

CS for EHB 2604

1 THE STATE SENATE  
2 Thursday, April 6, 2006

3 Committee Substitute for  
4 ENGROSSED  
5 House Bill No. 2604

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2604 - By: DeWITT  
7 of the House and SHURDEN of the Senate.

8 [ agriculture - National Pollution Discharge Elimination  
9 System - deleting jurisdiction provision for certain point  
10 source discharge - effective date ]

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

12 SECTION 1. AMENDATORY 27A O.S. 2001, Section 1-3-103, as  
13 amended by Section 3, Chapter 100, O.S.L. 2004, and as renumbered by  
14 Section 4, Chapter 100, O.S.L. 2004 (2 O.S. Supp. 2005, Section 2-  
15 18.2), is amended to read as follows:

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

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

4 Section 3-85. A. 1. The State Board of Agriculture shall  
5 administer and enforce the provisions of this subarticle and shall  
6 promulgate rules and standards for the application, use or sale of  
7 pesticides, rules for pesticide registration, standards for  
8 contracts and recordkeeping, work performance, prescribe standards  
9 for the licensing of application of pesticides, issuing pesticide  
10 dealer permits, certification, recertification procedures, and  
11 storing and disposal of pesticide and pesticide containers.

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

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

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

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

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

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

- 1 (1) pesticides with a stated concentration of active  
2 ingredient less than 0.51% shall not exceed 150%  
3 or fail to meet 80% of the stated active  
4 ingredient on the pesticide label when analyzed,
- 5 (2) pesticides with a stated concentration of active  
6 ingredient not less than 0.51% and not more than  
7 1.0% shall not exceed 140% or fail to meet 85% of  
8 the stated active ingredient on the pesticide  
9 label when analyzed,
- 10 (3) pesticides with a stated concentration of active  
11 ingredient not less than 1.01% and not more than  
12 5.00% shall not exceed 140% or fail to meet 90%  
13 of the stated active ingredient on the pesticide  
14 label when analyzed,
- 15 (4) pesticides with a stated concentration of active  
16 ingredient not less than 5.01% and not more than  
17 10.00% shall not exceed 130% or fail to meet 92%  
18 of the stated active ingredient on the pesticide  
19 label when analyzed,
- 20 (5) pesticides with a stated concentration of active  
21 ingredient not less than 10.01% and not more than  
22 50.00% shall not exceed 125% or fail to meet 94%

1 of the stated active ingredient on the pesticide  
2 label when analyzed, and

3 (6) pesticides with a stated concentration of active  
4 ingredient not less than 50.01% and more than  
5 100.00% shall not exceed 115% or fail to meet 96%  
6 of the stated active ingredient on the pesticide  
7 label when analyzed.

8 b. The concentration of an active ingredient for a  
9 pesticide concentrate in fertilizer and pesticide  
10 mixtures, pressed blocks and non-uniform baits shall  
11 not be less than the concentration of active  
12 ingredient stated on the pesticide label for the  
13 tolerance for active ingredient concentration  
14 specified by this paragraph. Concentrations below the  
15 established tolerance shall be prima facie evidence  
16 that a pesticide is adulterated or misbranded:

17 (1) when the stated concentration of active  
18 ingredient on the pesticide label is less than  
19 1.26% the minimum amount of active ingredient  
20 shall be at least 67.0% of the stated  
21 concentration on the pesticide label when  
22 analyzed,

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

7 (3) when the stated concentration of active  
8 ingredient on the pesticide label is more than  
9 5.0% the minimum amount of active ingredient  
10 shall be at least 85.0% of the stated  
11 concentration on the pesticide label when  
12 analyzed.

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

22 (1) when the stated concentration of active  
23 ingredient on the pesticide label is less than

1           0.51% the minimum amount of active ingredient  
2           shall be at least 70.0% of the state  
3           concentration on the pesticide label when  
4           analyzed,

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

11          (3) when the stated concentration of active  
12          ingredient on the pesticide label is more than  
13          1.25% the minimum amount of active ingredient  
14          shall be at least 85.0% of the stated  
15          concentration on the pesticide label when  
16          analyzed.

