

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1796

6 By: Armes

7 COMMITTEE SUBSTITUTE

8 An Act relating to agriculture; amending 2 O.S. 2001,  
9 Sections 9-200 and 9-201, as renumbered by Section  
10 25, Chapter 292, O.S.L. 2005, 9-202, as renumbered by  
11 Section 25, Chapter 292, O.S.L. 2005 and as amended  
12 by Section 2, Chapter 128, O.S.L. 2006, 9-203, 9-204,  
13 9-204.1 and 9-205, as renumbered by Section 25,  
14 Chapter 292, O.S.L. 2005, 9-205.1, as renumbered by  
15 Section 25, Chapter 292, O.S.L. 2005 and as amended  
16 by Section 2, Chapter 129, O.S.L. 2006, 9-205.2, as  
17 renumbered by Section 25, Chapter 292, O.S.L. 2005,  
18 9-205.3, as renumbered by Section 25, Chapter 292,  
19 O.S.L. 2005 and as amended by Section 3, Chapter 128,  
20 O.S.L. 2006, 9-205.3a, as renumbered by Section 25,  
21 Chapter 292, O.S.L. 2005, 9-205.4, as renumbered by  
22 Section 25, Chapter 292, O.S.L. 2005 and as amended  
23 by Section 1, Chapter 148, O.S.L. 2006, 9-205.5 and  
24 9-206, as renumbered by Section 25, Chapter 292,  
O.S.L. 2005, 9-208, as amended by Section 22, Chapter  
292, O.S.L. 2005 and as renumbered by Section 25,  
Chapter 292, O.S.L. 2005, 9-209, 9-209.1, 9-210, 9-  
210.1, 9-210.2 and 9-210.3, as renumbered by Section  
25, Chapter 292, O.S.L. 2005, Section 23, Chapter  
292, O.S.L. 2005, Section 2, Chapter 31, O.S.L. 2004,  
as renumbered by Section 25, Chapter 292, O.S.L.  
2005, and 9-211, 9-212, 9-212.1 and 9-214, as  
renumbered by Section 25, Chapter 292, O.S.L. 2005 (2  
O.S. Supp. 2006, Sections 20-1, 20-2, 20-3, 20-4, 20-  
5, 20-6, 20-7, 20-8, 20-9, 20-10, 20-11, 20-12, 20-  
13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20,  
20-21, 20-22, 20-23, 20-25, 20-26, 20-27 and 20-28),  
which relate to the Oklahoma Concentrated Animal  
Feeding Operations Act; amending title of act;  
providing for the Oklahoma Swine Feeding Operations

1 Act; replacing animals with swine comprehensively  
2 through act; removing references to animal feeding  
3 operations comprehensively through act; amending  
4 definitions to conform to swine operations; modifying  
5 committee; modifying fees; modifying setback  
6 provisions; enacting the Oklahoma Concentrated Animal  
7 Feeding Operations Act; defining terms; authorizing  
8 State Board of Agriculture to promulgate rules;  
9 providing for a rule advisory committee; providing  
10 for licensing; specifying application content;  
11 providing for renewal application; providing for  
12 transfer of license; providing for disclosure of  
13 certain information for all applications;  
14 establishing penalty for false statements; providing  
15 for notification to certain persons; establishing  
16 administrative hearing procedures; requiring  
17 development of a Pollution Prevention Plan; providing  
18 for review; specifying content; requirement  
19 maintenance of records; requiring Best Management  
20 Practices; providing for Animal Waste Management  
21 Plan; requiring records for animal waste; providing  
22 for disposal of dead animals; specifying discharge  
23 provisions; providing for irrigation systems;  
24 authorizing investigation of complaints; providing  
for inspection; providing procedure for control of  
communicable diseases; specifying jurisdiction;  
providing for expiration of license; setting fees;  
providing for retention structures; specifying  
sureties; establishing liability; specifying  
requirements for operation; providing setback  
requirements; providing for waiver; providing for  
over-capacity; establishing procedure for diseased  
animals; providing for violations; providing  
penalties; providing for injunctive relief; providing  
for recodification; providing for codification; and  
providing an effective date.

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

1 SECTION 1. AMENDATORY 2 O.S. 2001, Section 9-200, as  
2 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
3 2006, Section 20-1), is amended to read as follows:

4 Section 20-1. It is the intent of the Legislature that the  
5 ~~amendments and the new law contained in this act~~ the Oklahoma Swine  
6 Feeding Operations Act shall only apply to swine and operations  
7 which house swine ~~except as otherwise provided by Sections 17, 18~~  
8 ~~and 19 of this act.~~

9 SECTION 2. AMENDATORY 2 O.S. 2001, Section 9-201, as  
10 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
11 2006, Section 20-2), is amended to read as follows:

12 Section 20-2. A. Sections ~~9-201~~ 20-1 through ~~9-215~~ 20-29 of  
13 this title shall be known and may be cited as the "Oklahoma  
14 ~~Concentrated Animal Swine~~ Swine Feeding Operations Act".

15 B. The purpose of the Oklahoma ~~Concentrated Animal Swine~~  
16 Feeding Operations Act is to provide for environmentally responsible  
17 construction and expansion of ~~animal~~ swine feeding operations and to  
18 protect the safety, welfare and quality of life of persons who live  
19 in the vicinity of ~~an animal~~ a swine feeding operation.

