

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1490

By: Sullivan

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7 COMMITTEE SUBSTITUTE

8 (environment - Eucha-Spavinaw Poultry Waste
9 Management Act - priority - State Board of
10 Agriculture - Oklahoma Department of Agriculture,
11 Food, and Forestry - poultry waste - requiring soil
12 testing - injunctive relief - land application of
13 poultry waste - soil and poultry waste tests -
14 codification - effective date -
15 emergency)

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 10-10.1 of Title 2, unless there
21 is created a duplication in numbering, reads as follows:

22 Sections 2 through 6 of this act shall be known and may be cited
23 as the "Eucha-Spavinaw Poultry Waste Management Act".
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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 10-10.2 of Title 2, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Eucha-Spavinaw Poultry Waste Management Act:

5 1. "Board" means the State Board of Agriculture;

6 2. "City of Tulsa Case" means the federal court proceeding
7 styled The City of Tulsa et al. v. Tyson Foods Inc. et al., Case No.
8 01 CV0900EA(C), filed in the United States District Court for the
9 Northern District of Oklahoma in December, 2001;

10 3. "Department" means the Oklahoma Department of Agriculture,
11 Food, and Forestry;

12 4. "Eucha-Spavinaw phosphorous index (PI)" means the phosphorus
13 assessment tool adopted by the court in the City of Tulsa Case by
14 court order entered on February 13, 2004, developed to govern the
15 terms and conditions under which poultry waste may be land applied
16 in the Eucha-Spavinaw Watershed, and includes any modifications
17 approved and adopted by the court in that case, or as approved and
18 adopted by the Board in accordance with its rule-making procedures,
19 in the event the court in the City of Tulsa Case relinquishes
20 jurisdiction. PI shall also mean any form of the approved PI used
21 in the Eucha-Spavinaw Watershed, whether described as risk-based,
22 qualitative or quantitative, and may include the "PPM Calculator"
23 phosphorous index model referenced in the City of Tulsa case
24 February 13, 2004, order, or any variation of that model or similar

1 phosphorus assessment tool or model, if approved by the court or the
2 Board;

3 5. "Eucha-Spavinaw Watershed" means the watershed for Lakes
4 Eucha and Spavinaw located in Delaware County and Mayes County,
5 Oklahoma as further defined by Hydrologic Unit Code (HUC) 11070206
6 as compiled by the United States Geological Survey, Natural
7 Resources Conservation Services;

8 6. "Land application" means the application of nutrients or
9 poultry litter to the land in the Eucha-Spavinaw Watershed, through
10 any means whatsoever, for any purpose, but shall not include the
11 incidental placing of poultry litter on land during the process of
12 hauling or moving to storage or composting for a temporary period of
13 time, not to exceed three (3) days as defined in Definition No. 11
14 of Section A of the Settlement Agreement;

15 7. "Nutrient" means poultry litter, and any other animal waste,
16 manure, or commercial fertilizer containing phosphorus, as defined
17 in Definition No. 15 of Section A of the Settlement Agreement;

18 8. "Poultry Act" means the Oklahoma Registered Poultry Feeding
19 Operations Act, the Oklahoma Poultry Waste Transfer Act, and the
20 Oklahoma Poultry Waste Applicators Certification Act, either
21 separately or collectively;

22 9. "Poultry litter" or "litter" means all by-products
23 associated with the confinement of poultry, including excrement,
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1 feed waste, and bedding materials as defined in Definition No. 13 of
2 Section A of the Settlement Agreement;

3 10. "Poultry waste management plan (PWMP)" means a nutrient
4 management plan further described in Section G of the Settlement
5 Agreement, and includes other similarly named plans, regardless of
6 how denominated, such as waste management plan, as defined in
7 Definition No. 14 of Section A of the Settlement Agreement;

8 11. "Poultry waste management unit" means any tract of land in
9 the Eucha-Spavinaw Watershed larger than two and one half (2 1/2)
10 acres outside of any city limits where poultry litter or other
11 nutrients from any contract grower or company farm, as defined in
12 the Settlement Agreement, are land applied or expected to be land
13 applied, as defined as an application site in Definition No. 2 of
14 Section A of the Settlement Agreement; and

15 12. "Settlement Agreement" means the settlement agreement dated
16 July 16, 2003, between the parties in the City of Tulsa Case.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 10-10.3 of Title 2, unless there
19 is created a duplication in numbering, reads as follows:

20 A. It shall be the purpose of the Eucha-Spavinaw Poultry Waste
21 Management Act to preserve and promote the purposes and agreements
22 of the parties set forth in the Settlement Agreement with regard to
23 the standards for the management and land application of poultry
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1 waste, if and when the court in the City of Tulsa Case relinquishes
2 jurisdiction of the case.