17          d. The concentration of an active ingredient for a  
18          pesticide tank mix, as stated by the applicator and  
19          allowed by the pesticide label, shall not exceed or be  
20          less than the concentration of active ingredient  
21          stated by more or less than the tolerance for active  
22          ingredient concentration specified by this paragraph.  
23          Concentrations above or below the established

1 tolerance shall be prima facie evidence of a use  
2 unsuitable, unsafe or inconsistent with its label or  
3 labeling. No pesticide shall be formulated into a  
4 tank mix at a concentration in excess of or below that  
5 permitted by the pesticide label without written  
6 approval from an authorized agent of the ~~State~~  
7 Oklahoma Department of Agriculture, Food, and  
8 Forestry:

- 9 (1) when the stated concentration or that allowed by  
10 the pesticide label is less than 0.51% the  
11 minimum amount of active ingredient in the tank  
12 mix shall be at least 60.0% and not more than  
13 150.0% of the stated concentration or that  
14 allowed by the pesticide label when analyzed,  
15 (2) when the stated concentration or that allowed by  
16 the pesticide label is not less than 0.51% and  
17 not more than 1.0% the minimum amount of active  
18 ingredient in the tank mix shall be at least  
19 70.0% and not more than 140.0% of the stated  
20 concentration or that allowed by the pesticide  
21 label when analyzed,  
22 (3) when the stated concentration or that allowed by  
23 the pesticide label is not less than 1.01% and

1 not more than 5.0% the minimum amount of active  
2 ingredient in the tank mix shall be at least  
3 80.0% and not more than 140.0% of the stated  
4 concentration or that allowed by the pesticide  
5 label when analyzed,

6 (4) when the stated concentration or that allowed by  
7 the pesticide label is not less than 5.01% and  
8 not more than 10.0% the minimum amount of active  
9 ingredient in the tank mix shall be at least  
10 84.0% and not more than 130.0% of the stated  
11 concentration or that allowed by the pesticide  
12 label when analyzed,

13 (5) when the stated concentration or that allowed by  
14 the pesticide label is not less than 10.01% and  
15 not more than 50.0% the minimum amount of active  
16 ingredient in the tank mix shall be at least  
17 88.0% and not more than 125.0% of the stated  
18 concentration or that allowed by the pesticide  
19 label when analyzed, and

20 (6) when the stated concentration or that allowed by  
21 the pesticide label is not less than 50.01% and  
22 not more than 100.0% the minimum amount of active  
23 ingredient in the tank mix shall be at least

1 92.0% and not more than 115.0% of the stated  
2 concentration or that allowed by the pesticide  
3 label when analyzed~~+~~.

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

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

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

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

- 1 (4) the termiticide Demon TC shall have a soil  
2 residue threshold level of at least twenty-eight  
3 (28) ppm,  
4 (5) the termiticide Dragnet FT shall have a soil  
5 residue threshold level of at least eighty-five  
6 (85) ppm,  
7 (6) the termiticide Dursban TC shall have a soil  
8 residue threshold level of at least fifty-one  
9 (51) ppm, and  
10 (7) the termiticide Premise shall have a soil residue  
11 threshold level of at least ten (10) ppm~~7~~.  
12 f. The threshold level for soil residue of pesticide  
13 concentration expressed in parts per million (ppm) for  
14 preconstruction termiticide treatment shall meet or  
15 exceed the established concentration specified by this  
16 paragraph in soils sampled within thirty (30) days of  
17 treatment for vertical barriers. Soil residue  
18 concentration below the threshold level specified by  
19 this paragraph shall be prima facie evidence of a use  
20 unsuitable, unsafe or inconsistent with its label or  
21 labeling:  
22 (1) the termiticide Torpedo shall have a soil residue  
23 threshold level of at least ninety (90) ppm,

- 1 (2) the termiticide Tribute shall have a soil residue  
2 threshold level of at least two hundred four  
3 (204) ppm,  
4 (3) the termiticide Prevail FT shall have a soil  
5 residue threshold level of at least sixty-four  
6 (64) ppm,  
7 (4) the termiticide Demon TC shall have a soil  
8 residue threshold level of at least forty-one  
9 (41) ppm,  
10 (5) the termiticide Dragnet FT shall have a soil  
11 residue threshold level of at least ninety-seven  
12 (97) ppm,  
13 (6) the termiticide Dursban TC shall have a soil  
14 residue threshold level of at least one hundred  
15 (100) ppm, and  
16 (7) the termiticide Premise shall have a soil residue  
17 threshold level of at least ten (10) ppm~~+~~.