20 SECTION 3. AMENDATORY 2 O.S. 2001, Section 9-202, as  
21 renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended  
22 by Section 2, Chapter 128, O.S.L. 2006 (2 O.S. Supp. 2006, Section  
23 20-3), is amended to read as follows:

24

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

5 B. As used in the Oklahoma ~~Concentrated Animal~~ Swine 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 a swine 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 swine 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) swine animal units for which a license is  
19 being sought;

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

22 a. ~~animals~~ swine have been, are, or will be stabled or  
23 confined and fed or maintained for a total of ninety  
24

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

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

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

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

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

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

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

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

1 11. "Concentrated ~~animal~~ swine feeding operation" or "CAFO"

2 means:

3 a. a licensed managed feeding operation, or

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

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

8 ~~(a) 1,000 slaughter and feeder cattle,~~

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

11 ~~(c) 500 horses,~~

12 ~~(d) 10,000 sheep or lambs,~~

13 ~~(e) 55,000 turkeys,~~

14 ~~(f) 5,000 ducks, or~~

15 ~~(g) 1,000 animal units, and~~

16 ~~(2) pollutants are discharged into waters of the~~  
17 ~~state. Provided, no animal feeding operation~~

18 ~~pursuant to this subparagraph shall be construed~~

19 ~~to be a concentrated animal feeding operation if~~

20 ~~such animal feeding operation discharges only in~~

21 ~~the event of a twenty-five year, twenty-four hour~~

22 ~~storm event, or~~

23 e. ~~an animal~~ a swine feeding operation which meets the

24 following criteria:

- 1 (1) more than the number of ~~animals~~ swine specified  
2 in any of the following categories are confined:  
3 (a) ~~300 slaughter or feeder cattle,~~  
4 ~~(b) 200 mature dairy cattle, whether milk or dry~~  
5 ~~ewes,~~  
6 ~~(e) 750 swine each weighing over 25 kilograms or~~  
7 ~~approximately 55 pounds,~~  
8 ~~(d) (b) 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) (c) 300 swine 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  
24

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

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

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

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

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

24 14. "Expanding operation" means:

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

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

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

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

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

22 18. "Licensed managed feeding operations (~~LMFO~~)" means ~~an~~  
23 ~~animal~~ a swine feeding operation primarily using a liquid ~~animal~~  
24 swine waste management system, where ~~animals~~ swine are primarily

1 housed in a roof-covered structure and which has more than the  
2 number of ~~animals~~ swine specified in any of the following categories  
3 confined:

- 4 a. 2,500 swine each weighing over ~~25 kilograms,~~  
5 ~~approximately~~ 55 pounds,
- 6 b. 10,000 weaned swine each weighing under ~~25 kilograms~~  
7 55 pounds, or
- 8 c. ~~100,000 laying hens or broilers, if the facility has~~  
9 ~~continuous overflow watering,~~
- 10 d. ~~30,000 laying hens or broilers, if the facility has a~~  
11 ~~liquid manure system, or~~
- 12 e. any combination of swine weighing over ~~twenty five~~  
13 ~~(25) kilograms~~ 55 pounds or under ~~twenty five (25)~~  
14 ~~kilograms~~ 55 pounds which would equal one thousand  
15 (1,000) swine animal units;

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

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

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

1       ~~22.~~ 21. "Nutrient-vulnerable groundwater" means groundwater  
2 which is designated "nutrient-vulnerable" in the most recent  
3 Oklahoma Water Quality Standards;

4       ~~23.~~ 22. "Odor Abatement Plan" ~~or "OAP"~~ means schedules of  
5 activities, prohibitions of practices, maintenance procedures and  
6 other management practices to prevent or reduce odor as established  
7 by the ~~Oklahoma Department of Agriculture, Food, and Forestry~~  
8 pursuant to Section ~~10~~ 20-11 of ~~this act~~ the Oklahoma Swine Feeding  
9 Operations Act;

10       ~~24.~~ 23. "Occupied residence" means a habitable structure  
11 designed and constructed for full-time occupancy in all weather  
12 conditions ~~which~~ and:

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

18       ~~25.~~ 24. "Pollution Prevention Plan" ~~or "PPP"~~ means a written  
19 plan to control the discharge of pollutants which has been prepared  
20 in accordance with industry-acceptable engineering and management  
21 practices by the owner or operator of ~~an animal~~ a swine feeding  
22 operation as required pursuant to Section 20-9 of this title;

23       ~~26.~~ 25. "Process wastewater" means any water utilized in the  
24 facility that comes into contact with any manure, litter, bedding,

1 raw, intermediate, or final material or product used in or resulting  
2 from the production of ~~animals~~ swine and any products directly or  
3 indirectly used in the operation of a facility, such as spillage or  
4 overflow from ~~animal~~ swine watering systems; washing, cleaning, or  
5 flushing pens, barns, manure pits, direct contact, swimming, washing  
6 or spray cooling of ~~animals~~ swine; and dust control and any  
7 precipitation which comes into contact with ~~animals~~ swine or ~~animal~~  
8 swine waste;

9       ~~27.~~ 26. "Retention structures" ~~includes~~ means, but is not  
10 limited to, all collection ditches, conduits and swales for the  
11 collection of runoff water and process wastewater, and basins, ponds  
12 and lagoons or other structures used to store ~~animal~~ swine wastes;

13       ~~28.~~ 27. "Spill" means the release from a swine ~~animal~~ feeding  
14 operation of any process wastewater or manure that does not reach  
15 waters of the state;

16       ~~29.~~ 28. "Waste facility" means any structure or combination of  
17 structures utilized to control ~~animal~~ swine waste until it can be  
18 disposed of in an authorized manner. ~~Such~~ The structures shall  
19 include but not be limited to pits, burial sites, barns or roof-  
20 covered structures housing ~~animals~~ swine, ~~composters~~ composters,  
21 waste storage sites, or retention structures or appurtenances or  
22 additions thereto; and

23       ~~30.~~ 29. "Waters of the state" means all streams, lakes, ponds,  
24 marshes, watercourses, waterways, wells, springs, irrigation

1 systems, drainage systems, storm sewers and all other bodies or  
2 accumulations of water, surface and underground, natural or  
3 artificial, public or private, which are contained within, flow  
4 through or border upon this state or any portion thereof, and shall  
5 include under all circumstances the waters of the United States  
6 which are contained within the boundaries of, flow through or border  
7 upon this state or any portion thereof. ~~Process wastewaters shall~~  
8 Provided, waste treatment systems, including treatment ponds and  
9 lagoons designed to meet federal and state requirements other than  
10 cooling ponds as defined in the Clean Water Act or rules promulgated  
11 pursuant thereto, are not be considered as waters of the state if  
12 contaminated at the site.

