

CS for EHB 2603

1 THE STATE SENATE
2 Monday, April 10, 2006

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 2603

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2603 - By: DeWITT,
7 ARMES, DENNEY, BLACKWELL, BILLY, ELLIS, GLENN, HICKMAN, PRUETT,
8 ROGGOW and WALKER of the House and JUSTICE of the Senate.

9 An Act relating to agriculture; enacting the CAFO Rural
10 Economic Development Initiative Act; providing short title;
11 amending 2 O.S. 2001, Section 9-202, as renumbered by
12 Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005,
13 Section 20-3), which relates to the Oklahoma Concentrated
14 Animal Feeding Operations Act; adding definition; amending 2
15 O.S. 2001, Section 9-205.3, as renumbered by Section 25,
16 Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-10),
17 which relates to Best Management Practices; providing for
18 regulation of certain spills; requiring Oklahoma Department
19 of Agriculture, Food, and Forestry to maintain certain
20 records; providing for noncodification; and providing an
21 effective date.

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

23 SECTION 1. NEW LAW A new section of law not to be
24 codified in the Oklahoma Statutes reads as follows:

25 This act shall be known and may be cited as the "CAFO Rural
26 Economic Development Initiative Act".

27 SECTION 2. AMENDATORY 2 O.S. 2001, Section 9-202, as
28 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.
29 2005, Section 20-3), is amended to read as follows:

1 Section 20-3. A. Concentrated animal feeding operations are
2 point sources subject to the license program established pursuant to
3 the provisions of the Oklahoma Concentrated Animal Feeding
4 Operations Act.

5 B. As used in the Oklahoma Concentrated Animal Feeding
6 Operations Act:

- 7 1. "Affected property owner" means a surface landowner within:
8 a. one (1) mile of the designated perimeter of an animal
9 feeding operation which:
10 (1) does not meet the definition of a licensed
11 managed feeding operation, or
12 (2) is previously unlicensed or an expanding licensed
13 managed feeding operation with a capacity of two
14 thousand (2,000) or less animal units, or
15 b. two (2) miles of the designated perimeter of a
16 licensed managed feeding operation or an expanding
17 operation with a capacity of more than two thousand
18 (2,000) animal units for which a license is being
19 sought;
- 20 2. "Animal feeding operation" means a lot or facility where the
21 following conditions are met:
22 a. animals have been, are, or will be stabled or confined
23 and fed or maintained for a total of ninety (90)

1 consecutive days or more in any twelve-month period,
2 and

3 b. crops, vegetation, forage growth or post-harvest
4 residues are not sustained in the normal growing
5 season over any portion of the lot or facility.

6 The term "animal feeding operation" shall not include a
7 racetrack licensed by the Oklahoma Horse Racing Commission to hold
8 pari-mutuel race meetings pursuant to the Oklahoma Horse Racing Act
9 if such facility discharges to a publicly owned treatment works, or
10 an aquatic animal production facility;

11 3. "Animal unit" means a unit of measurement for any animal
12 feeding operation calculated by adding the following numbers: The
13 number of slaughter and feeder cattle multiplied by one (1), plus
14 the number of mature dairy cattle multiplied by one and four-tenths
15 (1.4), plus the number of swine weighing over twenty-five (25)
16 kilograms, approximately fifty-five (55) pounds, multiplied by four-
17 tenths (0.4), plus the number of weaned swine weighing under twenty-
18 five (25) kilograms multiplied by one-tenth (0.1), plus the number
19 of sheep multiplied by one-tenth (0.1), plus the number of horses
20 multiplied by two (2);

21 4. "Animal waste" means animal excrement, animal carcasses,
22 feed wastes, process wastewaters or any other waste associated with
23 the confinement of animals from an animal feeding operation;

1 5. "Animal Waste Management Plan" or "AWMP" means a written
2 plan that includes a combination of conservation and management
3 practices designed to protect the natural resources of the state
4 prepared by an owner or operator of an animal feeding operation as
5 required by the Department pursuant to the provisions of Section ~~9-~~
6 ~~205.3~~ 20-10 of this title;

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

11 7. "Artificially constructed" means constructed by humans;

12 8. "Best Management Practices" or "BMPs" means schedules of
13 activities, prohibitions of practices, maintenance procedures, and
14 other management practices to prevent or reduce the pollution of
15 waters of the state as established by the ~~State~~ Oklahoma Department
16 of Agriculture, Food, and Forestry pursuant to Section ~~9-205.3~~ 20-10
17 of this title;