18 g. The threshold level for soil residue of pesticide  
19 concentration expressed in parts per million (ppm) for  
20 preconstruction termiticide treatment shall meet or  
21 exceed the established concentration specified by this  
22 paragraph in soils sampled within one hundred eighty  
23 (180) days of treatment for vertical barriers. Soil

1 residue concentration below the threshold level  
2 specified by this paragraph shall be prima facie  
3 evidence of a use unsuitable, unsafe or inconsistent  
4 with its label or labeling:

- 5 (1) the termiticide Torpedo shall have a soil residue  
6 threshold level of at least sixty-three (63) ppm,
- 7 (2) the termiticide Tribute shall have a soil residue  
8 threshold level of at least one hundred fifty  
9 (150) ppm,
- 10 (3) the termiticide Prevail FT shall have a soil  
11 residue threshold level of at least forty-six  
12 (46) ppm,
- 13 (4) the termiticide Demon TC shall have a soil  
14 residue threshold level of at least twenty-eight  
15 (28) ppm,
- 16 (5) the termiticide Dragnet FT shall have a soil  
17 residue threshold level of at least eighty-five  
18 (85) ppm,
- 19 (6) the termiticide Dursban TC shall have a soil  
20 residue threshold level of at least fifty-one  
21 (51) ppm, and
- 22 (7) the termiticide Premise shall have a soil residue  
23 threshold level of at least ten (10) ppm~~+~~.

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

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

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

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

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

- 1 (5) the termiticide Dragnet FT shall have a soil  
2 residue threshold level of at least seventy-three  
3 (73) ppm,  
4 (6) the termiticide Dursban TC shall have a soil  
5 residue threshold level of at least seventy-five  
6 (75) ppm, and  
7 (7) the termiticide Premise shall have a soil residue  
8 threshold level of at least five (5) ppm~~7~~5.
- 9 i. The threshold level for soil residue of pesticide  
10 concentration expressed in parts per million (ppm) for  
11 preconstruction termiticide treatment shall meet or  
12 exceed the established concentration specified by this  
13 paragraph in soils sampled within one hundred eighty  
14 (180) days of treatment for horizontal barriers. Soil  
15 residue concentration below the threshold level  
16 specified by this paragraph shall be prima facie  
17 evidence of a use unsuitable, unsafe or inconsistent  
18 with its label or labeling:
- 19 (1) the termiticide Torpedo shall have a soil residue  
20 threshold level of at least forty-seven (47) ppm,  
21 (2) the termiticide Tribute shall have a soil residue  
22 threshold level of at least one hundred thirteen  
23 (113) ppm,

- 1 (3) the termiticide Prevail FT shall have a soil  
2 residue threshold level of at least thirty-five  
3 (35) ppm,  
4 (4) the termiticide Demon TC shall have a soil  
5 residue threshold level of at least twenty-one  
6 (21) ppm,  
7 (5) the termiticide Dragnet FT shall have a soil  
8 residue threshold level of at least sixty-four  
9 (64) ppm,  
10 (6) the termiticide Dursban TC shall have a soil  
11 residue threshold level of at least thirty-eight  
12 (38) ppm, and  
13 (7) the termiticide Premise shall have a soil residue  
14 threshold level of at least five (5) ppm~~7~~5.

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

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

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

4 2. If it appears from examination that a pesticide or device  
5 fails to comply with the provisions of this subarticle, and the  
6 Board contemplates instituting administrative proceedings against  
7 any person, the Board shall cause notice and an opportunity for a  
8 hearing given to the person pursuant to the Administrative  
9 Procedures Act~~7~~.

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

15 a. in the case of a pesticide, it is adulterated or  
16 misbranded, it has not been registered under the  
17 provisions of this subarticle, it fails to bear on its  
18 label the information required by this subarticle, or  
19 it is a white powder pesticide and it is not colored  
20 as required under this subarticle, or

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

22 2. If the pesticide or device is condemned it shall, after  
23 entry of decree or judgment of a district court, be disposed of by

1 destruction or sale as the court may direct. If the article is  
2 sold, the proceeds, less court costs, shall be paid to the State  
3 Department of Agriculture Revolving Fund~~†~~.