13 SECTION 4. AMENDATORY 2 O.S. 2001, Section 9-203, as  
14 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
15 2006, Section 20-4), is amended to read as follows:

16 Section 20-4. The State Board of Agriculture is authorized to  
17 promulgate rules for the administration, ~~and implementation,~~ and  
18 enforcement of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
19 Operations Act. For the performance of its duties and  
20 responsibilities, the Board is authorized to employ such personnel  
21 and agents as may be required within the funds available.

22 SECTION 5. AMENDATORY 2 O.S. 2001, Section 9-204, as  
23 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
24 2006, Section 20-5), is amended to read as follows:

1 Section 20-5. A. The State Board of Agriculture shall appoint  
2 a rule advisory committee who, without compensation, shall act as  
3 advisors to the Board in the formulation of the rules promulgated  
4 pursuant to the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
5 Operations Act.

6 1. The committee shall consist of:

7 ~~1. One member who shall represent the beef cattle producers;~~

8 ~~2. One member who shall represent the dairy producers;~~

9 ~~3. One member~~

10 a. three members who shall represent ~~the~~ pork producers~~;~~;

11 ~~4. One member who shall represent the poultry producers;~~

12 ~~5. One~~

13 b. one member who shall represent the field of  
14 hydrogeology~~;~~;

15 ~~6. One~~

16 c. one member who shall be a soil scientist~~;~~;

17 ~~7. One~~

18 d. one member designated by the Secretary of the  
19 Environment~~;~~;

20 ~~8. One~~

21 e. one member who shall be a ~~biological systems~~  
22 professional engineer~~;~~;

23 ~~9. One~~

24



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

4 SECTION 6. AMENDATORY 2 O.S. 2001, Section 9-204.1, as  
5 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
6 2006, Section 20-6), is amended to read as follows:

7 Section 20-6. A. 1. Any ~~animal~~ swine feeding operation  
8 meeting the criteria defining a concentrated ~~animal~~ swine feeding  
9 operation shall be required to obtain a license to operate pursuant  
10 to the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act and  
11 rules promulgated pursuant thereto.

12 2. No ~~animal~~ swine feeding operation which voluntarily obtains  
13 a license pursuant to the ~~Concentrated Animal~~ Oklahoma Swine Feeding  
14 Operations Act shall be considered to be a concentrated ~~animal~~ swine  
15 feeding operation unless the operation meets the definition of  
16 concentrated ~~animal~~ swine feeding operation.

17 3. Any ~~animal~~ other swine feeding operation ~~other than a~~  
18 ~~concentrated animal feeding operation~~, regardless of the number of  
19 ~~animals~~ swine, shall only be required to be licensed pursuant to the  
20 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
21 Operations Act and rules promulgated pursuant thereto if the State  
22 Board of Agriculture determines the operation to be a significant  
23 contributor of pollution to waters of the state ~~pursuant to~~  
24 ~~subsection D of this section.~~

1 B. 1. Two or more ~~animal~~ swine feeding operations under common  
2 ownership are considered, for the purposes of licensure, to be a  
3 single ~~animal~~ swine feeding operation if they adjoin each other or  
4 if they use a common area or system for the disposal of wastes.

5 2. ~~After September 1, 1997, any~~ Any licensed managed feeding  
6 operation shall be required to obtain a license for any increase in  
7 excess of five percent (5%) of the original facility's licensed  
8 capacity.

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

13 D. 1. The ~~State Board of Agriculture~~ may make a case-by-case  
14 designation of concentrated ~~animal~~ swine feeding operations pursuant  
15 to this section. Any ~~animal~~ swine feeding operation may be  
16 designated as a concentrated ~~animal~~ swine feeding operation if it is  
17 determined to be a significant contributor of pollution to the  
18 waters of the state. In making this designation, the Board shall  
19 consider the following factors:

- 20 a. the size of the ~~animal~~ swine feeding operation and the  
21 amount of wastes reaching waters of the state,
- 22 b. the location of the ~~animal~~ swine feeding operation  
23 relative to waters of the state,

24

- 1           c.    the means of conveyance of ~~animal~~ swine waste and  
2                    wastewater into waters of the state,  
3           d.    the method of disposal for ~~animal~~ swine waste and  
4                    process wastewater disposal,  
5           e.    the slope, vegetation, rainfall and other factors  
6                    affecting the likelihood or frequency of discharge of  
7                    ~~animal~~ swine wastes and process wastewaters into  
8                    waters of the state, and  
9           f.    other ~~such~~ factors relative to the significance of the  
10                   pollution problem sought to be regulated.

11           2.    In no case shall an application for a license be required  
12           from ~~an animal~~ a swine feeding operation pursuant to this subsection  
13           until there has been an on-site inspection of the operation and a  
14           determination by the ~~State~~ Oklahoma Department of Agriculture, Food,  
15           and Forestry that the operation is a concentrated ~~animal~~ swine  
16           feeding operation.  Should the Department determine that the  
17           operation is a concentrated ~~animal~~ swine feeding operation, the  
18           Department shall notify the operation of ~~such~~ the determination and  
19           of an opportunity for the owner or operator of the facility to  
20           request an administrative hearing on the issue.