3 B. The Eucha-Spavinaw Poultry Waste Management Act shall apply
4 to any other person or entity who is a land applicator, or a land or
5 facility owner or operator in the Eucha-Spavinaw Watershed, whether
6 or not that person or entity is a party to the Settlement Agreement.

7 C. The Eucha-Spavinaw Poultry Waste Management Act shall be
8 construed in harmony with the purpose, intent and provisions of all
9 other applicable state or federal laws, rules and regulations that
10 preserve and protect the waters of the state, public health and
11 safety and the environment, including but not limited to Title 2 and
12 Title 27A of the Oklahoma Statutes. In the event of any conflict
13 between or among the provisions of the Eucha-Spavinaw Poultry Waste
14 Management Act, the Poultry Act, the Settlement Agreement, any court
15 order entered in the City of Tulsa Case, and any other applicable
16 state and federal law, rule or regulation, the provision that is
17 most protective of the waters of the state, the public health and
18 safety and the environment shall control. Any registration that is
19 required by the Eucha-Spavinaw Poultry Waste Management Act is in
20 addition to, and not in lieu of, any other registration or permit
21 that may be required for any operation or facility by any other
22 state for federal law.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 10-10.4 of Title 2, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Eucha-Spavinaw Poultry Waste Management Act shall be
5 administered and enforced by the State Board of Agriculture and the
6 Oklahoma Department of Agriculture, Food, and Forestry except to the
7 extent that the court in the City of Tulsa Case exercises
8 jurisdiction. Except as otherwise provided for in this section, the
9 Board and the Department may exercise any powers, impose any
10 penalties and sanctions, or conduct any inspections or
11 investigations granted in the Poultry Act or other applicable law.
12 The rights and powers of the Board and Department shall apply to
13 inspections or investigations of poultry waste management units in
14 the Eucha-Spavinaw Watershed to the same extent that the Poultry Act
15 authorizes inspections or investigations of poultry feeding
16 operations. Any inspector or investigator for the Department may
17 exercise any right or duty granted to the Watershed Monitoring Team
18 as provided in the Settlement Agreement, except for the preparation
19 of poultry waste management plans (PWMPs), which shall be prepared
20 by a qualified nutrient planner.

21 B. In addition to any legislative appropriation allocated to
22 the Board or Department for normal operations and duties, the Board
23 or Department is hereby authorized to accept any monetary grant,
24 donation or other contribution of money or resources from any person

1 or entity for the purpose of hiring, training, compensating,
2 providing benefits and supervising any investigator, inspector, or
3 qualified nutrient planner to carry out the provisions of the Eucha-
4 Spavinaw Poultry Waste Management Act.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 10-10.5 of Title 2, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The land application rate for all poultry waste on all
9 poultry waste management units in the Eucha-Spavinaw Watershed shall
10 be specified in the poultry waste management plan (PWMP) for each
11 unit, and shall follow the requirements and limitations of the
12 applicable Eucha-Spavinaw phosphorous index (PI) unless a more
13 restrictive or protective application rate is prescribed by some
14 other state or federal law, rule or court order, in which case the
15 more restrictive or protective rate shall be followed.

16 B. Soil testing and poultry waste testing shall be performed
17 for all poultry waste management units in the Eucha-Spavinaw
18 Watershed in the manner and frequency prescribed in the Poultry Act
19 for nutrient-limited watersheds and the records shall be maintained
20 as prescribed in the Poultry Act.

21 SECTION 6. AMENDATORY 2 O.S. 2001, Section 10-9.19, is
22 amended to read as follows:

23 Section 10-9.19 1. Prior to any land application of poultry
24 waste by a certified poultry waste applicator, the applicator shall

1 obtain the most recent soil and poultry waste tests as required by
2 the Oklahoma Poultry Waste Applicators Certification Act, the
3 Settlement Agreement as defined in the Eucha-Spavinaw Poultry Waste
4 Management Act, or rules promulgated by the Oklahoma Department of
5 Agriculture, Food, and Forestry, whichever law or rule requires the
6 most frequent testing.

7 2. Land application of poultry waste in a non-nutrient-limited
8 watershed and non-nutrient-vulnerable groundwaters shall not be made
9 at any rate which exceeds the most recently published United States
10 Department of Agriculture Natural Resources Conservation Service
11 Waste Utilization Standards.

12 3. The Oklahoma Department of Agriculture, Food, and Forestry
13 may promulgate rules pursuant to the Administrative Procedures Act
14 which will prohibit the land application of poultry waste in
15 nutrient-limited watersheds and nutrient-vulnerable groundwaters
16 based upon lower soil phosphorous levels than are allowed in this
17 section for non-nutrient-limited watersheds and non-nutrient-
18 vulnerable groundwaters.

19 SECTION 7. This act shall become effective July 1, 2007.

20 SECTION 8. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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