~~owner~~ operator of the animal feeding operation.

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

11 C. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ 44 of this
12 ~~title act~~, no new concentrated animal feeding operation or expanding
13 operation shall be established ~~after September 1, 1997, which is~~
14 within one (1) mile of ten or more residences ~~which~~ that are
15 occupied residences at the time of the establishment of the
16 concentrated animal feeding operation.

17 D. The proscription contained in subsections A, B and C of this
18 section shall not apply if the applicable property owner executes a
19 written waiver with the ~~owner or~~ operator of the animal feeding
20 operation, under ~~such~~ terms and conditions that the parties
21 negotiate. The written waiver becomes effective upon recording of
22 the waiver in the offices of the recorder of deeds in the county ~~in~~
23 ~~which such~~ where the property is located. The filed waiver shall

1 preclude enforcement of the setback requirements contained in
2 subsections A, B and C of this section. A change in ownership of
3 the applicable property or change in the ownership of the property
4 on which the animal feeding operation is located shall not affect
5 the validity of the waiver.

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

9 F. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ 44 of this
10 ~~title act~~, no new concentrated animal feeding operation or expanding
11 operation shall be established ~~after September 1, 1997, which is~~ if
12 located:

- 13 1. Within three (3) miles of a state park or resort;
- 14 2. On land within three (3) miles of the incorporated limits of
15 any municipality; or
- 16 3. Within three (3) miles of the high water mark of a surface
17 public water supply if the new concentrated animal feeding operation
18 or expanding operation is proposed to be located within the drainage
19 basin for the public water supply.

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

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

4 SECTION 44. AMENDATORY 2 O.S. 2001, Section 9-210.2, is
5 amended to read as follows:

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

13 ~~2.~~ The provisions of Section ~~9-210.1~~ 43 of this ~~title act~~
14 relating to setback requirements and the provisions of subsections B
15 and C of Section ~~9-205.4~~ 36 of this ~~title act~~ relating to
16 utilization of liners in retention structures or documentation of no
17 hydrologic connection and to a minimum separation of ~~four (4)~~ ten
18 (10) feet between the bottom of the retention structure and the
19 maximum groundwater elevation shall not apply to ~~the facilities~~
20 ~~specified by this subsection~~ any concentrated animal feeding
21 operation that was permitted by or submitted a substantially
22 complete application on or before September 1, 1997.

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

9 2. The provisions of Section ~~9-210.1~~ 43 of this ~~title act~~
10 relating to setback requirements and the provisions of subsections B
11 and C of Section ~~9-205.4~~ 36 of this ~~title act~~ relating to
12 utilization of liners in retention structures or documentation of no
13 hydrologic connection and to a minimum separation of ~~four (4)~~ ten
14 (10) feet between the bottom of the retention structure and the
15 maximum groundwater elevation shall not apply to ~~the facilities~~
16 ~~specified~~ any animal feeding operation, other than a concentrated
17 animal feeding operation, that was permitted by this subsection or
18 submitted a substantially complete application on or before
19 September 1, 1997.

20 C. 1. Animal feeding operations, other than a concentrated
21 animal feeding operation, not ~~licensed~~ permitted pursuant to the
22 provisions of the Oklahoma ~~Feed Yards~~ Concentrated Animal Feeding
23 Operations Act in operation on ~~the effective date of this act~~

1 September 1, 1997, shall not be subject to any setback requirements
2 not in effect on the date of past construction.

3 2. Provided, that the provisions of subsections B and C of
4 Section ~~9-205.4~~ 36 of this ~~title~~ act relating to utilization of
5 liners in retention structures or documentation of no hydrologic
6 connection and to a minimum separation of ~~four (4)~~ ten (10) feet
7 between the bottom of the retention structure and the maximum
8 groundwater elevation shall not apply to facilities specified by
9 this subsection except as a condition to the issuance of a ~~license~~
10 permit pursuant to the provisions of the Oklahoma Concentrated
11 Animal Feeding Operations Act.