21           3.    Process wastewater in the overflow may be discharged to  
22           navigable waters whenever rainfall events, either chronic or  
23           catastrophic, cause an overflow of process wastewater from a  
24           retention structure properly designed, constructed and operated to

1 contain all process wastewaters plus the runoff from a twenty-five-  
2 year, twenty-four-hour rainfall event for the location of the point  
3 source. There shall be no effluent limitations on discharges from a  
4 waste facility constructed and properly maintained to contain the  
5 twenty-five-year, twenty-four-hour storm event; provided the proper  
6 design, construction, and operation of the retention structure shall  
7 include but not be limited to one (1) foot of free board.

8 E. ~~After September 1, 1997, no~~ No new concentrated ~~animal~~ swine  
9 feeding operation or expansion of a concentrated ~~animal~~ swine  
10 feeding operation requiring a license pursuant to the Oklahoma  
11 ~~Concentrated Animal Swine~~ Swine Feeding Operations Act shall be  
12 constructed or placed in operation unless final design plans,  
13 specifications and a Pollution Prevention Plan developed pursuant to  
14 Section ~~9-205.2~~ 20-9 of this title have been approved by the  
15 Department.

16 F. ~~After the effective date of this act, no~~ No new licensed  
17 managed feeding operation or expanding operation shall be  
18 constructed until a building permit for such facility or expansion  
19 has been issued by the Department. No new licensed managed ~~animal~~  
20 feeding operation or expanding operation shall be placed in  
21 operation until a license for ~~such~~ the facility or expansion has  
22 been issued by the Department.

23  
24

1 SECTION 7. AMENDATORY 2 O.S. 2001, Section 9-205, as  
2 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
3 2006, Section 20-7), is amended to read as follows:

4 Section 20-7. A. The State Board of Agriculture shall cause to  
5 be prepared and available, for any person desiring or required to  
6 apply for a license to operate a new or previously unlicensed ~~animal~~  
7 swine feeding operation or expanding operation, the necessary forms  
8 and applications.

9 B. The application for a license to operate a new or previously  
10 unlicensed ~~animal~~ swine feeding operation or expanding operation  
11 shall contain, as a minimum, the following information:

12 1. Name and address of the owner and operator of the facility;

13 2. Name and address of the ~~animal~~ swine feeding operation;

14 3. Capacity in swine animal units, and number and type of  
15 ~~animals~~ swine housed or confined;

16 4. A diagram or map and legal description showing geographical  
17 location of the facility on which the perimeters of the facility are  
18 designated, location of waters of the state, including, but not  
19 limited to, drainage from the facility, ~~animal~~ swine waste storage  
20 facilities and land application sites owned or leased by the  
21 applicant;

22 5. A copy of the Pollution Prevention Plan containing ~~an Animal~~  
23 a Swine Waste Management Plan, Best Management Practices, Odor  
24 Abatement Plan or such other plan authorized by the Oklahoma

1 ~~Concentrated Animal~~ Swine Feeding Operations Act and approved by the  
2 Department;

3 6. A copy of the written waiver by an adjacent property owner  
4 to the facility releasing specified setback requirements as provided  
5 by ~~Section 9-210.1~~ Sections 20-19 and 20-21 of this title; and

6 7. Any other information deemed necessary by the ~~State~~ Oklahoma  
7 Department of Agriculture, Food, and Forestry to administer the  
8 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
9 Operations Act and rules promulgated pursuant thereto.

10 C. 1. An application for renewal of a license to operate an  
11 ~~animal~~ a swine feeding operation shall be considered to be properly  
12 filed when the Department has received a completed renewal  
13 application and payment of fees from the applicant.

14 2. If the application for renewal is denied, written  
15 notification of the denial and an opportunity for an administrative  
16 hearing on the denial shall be given to the applicant by the  
17 Department. The notification shall set forth the reasons for the  
18 denial, steps necessary to meet the requirements for issuance of the  
19 renewal license and the opportunity for the applicant to request an  
20 administrative hearing.

21 D. No new licensed managed feeding operation or expanding  
22 operation shall be constructed until a building permit for such  
23 facility or expansion has been issued by the Department. No new  
24 licensed managed feeding operation shall be placed in operation

1 until a license for ~~such a~~ the facility or expansion has been issued  
2 by the Department.

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

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

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

- 12 a. the new owner or operator cannot comply with the  
13 requirements of transfer,  
14 b. the Department finds a material or substantial change  
15 in conditions since the issuance of the original  
16 license to operate the ~~animal~~ swine feeding operation,  
17 c. failure of the new owner or operator to meet any other  
18 conditions or requirements for compliance established  
19 by the Department pursuant to the Oklahoma  
20 ~~Concentrated Animal~~ Swine Feeding Operations Act and  
21 rules promulgated pursuant thereto, or  
22 d. the new owner or operator has failed to meet the  
23 requirements of Section ~~9-211~~ 20-25 of this title; and  
24

1           3. If a transfer is denied, written notification of ~~such~~ the  
2 denial and an opportunity for an administrative hearing on the  
3 denial shall be given to the applicant for a transfer license by the  
4 Department. The notification shall set forth the reasons for the  
5 denial, steps necessary to meet the requirements for a transfer  
6 license, and the opportunity for the applicant to request an  
7 administrative hearing.

8           F. Any suspension or revocation or nonrenewal of a license  
9 issued pursuant to the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
10 Operations Act by the Board shall be made in accordance with Section  
11 ~~9-211~~ 20-25 of this title.

12           G. In addition to other information required for issuance of a  
13 new or transfer license, an application for a new or transfer  
14 license for a concentrated ~~animal~~ swine feeding operation shall be  
15 under oath and shall contain the following information:

16           1. a. A statement of ownership.

17                   (1) If the applicant is a firm or partnership, the  
18 name and address of each member thereof shall be  
19 included in the application.

20                   (2) If the applicant is a corporation, the name and  
21 address of the corporation and the name and  
22 address of each officer and registered agent of  
23 the corporation shall be included in the  
24 application.