18 9. "Board" means the State Board of Agriculture;

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

23 11. "Concentrated animal feeding operation" or "CAFO" means:

- 1 a. a licensed managed feeding operation, or
- 2 b. an animal feeding operation which meets the following
- 3 criteria:
- 4 (1) more than the number of animals specified in any
- 5 of the following categories are confined:
- 6 (a) 1,000 slaughter and feeder cattle,
- 7 (b) 700 mature dairy cattle, whether milk or dry
- 8 cows,
- 9 (c) 500 horses,
- 10 (d) 10,000 sheep or lambs,
- 11 (e) 55,000 turkeys,
- 12 (f) 5,000 ducks, or
- 13 (g) 1,000 animal units, and
- 14 (2) pollutants are discharged into waters of the
- 15 state. Provided, no animal feeding operation
- 16 pursuant to this subparagraph shall be construed
- 17 to be a concentrated animal feeding operation if
- 18 such animal feeding operation discharges only in
- 19 the event of a twenty-five-year, twenty-four-hour
- 20 storm event, or
- 21 c. an animal feeding operation which meets the following
- 22 criteria:

- 1 (1) more than the number of animals specified in any
2 of the following categories are confined:
3 (a) 300 slaughter or feeder cattle,
4 (b) 200 mature dairy cattle, whether milk or dry
5 cows,
6 (c) 750 swine each weighing over 25 kilograms or
7 approximately 55 pounds,
8 (d) 3,000 weaned swine each weighing under 25
9 kilograms,
10 (e) 150 horses,
11 (f) 3,000 sheep or lambs,
12 (g) 16,500 turkeys,
13 (h) 30,000 laying hens or broilers, if the
14 facility has continuous overflow watering,
15 (i) 9,000 laying hens or broilers, if the
16 facility has a liquid manure system,
17 (j) 1,500 ducks, or
18 (k) 300 animal units, and
19 (2) either one of the following conditions are met:
20 (a) pollutants are discharged into waters of the
21 state through an artificially constructed
22 ditch, flushing system or other similar
23 artificially constructed device, or

1 (b) pollutants are discharged directly into
2 navigable waters which originate outside of
3 and pass over, across or through the
4 facility or otherwise come into direct
5 contact with the animals confined in the
6 operation.

7 Provided, however, that no animal feeding operation
8 pursuant to this subparagraph is a concentrated animal
9 feeding operation if such animal feeding operation
10 discharges only in the event of a twenty-five-year,
11 twenty-four-hour storm event, or

12 d. the Board determines that the operation is a
13 significant contributor of pollution to waters of the
14 state pursuant to Section ~~9-204.1~~ 20-6 of this title;

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

17 13. "Designated perimeter" means the perimeter of any structure
18 or combination of structures utilized to control animal waste until
19 it can be disposed of in an authorized manner. Such structures
20 shall include but not be limited to pits, burial sites, barns or
21 roof-covered structures housing animals, composters, waste storage
22 sites, or retention structures or appurtenances or additions
23 thereto;

1 14. "Expanding operation" means:
2 a. a facility that either increases its animal unit
3 capacity to a number that causes the facility to
4 initially meet the definition of a licensed managed
5 feeding operation, or
6 b. a licensed managed feeding operation that seeks to
7 increase its licensed capacity in excess of five
8 percent (5%) of the original facility's licensed
9 capacity;

10 15. "Facility" means any place, site or location or part
11 thereof where animals are kept, handled, housed, or otherwise
12 maintained and processed and includes but is not limited to
13 buildings, lots, pens, and animal waste management systems;

14 16. "Interested party" means an affected property owner who
15 validly requests an individual hearing, in accordance with the
16 provisions of the Oklahoma Concentrated Animal Feeding Operations
17 Act and rules promulgated pursuant thereto regarding the issuance of
18 an animal feeding operation license and asserts rights to relief in
19 respect to or arising out of the same license;

20 17. "Land application" means the spreading on, or incorporation
21 of animal waste into the soil mantle primarily for beneficial
22 purposes;

1 21. "Nutrient-limited watershed" means a watershed of a
2 waterbody which is designated as "nutrient-limited" in the most
3 recent Oklahoma Water Quality Standards;

4 22. "Nutrient-vulnerable groundwater" means groundwater which
5 is designated "nutrient-vulnerable" in the most recent Oklahoma
6 Water Quality Standards;