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

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

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

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

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

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

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

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

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

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

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

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

3 1. Commercial manufacturers of fertilizers, grain~~7~~ and feed  
4 products, and chemicals, and over manufacturing of food and kindred  
5 products, tobacco, paper, lumber, wood, textile ~~mills~~, mill and  
6 other agricultural products;

7 2. Slaughterhouses, but not including feedlots at  
8 ~~slaughterhouses~~ these facilities;

9 3. ~~Animal aquaculture~~ Aquaculture and fish hatcheries,  
10 including, but not limited to, discharges of pollutants and storm  
11 water to waters of the state, surface ~~impoundment~~ impoundments and  
12 land application of wastes and sludge, and other pollution  
13 originating at these facilities; and

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

20 ~~5. Any point source and nonpoint source discharges related to~~  
21 ~~agriculture as specified in paragraph 1 of subsection D of Section 6~~  
22 ~~of Title 27A of the Oklahoma Statutes, which require a federal~~  
23 ~~National Pollutant Discharge Elimination Systems permit and which~~

1 ~~are not specified under this subsection as being subject to the~~  
2 ~~jurisdiction of the Department of Environmental Quality shall~~  
3 ~~continue to be subject to the direct jurisdiction of the federal~~  
4 ~~Environmental Protection Agency for issuance and enforcement of the~~  
5 ~~permit.~~

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

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

18       Section 8-41.16 The Department of Environmental Quality shall  
19 have environmental jurisdiction over:

20       1.   a.   commercial manufacturers of fertilizers, grain and  
21                    feed products, and chemicals, and over manufacturing  
22                    of food and kindred products, tobacco, paper, lumber,  
23                    wood, textile mills, and other agricultural products,

1           b.    slaughterhouses, but not including feedlots at ~~such~~  
2                these facilities, and  
3           c.    aquaculture and fish hatcheries,  
4 including, but not limited to, discharges of pollutants and storm  
5 water to waters of the state, surface impoundments and land  
6 application of wastes and sludge, and other pollution originating at  
7 ~~the~~ these facilities; and

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

15           ~~Any point source discharge related to agriculture, as specified~~  
16 ~~in paragraph 1 of subsection D of Section 1-3-101 of Title 27A of~~  
17 ~~the Oklahoma Statutes, which require a federal National Pollutant~~  
18 ~~Discharge Elimination Systems permit and which are not specified~~  
19 ~~under paragraphs 1 and 2 of this section as being subject to the~~  
20 ~~jurisdiction of the Department of Environmental Quality shall~~  
21 ~~continue to be subject to the direct jurisdiction of the federal~~  
22 ~~Environmental Protection Agency for issuance and enforcement of this~~

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

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

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

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

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

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

1           ~~(2)~~ b.       slaughterhouses, but not including feedlots at  
2                    such these facilities, and  
3           ~~(3)~~ c.       aquaculture and fish hatcheries, including, but  
4                    not limited to, discharges of pollutants and storm  
5                    water to waters of the state, surface impoundments and  
6                    land application of wastes and sludge, and other  
7                    pollution originating at ~~the~~ these facilities~~;~~ and  
8        ~~b. d. 2.~~ facilities which store grain, feed, seed, fertilizer,  
9        and agricultural chemicals that are required by federal National  
10       Pollutant Discharge Elimination System (NPDES) regulations to obtain  
11        a ~~federal National Pollutant Discharge Elimination System~~ permit for  
12        storm water discharges. ~~Storm water discharges~~ shall only be  
13        subject to the jurisdiction of the Department of Environmental  
14        Quality with respect to such storm water discharges.

15        ~~2. Any point source discharge related to agriculture, as~~  
16        ~~specified in paragraph 1 of subsection D of Section 1-3-101 of Title~~  
17        ~~27A of the Oklahoma Statutes, which require a federal National~~  
18        ~~Pollutant Discharge Elimination Systems permit and which are not~~  
19        ~~specified under paragraph 1 of this subsection as being subject to~~  
20        ~~the jurisdiction of the Department of Environmental Quality shall~~  
21        ~~continue to be subject to the direct jurisdiction of the federal~~  
22        ~~Environmental Protection Agency for issuance and enforcement of this~~

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

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,  
9 dated 4-4-06 - DO PASS, As Amended.