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

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

9 2. The name and address of the management, if the management is  
10 not the applicant and is acting as agent for the applicant;

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

1           b. A copy of all records relating to the environmental  
2           history required by this paragraph shall accompany the  
3           application.

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

9           4. Environmental awards or citations received or pollution  
10          prevention or voluntary remediation efforts undertaken by the  
11          applicant; and

12          5. Any other information or records required by the Department  
13          for purposes of implementing the Oklahoma ~~Concentrated Animal~~ Swine  
14          Feeding Operations Act or rules promulgated pursuant thereto.

15          H. 1. ~~For licensed managed feeding operations licensed on or~~  
16          ~~after August 1, 1998, all~~ All employees of a proposed licensed  
17          managed feeding operation whose duties include treatment, storage,  
18          or application of ~~animal~~ swine waste shall provide proof of  
19          certification of satisfactory completion of formal education or  
20          training in the areas of waste management and odor control ~~as~~  
21          ~~specified by rules promulgated by the Board.~~ Proof of certification  
22          of a minimum of nine (9) hours of training and education ~~must~~ shall  
23          be submitted either with the license application or within six (6)  
24          months of the date of the application for the license.

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

8           3. The Department shall require a minimum of three (3) hours of  
9 annual refresher training for any employee of a licensed managed  
10 feeding operation whose duties include treatment, storage, or  
11 application of ~~animal~~ swine waste.

12           4. Appropriate curricula and course content shall be developed  
13 under the supervision of Oklahoma State University Cooperative  
14 Extension Service, which shall provide certification to the  
15 Department.

16           5. Failure to obtain the prerequisite and annual training and  
17 education as required in this subsection shall be deemed a violation  
18 of the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act.

19           I. 1. In addition to other penalties as may be imposed by law,  
20 any person who knowingly makes any false statement, representation,  
21 or certification in, omits material data from, or tampers with any  
22 application for a license, or notice relating to the determination  
23 of affected property owners, shall, upon conviction thereof, be  
24 guilty of a misdemeanor and may be subject to a fine of not more

1 than Ten Thousand Dollars (\$10,000.00) for each ~~such~~ violation. In  
2 addition, the Department shall deny licensure to the applicant or  
3 may require submission of a new application.

4 2. The responsibility for ensuring that all affected property  
5 owners are notified pursuant to the provisions of this section shall  
6 be upon the applicant.

7 SECTION 8. AMENDATORY 2 O.S. 2001, Section 9-205.1, as  
8 renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended  
9 by Section 2, Chapter 129, O.S.L. 2006 (2 O.S. Supp. 2006, Section  
10 20-8), is amended to read as follows:

11 Section 20-8. A. 1. Any person applying for a license for a  
12 new or expanding ~~animal~~ swine feeding operation shall comply with  
13 the notice and hearing requirements as specified by this section and  
14 rules promulgated by the State Board of Agriculture.

15 2. Notice requirements shall include notice to affected  
16 property owners by certified mail, return receipt requested pursuant  
17 to subsection C of this section and public notice pursuant to  
18 subsection D of this section.

19 B. After submission of a completed application as provided by  
20 the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act and  
21 rules promulgated pursuant thereto, the Oklahoma Department of  
22 Agriculture, Food, and Forestry shall have sixty (60) working days  
23 to review the application for a new or expanding operation for  
24 physical and technical suitability.

1 C. 1. After review and after the applicant has submitted any  
2 additional required information to the Department, the Department  
3 shall require the applicant to notify all affected property owners  
4 of the proposed facility or expanding operation. Notice shall be  
5 sent by certified mail, return receipt requested. The notice shall  
6 identify that an application for a new or expanding ~~animal~~ swine  
7 feeding operation has been submitted to the Department, the location  
8 where the facility is to be located, that a hearing may be requested  
9 pursuant to this subsection, and the date the application will be  
10 available for public review beginning no earlier than the day  
11 following the certified mailing of all the required notices, and any  
12 other information required by the Department.

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

- 15 a. the name and address of the interested party and proof  
16 of standing by showing that the interested party is an  
17 affected property owner,
- 18 b. a statement of specific allegations showing that the  
19 proposed facility or expanding operation may have a  
20 direct, substantial and immediate effect upon a  
21 legally protected interest of the interested party,  
22 and
- 23 c. the relief sought by the interested party.

24

1           3. If any of the affected property owners request an  
2 administrative hearing and all information listed in paragraph 2 of  
3 this subsection is found to be complete and adequate in the request  
4 for hearing, the scheduling conference for the hearing shall be held  
5 by the Department at a reasonable time within sixty (60) calendar  
6 days after the close of the public review period. Should the  
7 interested party have failed to provide any of the information  
8 listed in paragraph 2 of this subsection, the interested party shall  
9 have thirty (30) calendar days with which to cure any deficiencies  
10 after notice by the Department of such failure and receipt thereof  
11 in writing by the interested party. All interested parties may be  
12 joined as parties to the hearing.

13           4. a. In addition to any other information deemed necessary  
14 by the Department, at the hearing the Department shall  
15 hear testimony and accept evidence pertaining to the  
16 physical and technical suitability of the proposed  
17 facility or expanding operations.

18                   (1) Prior to the hearing, and after a reasonable  
19 opportunity for discovery, the interested party  
20 shall identify with specificity the reasons why  
21 the applicant has failed to show that the  
22 application should be granted.

23  
24

1 (2) In a prehearing order, the Department shall  
2 identify the allegations that are relevant and  
3 applicable to the hearing.

4 (3) At the hearing, the interested party shall be  
5 afforded a reasonable opportunity to present  
6 evidence and argument in support of the  
7 allegations identified in the prehearing order  
8 and the applicant shall be afforded a reasonable  
9 opportunity to present evidence and argument to  
10 controvert those allegations.