7 23. "Odor Abatement Plan" or "OAP" means schedules of
8 activities, prohibitions of practices, maintenance procedures and
9 other management practices to prevent or reduce odor as established
10 by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry
11 pursuant to Section 10 of this act;

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

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

20 25. "Pollution Prevention Plan" or "PPP" means a written plan
21 to control the discharge of pollutants which has been prepared in
22 accordance with industry-acceptable engineering and management

1 practices by the owner or operator of an animal feeding operation as
2 required pursuant to Section ~~9-205.2~~ 20-9 of this title;

3 26. "Process wastewater" means any water utilized in the
4 facility that comes into contact with any manure, litter, bedding,
5 raw, intermediate, or final material or product used in or resulting
6 from the production of animals and any products directly or
7 indirectly used in the operation of a facility, such as spillage or
8 overflow from animal watering systems; washing, cleaning, or
9 flushing pens, barns, manure pits, direct contact, swimming, washing
10 or spray cooling of animals; and dust control and any precipitation
11 which comes into contact with animals or animal waste;

12 27. "Retention structures" includes but is not limited to all
13 collection ditches, conduits and swales for the collection of runoff
14 water and process wastewater, and basins, ponds and lagoons or other
15 structures used to store animal wastes;

16 28. "Spill" means the release from a swine animal feeding
17 operation of any process wastewater or manure that does not reach
18 waters of the state;

19 29. "Waste facility" means any structure or combination of
20 structures utilized to control animal waste until it can be disposed
21 of in an authorized manner. Such structures shall include but not
22 be limited to pits, burial sites, barns or roof-covered structures

1 housing animals, compostors, waste storage sites, or retention
2 structures or appurtenances or additions thereto; and
3 ~~29~~ 30. "Waters of the state" means all streams, lakes, ponds,
4 marshes, watercourses, waterways, wells, springs, irrigation
5 systems, drainage systems, storm sewers and all other bodies or
6 accumulations of water, surface and underground, natural or
7 artificial, public or private, which are contained within, flow
8 through or border upon this state or any portion thereof, and shall
9 include under all circumstances the waters of the United States
10 which are contained within the boundaries of, flow through or border
11 upon this state or any portion thereof. Process wastewaters shall
12 not be considered as waters of the state if contaminated at the
13 site.

14 SECTION 3. AMENDATORY 2 O.S. 2001, Section 9-205.3, as
15 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.
16 2005, Section 20-10), is amended to read as follows:

17 Section 20-10. A. 1. All licensed managed feeding operations
18 shall utilize Best Management Practices meeting the conditions and
19 requirements established by subsection B of this section and by
20 rules promulgated by the State Board of Agriculture pursuant to the
21 Oklahoma Concentrated Animal Feeding Operations Act.

22 2. Animal feeding operations licensed pursuant to the
23 provisions of the Oklahoma Concentrated Animal Feeding Operations

1 Act other than licensed managed feeding operations shall utilize
2 Best Management Practices, or may substitute for best management
3 practice equivalent measures contained in a site-specific Animal
4 Waste Management Plan meeting the conditions and requirements
5 established by subsection C of this section and by rules promulgated
6 by the Board pursuant to the Oklahoma Concentrated Animal Feeding
7 Operations Act.

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

12 1. There shall be no discharge of process wastewater to waters
13 of the state except in accordance with the provisions of the
14 Oklahoma Concentrated Animal Feeding Operations Act;

15 2. Animal waste shall be isolated from outside surface drainage
16 by ditches, dikes, berms, terraces or other such structures except
17 for a twenty-five-year, twenty-four-hour rainfall event;

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

20 4. Animal waste handling, treatment, management and removal
21 shall:

- 22 a. not create an environmental or a public health hazard,
23 b. not result in the contamination of public or private