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

15 SECTION 45. AMENDATORY 2 O.S. 2001, Section 9-210.3, is
16 amended to read as follows:

17 Section 9-210.3 A. Except as ~~otherwise~~ provided by Section ~~14~~
18 44 of this act and subsection F of this section, animal feeding
19 operations using liquid animal waste management systems where swine
20 are housed in roof-covered structures shall not be located within
21 the following applicable distances from an occupied residence:

- 22 1. More than 4000 animal units..... 2 miles;
23 2. 2001 to 4000 animal units.....1 1/4 miles;

- 1 3. 1001 to 2000 animal units..... 3/4 mile;
- 2 4. 601 to 1000 animal units..... 1/2 mile;
- 3 5. 300 to 600 animal units.....1/4 mile; and
- 4 6. Less than 300 animal units.....no setback.

5 B. Except as ~~otherwise~~ provided by this section, no licensed
6 managed feeding operation ~~which applies for~~ that is a new or
7 expanding ~~concentrated animal feeding~~ operation license after March
8 9, 1998, shall be located within three (3) miles of the outside
9 boundary of any area or facility owned or operated as a camp or
10 recreational site by a nonprofit organization established prior to
11 application of the concentrated animal feeding operation. In
12 determining whether any such area or facility is a camp or
13 recreational site, the Board shall consider:

- 14 a. whether a reasonable person, after considering the
15 totality of the circumstances, would determine that
16 the area or facility is predominately used for camping
17 or recreational purposes,
- 18 b. the type of permanent structures or fixtures of a
19 recreational nature located on the land,
- 20 c. the frequency with which the site is used for
21 recreational purposes,
- 22 d. the types of activities which are conducted or engaged
23 in on the site, and

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

4 C. The setback requirements contained in subsections A and B of
5 this section shall not apply to any property owner who executes a
6 written waiver with the ~~owner or~~ operator of the animal feeding
7 operation, under ~~such~~ terms and conditions as are agreed to by the
8 parties. The written waiver shall be effective upon recording of
9 the waiver in the office of the county clerk in the county ~~in which~~
10 ~~such~~ where the property is located. The filed waiver shall preclude
11 enforcement of the setback requirements of ~~subsections~~ subsection A
12 or B of this section with regard to property described in the waiver
13 and owned by the person executing ~~such~~ the waiver. A change in
14 ownership of the applicable property or change in ownership of the
15 property ~~on which~~ where the animal feeding operation is located
16 shall not affect the validity of the waiver.

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

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

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

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

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

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

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

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

1 SECTION 46. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 20-21.1 of Title 2, unless there
3 is created a duplication in numbering, reads as follows:

4 The Oklahoma Department of Agriculture, Food, and Forestry shall
5 not accept or approve any pending applications requesting permits
6 for construction or expansion of any concentrated animal feeding
7 operation, as defined in Section 23 of this act, to be located
8 within one (1) mile upstream of the Pensacola Project boundary as
9 described in the records of the Grand River Dam Authority and the
10 Federal Emergency Management Agency. Any operation authorized or
11 permitted prior to April 17, 2002, shall not be affected by the
12 provisions of this section.

13 SECTION 47. AMENDATORY 2 O.S. 2001, Section 9-211, is
14 amended to read as follows:

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

22 2. The ~~State Board of Agriculture~~ Director of the Agriculture
23 Pollutant Discharge Elimination System shall have the power to

1 suspend, revoke, or not renew the ~~license~~ permit of any animal
2 feeding operation ~~based on such point system~~ after a hearing, and
3 after an administrative determination that ~~such~~ the animal feeding
4 operation has violated or has failed to comply with any of the
5 provisions of the Oklahoma Concentrated Animal Feeding Operations
6 Act, or any promulgated rule ~~promulgated pursuant thereto~~ except as
7 otherwise provided by the Oklahoma Agriculture Pollutant Discharge
8 Elimination System Act or the Oklahoma Agriculture Environmental
9 Permitting Act.

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

21 B. In order to protect the public health and safety and the
22 environment of this state, the ~~Board, pursuant to the Oklahoma~~
23 ~~Concentrated Animal Feeding Operations Act,~~ Director may deny

1 issuance of a ~~license~~ permit or transfer of a ~~license~~ permit to
2 establish and operate an animal feeding operation ~~on and after~~
3 ~~September 1, 1997,~~ to any person ~~or other legal entity which~~ that:

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

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

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

16 SECTION 48. AMENDATORY 2 O.S. 2001, Section 9-212.1, is
17 amended to read as follows:

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

1 promulgated pursuant to this section and the Oklahoma Concentrated
2 Animal Feeding Operations Act.