11 b. For new applications submitted on and after August 1,  
12 1998, the Department shall deny the issuance of a  
13 license to an applicant for a licensed managed feeding  
14 operation if an interested party within:

15 (1) one (1) mile of the designated perimeter of the  
16 proposed licensed managed feeding operation or  
17 expansion thereof, or

18 (2) the setback distance of an occupied residence if  
19 setback distances are greater than one (1) mile,  
20 proves that the granting of the license will cause  
21 significant harm to the property value of the  
22 interested party.

1           5. Any administrative hearing held pursuant to the provisions  
2 of this subsection shall comply with the Administrative Procedures  
3 Act and rules promulgated by the Board.

4           6. Establishment of property usage is the date the ~~animal~~ swine  
5 feeding operation application was made available for public review  
6 versus date of initial construction or placement of occupied  
7 residence and shall be given consideration when determining a  
8 contested matter between an applicant and an interested party on  
9 issues other than pollution of the waters of the state.

10          D. 1. In addition to the individual notice, the Department  
11 shall require the applicant to give public notice of the opportunity  
12 to comment on the granting of the license.

13          2. The public notice for a new or expanding operation shall be  
14 published as a legal notice prior to the date the application is  
15 available for public viewing, in at least one newspaper of general  
16 circulation in the county where the proposed facility or expanding  
17 operation is to be located.

18          3. The notice shall identify locations where the application  
19 shall be available for viewing. The locations shall include the  
20 office of the Department and a specific public location in the  
21 county where the proposed facility or expanding operation is to be  
22 located.

23          4. The application shall be available for public review during  
24 normal business hours. The copies of the application posted for

1 public viewing shall be complete except for proprietary provisions  
2 otherwise protected by law and shall remain posted during normal  
3 business hours for at least twenty (20) working days after notice is  
4 published.

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

9 E. Prior to the issuance of any license for ~~an animal~~ a swine  
10 feeding operation, or expanding operation, the Department shall  
11 require the applicant to submit:

12 1. Documentation certifying notice has been issued to all  
13 affected property owners. A map of all affected property owners and  
14 the corresponding mailing list shall be submitted with each  
15 application; and

16 2. Proof of publication notice of a new or expanding  
17 application for ~~an animal~~ a swine feeding operation license.

18 SECTION 9. AMENDATORY 2 O.S. 2001, Section 9-205.2, as  
19 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
20 2006, Section 20-9), is amended to read as follows:

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

1 pursuant thereto. The Pollution Prevention Plan shall include, but  
2 not be limited to, provisions for documentation of structural  
3 controls, documentation of Best Management Practices, an approved  
4 plan for the disposal of ~~animal~~ swine waste and recordkeeping  
5 provisions.

6 B. ~~An animal~~ A swine feeding operation licensed pursuant to the  
7 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
8 Operations Act, other than a licensed managed feeding operation,  
9 shall develop a Pollution Prevention Plan or may substitute  
10 equivalent measures contained in a site-specific ~~Animal~~ Swine Waste  
11 Management Plan prepared pursuant to Section ~~9-205.3~~ 20-10 of this  
12 title. Design and construction criteria developed by the United  
13 States Department of Agriculture Natural Resources Conservation  
14 Service, may be substituted for the documentation of design capacity  
15 and construction requirements.

16 C. 1. The Pollution Prevention Plan shall be signed by the  
17 owner or as otherwise authorized by the ~~State~~ Oklahoma Department of  
18 Agriculture, Food, and Forestry and a copy shall be retained on  
19 site.

20 2. The ~~animal~~ swine feeding operation shall amend the Pollution  
21 Prevention Plan and obtain approval of the Department prior to any  
22 change in design, construction, operation or maintenance, which has  
23 significant effect on the potential for the discharge of pollutants  
24 to the waters of the state.

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

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

14 F. In addition to other requirements specified by this section,  
15 the Pollution Prevention Plan shall include but not be limited to:

16 1. A description of potential sources, activities and materials  
17 which may reasonably be expected to or could potentially add  
18 pollutants to runoff from the facility;

19 2. A map, indicating an outline of the drainage area of the  
20 facility, and each existing structural control measure designed to  
21 reduce pollutants in wastewater and precipitation runoff in all  
22 surface waters of the state;

23 3. A spill contingency plan for potential pollutants;

24

1 4. All existing sampling data of groundwater, nitrate and  
2 coliform bacteria levels, soil tests from land application sites and  
3 ~~animal~~ swine waste nutrient sampling;

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

- 7 a. the location and a description of existing structural  
8 and nonstructural controls,
- 9 b. documentation of retention structure capacity and the  
10 assumptions and calculations used in determining the  
11 appropriate volume capacity, and
- 12 c. a description of the design standards for the  
13 retention facility embankments;

14 6. A description of the design standards for any retention  
15 facilities;

16 7. Training requirements for employees;

17 8. Documentation relating to any hydrologic connection between  
18 the contained wastewater and waters of the state which complies with  
19 Section ~~9-205.4~~ 20-12 of this title; and

20 9. Requirements that all irrigation systems into which any  
21 ~~animal~~ swine waste will be injected shall be equipped as specified  
22 by Section ~~9-205.5~~ 20-13 of this title.

