STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2603 By: DeWitt

AS INTRODUCED

An Act relating to agriculture; enacting the CAFO Rural Economic Development Initiative Act; amending 2 O.S. 2001, Section 9-202, as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-3), which relates to the Oklahoma Concentrated Animal Feeding Operations Act; adding definition; providing for noncodification; and providing an effective date.

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

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

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

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

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

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

1. "Affected property owner" means a surface landowner within:

a. one (1) mile of the designated perimeter of an animal feeding operation which:

(1) does not meet the definition of a licensed managed feeding operation, or

(2) is previously unlicensed or an expanding licensed managed feeding operation with a capacity of two thousand (2,000) or less animal units, or

b. two (2) miles of the designated perimeter of a licensed managed feeding operation or an expanding operation with a capacity of more than two thousand (2,000) animal units for which a license is being sought;

2. "Animal feeding operation" means a lot or facility where the following conditions are met:

a. animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period, and

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

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

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

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

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

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

7. "Artificially constructed" means constructed by humans;

8. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state as established by the State Department of Agriculture pursuant to Section 9-205.3 of this title;

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

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

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

a. a licensed managed feeding operation, or

b. an animal feeding operation which meets the following criteria:

(1) more than the number of animals specified in any of the following categories are confined:

(a) 1,000 slaughter and feeder cattle,

(b) 700 mature dairy cattle, whether milk or dry cows,

(c) 500 horses,

(d) 10,000 sheep or lambs,

(e) 55,000 turkeys,

(f) 5,000 ducks, or

(g) 1,000 animal units, and

(2) pollutants are discharged into waters of the state. Provided, no animal feeding operation pursuant to this subparagraph shall be construed to be a concentrated animal feeding operation if such animal feeding operation discharges only in the event of a twenty-five-year, twenty-four-hour storm event, or

c. an animal feeding operation which meets the following criteria:

(1) more than the number of animals specified in any of the following categories are confined:

(a) 300 slaughter or feeder cattle,

(b) 200 mature dairy cattle, whether milk or dry cows,

(c) 750 swine each weighing over 25 kilograms or approximately 55 pounds,

(d) 3,000 weaned swine each weighing under 25 kilograms,

(e) 150 horses,

(f) 3,000 sheep or lambs,

(g) 16,500 turkeys,

(h) 30,000 laying hens or broilers, if the facility has continuous overflow watering,

(i) 9,000 laying hens or broilers, if the facility has a liquid manure system,

(j) 1,500 ducks, or

(k) 300 animal units, and

(2) either one of the following conditions are met:

(a) pollutants are discharged into waters of the state through an artificially constructed ditch, flushing system or other similar artificially constructed device, or

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

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

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

12. "Department" means the State Department of Agriculture;

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

14. <u>"Discharge" includes, but is not limited to, a discharge of a pollutant or pollutants, and means any addition of any pollutant to waters of the state from any point or nonpoint source regulated</u>

by the Department within the areas of environmental jurisdiction of the Department;

15. "Expanding operation" means:

a. a facility that either increases its animal unit capacity to a number that causes the facility to initially meet the definition of a licensed managed feeding operation, or

b. a licensed managed feeding operation that seeks to increase its licensed capacity in excess of five percent (5%) of the original facility's licensed capacity;

~~15.~~ 16. "Facility" means any place, site or location or part thereof where animals are kept, handled, housed, or otherwise maintained and processed and includes but is not limited to buildings, lots, pens, and animal waste management systems;

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

~~17.~~ 18. "Land application" means the spreading on, or incorporation of animal waste into the soil mantle primarily for beneficial purposes;

~~18.~~ 19. "Licensed managed feeding operations (LMFO)" means an animal feeding operation primarily using a liquid animal waste management system, where animals are primarily housed in a roof-covered structure and which has more than the number of animals specified in any of the following categories confined:

a. 2,500 swine each weighing over 25 kilograms, approximately 55 pounds,

b. 10,000 weaned swine each weighing under 25 kilograms,

c. 100,000 laying hens or broilers, if the facility has continuous overflow watering,

d. 30,000 laying hens or broilers, if the facility has a liquid manure system, or

e. any combination of swine weighing over twenty-five (25) kilograms or under twenty-five (25) kilograms which would equal one thousand (1,000) animal units;

~~19.~~ 20. "Liquid animal waste management system" means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure;

~~20.~~ 21. "Managing operator" means the owner or one who is responsible for the management of each facility of a concentrated animal feeding operation or animal feeding operation;

~~21.~~ 22. "Nutrient-limited watershed" means a watershed of a waterbody which is designated as "nutrient-limited" in the most recent Oklahoma Water Quality Standards;

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

~~23.~~ 24. "Odor Abatement Plan" or "OAP" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce odor as established by the State Department of Agriculture pursuant to Section 10 of this act;

~~24.~~ 25. "Occupied residence" means a habitable structure designed and constructed for full-time occupancy in all weather conditions which:

a. is not readily mobile,

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

c. is occupied as a residence;

~~25.~~ 26. "Pollution Prevention Plan" or "PPP" means a written plan to control the discharge of pollutants which has been prepared in accordance with industry-acceptable engineering and management practices by the owner or operator of an animal feeding operation as required pursuant to Section 9-205.2 of this title;

~~26.~~ 27. "Process wastewater" means any water utilized in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of animals and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact, swimming, washing or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste;

~~27.~~ 28. "Retention structures" includes but is not limited to all collection ditches, conduits and swales for the collection of runoff water and process wastewater, and basins, ponds and lagoons or other structures used to store animal wastes;

~~28.~~ 29. "Waste facility" means any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. Such structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing animals, compostors, waste storage sites, or retention structures or appurtenances or additions thereto; and

~~29.~~ 30. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border

upon this state or any portion thereof. Process wastewaters shall not be considered as waters of the state if contaminated at the site.

SECTION 3. This act shall become effective November 1, 2006.

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