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

10 C. Whenever the ~~Department~~ Director finds that an emergency
11 exists requiring immediate action to protect the public health or
12 welfare or the environment pursuant to this subsection, the
13 ~~Department~~ Director may without notice or hearing issue an order,
14 effective upon issuance, reciting the existence of ~~such~~ an emergency
15 and requiring that ~~such~~ action be taken as deemed necessary by the
16 Director to meet the emergency. Any person to whom ~~such~~ an order is
17 directed shall comply ~~therewith~~ immediately but may request an
18 administrative enforcement hearing ~~thereon~~ within fifteen (15)
19 working days after the order is served. ~~Such~~ The hearing shall be
20 held ~~by the Department~~ within ten (10) working days after receipt of
21 the request. On the basis of the hearing record, the ~~Department~~
22 Director shall sustain or modify ~~such~~ the order.

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

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

14 F. The provisions of this section may be enforced pursuant to
15 the provisions of Section ~~9-212 of Title 2 of the Oklahoma Statutes~~
16 47 of this act.

17 SECTION 49. AMENDATORY Section 2, Chapter 94, O.S.L.
18 2002 (2 O.S. Supp. 2004, Section 10-9), is amended to read as
19 follows:

20 Section 10-9. ~~On the effective date of this act, the~~ The
21 Oklahoma Department of Agriculture, Food, and Forestry shall not
22 accept or approve any pending applications requesting permits for
23 registration, construction or expansion of any ~~concentrated animal~~

1 ~~feeding operation, as defined in Section 9-202 of Title 2 of the~~
2 ~~Oklahoma Statutes, or poultry feeding operation, as defined in~~
3 Section 10-9.1 of ~~Title 2 of the Oklahoma Statutes~~ this title, to be
4 located within one (1) mile upstream of the Pensacola Project
5 boundary as described in the records of the Grand River Dam
6 Authority and the Federal Emergency Management Agency. Any such
7 operation ~~currently~~ authorized or permitted prior to April 17, 2002,
8 shall not be affected by the provisions of this section.

9 SECTION 50. NEW LAW A new section of law not to be
10 codified in the Oklahoma Statutes reads as follows:

11 The State Board of Agriculture shall promulgate emergency rules
12 to implement Sections 2 through 48 of this act.

13 SECTION 51. RECODIFICATION 2 O.S. 2001, Sections 9-200,
14 9-201, 9-202 and 9-203, as amended by Sections 22, 23, 24 and 25 of
15 this act, shall be recodified as Sections 20-1, 20-2, 20-3 and 20-4
16 of Title 2 of the Oklahoma Statutes, unless there is created a
17 duplication in numbering. 2 O.S. 2001, Section 9-203.1, shall be
18 recodified as Section 1085.30a of Title 82 of the Oklahoma Statutes,
19 unless there is created a duplication in numbering. 2 O.S. 2001,
20 Sections 9-204, 9-204.1, 9-205, 9-205.1, 9-205.2, 9-205.3, 9-205.3a,
21 9-205.4, 9-205.5, 9-206, 9-208, 9-209, 9-209.1, 9-210, 9-210.1, 9-
22 210.2, 9-210.3 and 9-211, as amended by Sections 26, 28, 31, 32, 33,
23 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 47 of this act,

1 shall be recodified as Sections 20-5, 20-6, 20-9, 20-10, 20-11, 20-
2 12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-21,
3 20-22, 20-23 and 20-26 of Title 2 of the Oklahoma Statutes, unless
4 there is created a duplication in numbering. Section 2, Chapter 31,
5 O.S.L. 2004 (2 O.S. Supp. 2004, Section 20-49), shall be recodified
6 as Section 20-25 of Title 2 of the Oklahoma Statutes, unless there
7 is created a duplication in numbering. 2 O.S. 2001, Section 9-
8 212.1, as amended by Section 48 of this act, shall be recodified as
9 Section 20-27 of Title 2 of the Oklahoma Statutes, unless there is
10 created a duplication in numbering. 2 O.S. 2001, Section 9-214,
11 shall be recodified as Section 20-29 of Title 2 of the Oklahoma
12 Statutes, unless there is created a duplication in numbering. 2
13 O.S. 2001, Section 9-215, shall be recodified as Section 20-30 of
14 Title 2 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering.

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

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

20 SECTION 54. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
22 declared to exist, by reason whereof this act shall take effect and
23 be in full force from and after its passage and approval.

1 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-6-05 - DO
2 PASS, As Amended.