23 G. The following records shall be maintained at the site as  
24 long as the facility is in operation:

- 1 1. Water level in the retention structure;
- 2 2. Daily precipitation records from on-site rain gauge;
- 3 3. Incident reports such as spills and other discharges;
- 4 4. Inspection and maintenance reports;
- 5 5. Findings from annual inspections of the entire facility;
- 6 6. Log of preventive maintenance and employee training that was  
7 completed;
- 8 7. Log of removal of ~~animal~~ swine waste sold or given to other  
9 persons for disposal;
- 10 8. Other specific information deemed necessary by the  
11 Department to implement the provisions of the Oklahoma ~~Concentrated~~  
12 ~~Animal~~ Swine Feeding Operations Act and rules promulgated pursuant  
13 thereto;
- 14 9. Copy of general permit issued by the federal Environmental  
15 Protection Agency if applicable, a copy of the completed Pollution  
16 Prevention Plan, and other specific records deemed necessary by the  
17 Department to implement the provisions of the Oklahoma ~~Concentrated~~  
18 ~~Animal~~ Swine Feeding Operations Act and rules promulgated pursuant  
19 thereto; and
- 20 10. The notarized statement signed by the applicant accepting  
21 full responsibility for properly closing all waste retention  
22 structures pursuant to subsection I of this section.
- 23 H. Any analyses required by the provisions of the Oklahoma  
24 ~~Concentrated Animal~~ Swine Feeding Operations Act or rules

1 promulgated pursuant thereto shall be performed by a qualified  
2 independent testing laboratory certified by the Department of  
3 Environmental Quality and approved by the Department.

4 I. The applicant shall sign a notarized statement accepting  
5 full responsibility for properly closing all waste retention  
6 structures if the facility ceases to function or is ordered to close  
7 by action of the Department. When a license is transferred, the new  
8 owner or lessee shall submit a signed notarized statement accepting  
9 full responsibility for properly closing all waste retention  
10 structures if the facility ceases to function or is ordered to close  
11 by action of the Department.

12 SECTION 10. AMENDATORY 2 O.S. 2001, Section 9-205.3, as  
13 renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended  
14 by Section 3, Chapter 128, O.S.L. 2006 (2 O.S. Supp. 2006, Section  
15 20-10), is amended to read as follows:

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

21 2. ~~Animal~~ Swine feeding operations licensed pursuant to the  
22 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
23 Operations Act other than licensed managed feeding operations shall  
24 utilize Best Management Practices, or may substitute for best

1 management practice equivalent measures contained in a site-specific  
2 ~~Animal~~ Swine Waste Management Plan meeting the conditions and  
3 requirements established by subsection C of this section and by  
4 rules promulgated by the Board pursuant to the Oklahoma ~~Concentrated~~  
5 ~~Animal~~ Swine Feeding Operations Act.

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

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

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

16 3. No waters of the state shall come into direct contact with  
17 the ~~animals~~ swine confined on the ~~animal~~ swine feeding operation;

18 4. ~~Animal~~ Swine waste handling, treatment, management and  
19 removal shall:

20 a. not create an environmental or a public health hazard,

21 b. not result in the contamination of public or private  
22 drinking water supplies,

23 c. conform with Oklahoma Water Quality Standards,  
24

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

21 5. If, for any reason, there is a discharge other than a spill  
22 of less than ~~100~~ one hundred (100) gallons, the licensee is required  
23 to make immediate notification to the Department. The report of the  
24 discharge shall include:

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

18 6. Notwithstanding the provisions of paragraph 5 of this  
19 subsection, any spill that leaves the property owned or controlled  
20 by the licensee shall be reported to the Department regardless of  
21 total number of gallons spilled; and

22 7. The Department shall maintain records of all discharges and  
23 shall separately maintain records of all spills.  
24

1 C. The ~~Animal~~ Swine Waste Management Plan shall include at a  
2 minimum:

3 1. ~~Animal~~ Swine waste removal procedures;

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

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

10 4. Requirements including that:

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

20 (2) timing and rate of applications shall be in  
21 response to crop needs, expected precipitation  
22 and soil conditions,

23 b. land application practices shall be managed so as to  
24 reduce or minimize:

- 1 (1) the discharge of process water or ~~animal~~ swine  
2 waste to waters of the state,  
3 (2) contamination of waters of the state, and  
4 (3) odor,

5 c. facilities including waste retention structures, waste  
6 storage sites, ponds, pipes, ditches, pumps, and  
7 diversion and irrigation equipment shall be maintained  
8 to ensure the ability to fully comply with the terms  
9 of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
10 Operations Act, and

11 d. adequate equipment and land application area shall be  
12 available for removal of ~~such~~ waste and wastewater as  
13 required to maintain the proper operating volume of  
14 the retention structure; and

15 5. ~~Such other~~ Other information deemed necessary by the  
16 Department to administer the provisions of the Oklahoma ~~Concentrated~~  
17 ~~Animal~~ Swine Feeding Operations Act and rules promulgated pursuant  
18 thereto.

19 D. Records shall be maintained of all ~~animal~~ swine wastes  
20 applied on land owned or controlled by the licensee, and sold or  
21 given to other persons for disposal.

22 E. If the ~~animal~~ swine waste from a licensed managed feeding  
23 operation is sold or given to other persons for land application or  
24 disposal, the licensed managed feeding operation shall maintain a

1 log of: date of removal from the ~~animal~~ swine feeding operation;  
2 names of such other persons; and amount, in wet tons, dry tons or  
3 cubic yards, of ~~animal~~ swine waste removed from the ~~animal~~ swine  
4 feeding operation.

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

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

14 3. The 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~~ swine waste  
17 even if ~~such~~ 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 ~~animal~~ swine waste is applied shall  
20 be analyzed, annually, for phosphates, nitrates and soil pH prior to  
21 the first application of the ~~animal~~ swine waste in the calendar  
22 year. A copy of the results of the analysis shall be submitted to  
23 the Department upon request by the Department. Such analysis shall  
24

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

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

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

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~~ higher than normal mortality rates  
14 and other provisions which will provide for a decrease in the  
15 possibility of the spread of disease and prevent the contamination  
16 of waters of the state. The plan shall comply with rules  
17 promulgated by the Department.