- 1 drinking water supplies,
- 2 c. conform with Oklahoma Water Quality Standards,
- 3 d. comply with the Odor Abatement Plan for licensed
- 4 managed feeding operations and shall not otherwise
- 5 create unnecessary and unreasonable odors. Odors are
- 6 unnecessary and unreasonable if such odors may be
- 7 reduced by more efficient management practices at a
- 8 reasonable expense,
- 9 e. not violate any state or federal laws relating to
- 10 endangered or threatened species of plant, fish or
- 11 wildlife or to migratory birds,
- 12 f. conform to the Pest Management Plans for licensed
- 13 managed feeding operations as required by rules
- 14 promulgated by the State Board of Agriculture,
- 15 g. conform to such other handling, treatment and
- 16 management and removal requirements deemed necessary
- 17 by the ~~State~~ Oklahoma Department of Agriculture, Food,
- 18 and Forestry to implement the Oklahoma Concentrated
- 19 Animal Feeding Operations Act and rules promulgated
- 20 pursuant thereto, and
- 21 h. ensure that watersheds and groundwater are adequately
- 22 protected; ~~and~~
- 23 5. If, for any reason, there is a discharge other than a spill

1 of less than 100 gallons, the licensee is required to make immediate
2 notification to the Department. The report of the discharge shall
3 include:

- 4 a. a description and cause of the discharge, including a
5 description of the flow path to the receiving water
6 body,
- 7 b. an estimation of the flow rate and volume discharged,
- 8 c. the period of discharge, including exact dates and
9 times, and if not already corrected, the anticipated
10 time the discharge is expected to continue,
- 11 d. steps taken to reduce, eliminate and prevent
12 recurrence of the discharge, and
- 13 e. test results for fecal coliform bacteria, five-day
14 biochemical oxygen demand (BOD5), total suspended
15 solids (TSS), ammonia nitrogen, total Kjeldahl
16 nitrogen (TKN), any pesticides which the operator has
17 reason to believe could be in the discharge, or such
18 other parameters as required by the Department which
19 the Department has reason to believe could be in the
20 discharge;

21 6. Notwithstanding the provisions of paragraph 5 of this
22 subsection, any spill that leaves the property owned or controlled

1 by the licensee shall be reported to the Department regardless of
2 total number of gallons spilled; and

3 7. The Department shall maintain records of all discharges and
4 shall separately maintain records of all spills.

5 C. The Animal Waste Management Plan shall include at a minimum:

6 1. Animal waste removal procedures;

7 2. Records of inspections of retention structures, including,
8 but not limited to, specific measurement of wastewater level;

9 3. All calculations in determining land application rates,
10 acreage and crops for the land application rate of both solid and
11 liquid animal wastes on land owned or controlled by the licensee;

12 4. Requirements including that:

13 a. (1) land application of animal waste shall not exceed
14 the nitrogen uptake of the crop coverage or
15 planned crop planting with any land application
16 of wastewater or manure. Where local water
17 quality is threatened by phosphorous, in no case
18 shall the applicant or licensee exceed the
19 application rates in the most current Natural
20 Resources Conservation publication titled Waste
21 Utilization Standard, and

22 (2) timing and rate of applications shall be in
23 response to crop needs, expected precipitation

- 1 and soil conditions,
- 2 b. land application practices shall be managed so as to
- 3 reduce or minimize:
- 4 (1) the discharge of process water or animal waste to
- 5 waters of the state,
- 6 (2) contamination of waters of the state, and
- 7 (3) odor,
- 8 c. facilities including waste retention structures, waste
- 9 storage sites, ponds, pipes, ditches, pumps, diversion
- 10 and irrigation equipment shall be maintained to ensure
- 11 ability to fully comply with the terms of the Oklahoma
- 12 Concentrated Animal Feeding Operations Act, and
- 13 d. adequate equipment and land application area shall be
- 14 available for removal of such waste and wastewater as
- 15 required to maintain the proper operating volume of
- 16 the retention structure; and

17 5. Such other information deemed necessary by the Department to

18 administer the provisions of the Oklahoma Concentrated Animal

19 Feeding Operations Act and rules promulgated pursuant thereto.

20 D. Records shall be maintained of all animal wastes applied on

21 land owned or controlled by the licensee, and sold or given to other

22 persons for disposal.

23 E. If the animal waste from a licensed managed feeding

1 operation is sold or given to other persons for land application or
2 disposal, the licensed managed feeding operation shall maintain a
3 log of: date of removal from the animal feeding operation; names of
4 such other persons; and amount, in wet tons, dry tons or cubic
5 yards, of animal waste removed from the animal feeding operation.

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

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

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

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

1 Department upon request by the Department. Such analysis shall be
2 retained by the animal feeding operation as long as the facility is
3 in operation.

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

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

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

19 SECTION 4. This act shall become effective November 1, 2006.

20 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated 4-6-06
21 - DO PASS, As Amended.