18 SECTION 11. AMENDATORY 2 O.S. 2001, Section 9-205.3a, as  
19 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
20 2006, Section 20-11), is amended to read as follows:

21 Section 20-11. A. An Odor Abatement Plan shall be developed by  
22 each licensed managed feeding operation prior to the submission of  
23 an application pursuant to the provisions of this section and rules  
24 promulgated by the State Board of Agriculture pursuant thereto. The

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

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

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

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

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

1 D. In determining the adequacy of an odor abatement plan, the  
2 Department shall consider all relevant factors including but not  
3 limited to:

4 1. Design of the facilities;

5 2. Odor control technology to be utilized;

6 3. Prevailing wind direction in relation to occupied  
7 residences;

8 4. Size of operation;

9 5. Distance from facility to occupied residences; and

10 6. All information contained in the application.

11 SECTION 12. AMENDATORY 2 O.S. 2001, Section 9-205.4, as  
12 renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended  
13 by Section 1, Chapter 148, O.S.L. 2006 (2 O.S. Supp. 2006, Section  
14 20-12), is amended to read as follows:

15 Section 20-12. A. Any hydrologic connection between wastewater  
16 and waters of the state outside that authorized by the provisions of  
17 the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act shall  
18 constitute a discharge to waters of the state.

19 B. Except as otherwise provided by Section 20-20 of the  
20 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act, to  
21 prevent hydrologic connections between a retention structure and  
22 waters of the state, all swine feeding operations in this state  
23 primarily using a liquid ~~animal~~ swine waste management system  
24

1 whether or not such waste facilities are licensed pursuant to the  
2 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act shall:

3 1. Utilize a natural or geomembrane liner or other liner  
4 constructed of synthetic materials in any retention structure  
5 containing liquid ~~animal~~ swine waste; and

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

16 C. Except as provided by Section 20-20 of the Oklahoma  
17 ~~Concentrated Animal~~ Swine Feeding Operations Act and subsection E of  
18 this section, all retention structures of licensed managed feeding  
19 operations shall maintain a minimum separation of ten (10) feet  
20 between the bottom of the retention structure and the maximum  
21 historical groundwater elevation that is measured from the bottom of  
22 the retention structure and the highest point of the seasonal  
23 groundwater table. Documentation of a ten-foot separation shall be  
24 established by submission of a soil log from a soil boring extending

1 a minimum of ten (10) feet below the bottom of all retention  
2 structures to ascertain the presence of groundwater or bedrock and a  
3 statement from a professional engineer certifying the existence of  
4 the ten-foot separation distance.

5 D. The State Board of Agriculture shall establish standards for  
6 retention structures.

7 E. The Department of Agriculture, Food, and Forestry may allow  
8 a separation of less than ten (10) feet but in no event less than  
9 four (4) feet between the bottom of the retention structure and the  
10 maximum historical groundwater elevation. In determining the  
11 minimum separation to be required, the Department shall consider the  
12 following factors:

- 13 1. Soil type at the retention structure;
- 14 2. Soil tests per American Standards Testing Methods (ASTM)  
15 standards on all soils to be used as liner material;
- 16 3. Retention structure capacity;
- 17 4. Retention structure design;
- 18 5. Documentation of lack of hydrologic connection between the  
19 waters of the state and the retention structure;
- 20 6. Depth of retention structure;
- 21 7. Type and characteristics of liner to be used; and
- 22 8. Any other relevant information.

23 F. 1. Licensed managed feeding operations shall install and  
24 maintain in good working order a leak detection system or sufficient

1 monitoring wells both upgradient and downgradient around the  
2 perimeter of each retention structure prior to using the retention  
3 structure for storage of liquid waste pursuant to rules promulgated  
4 by the State Board of Agriculture.

5       2. a.       Samples of water shall be collected by the Oklahoma  
6                   Department of Agriculture, Food, and Forestry and  
7                   submitted for testing at least annually. The analysis  
8                   of the water samples shall be performed by a qualified  
9                   environmental laboratory approved by the Oklahoma  
10                  Department of Environmental Quality or by the relevant  
11                  certification agency for the state in which the  
12                  laboratory is located and approved by the Oklahoma  
13                  Department of Agriculture, Food, and Forestry; and the  
14                  cost shall be the responsibility of the owner of the  
15                  licensed managed feeding operation.

16               b.       The frequency of sampling set forth in subparagraph a  
17                   of this paragraph may be reduced to once every three  
18                   (3) years for those monitoring wells which have been  
19                   sampled for at least three (3) consecutive years and  
20                   have always been found to be dry. However, if any  
21                   subsequent sampling event indicates the monitoring  
22                   well is no longer dry, that monitoring well shall be  
23                   sampled pursuant to subparagraph a of this paragraph.

24

1 3. Documentation, sampling data, and any other records required  
2 by this section shall be maintained on site for the life of the  
3 facility.

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

12 5. The Oklahoma Water Resources Board shall promulgate rules  
13 providing for plugging of monitoring wells as appropriate.

14 G. Site-specific conditions shall be considered in the design  
15 and construction of liners. Liners for retention structures shall  
16 be designed and constructed in accordance with the provisions of  
17 this section and generally accepted engineering practices  
18 established by rules of the Board or as required by the federal  
19 Environmental Protection Agency. Liners for lagoons owned or  
20 operated by ~~an animal~~ a swine feeding operation with less than one  
21 thousand (1,000) swine animal units may be designed and constructed  
22 pursuant to Technical Note 716 of the United States Department of  
23 Agriculture Natural Resources Conservation Service or its current  
24

1 equivalent so long as the facility is designed by the United States  
2 Department of Agriculture Natural Resources Conservation Service.

3 H. 1. When a liner is installed to prevent hydrologic  
4 connection, the licensee or the owner shall maintain the liner to  
5 inhibit infiltration of wastewaters. Documentation of liner  
6 maintenance shall be maintained at the facility.

7 2. An environmental, agricultural, or other approved  
8 professional engineer licensed pursuant to Section 475.12 of Title  
9 59 of the Oklahoma Statutes shall conduct a site evaluation every  
10 five (5) years on the retention structure of every concentrated  
11 ~~animal~~ swine feeding operation with such a structure and annually on  
12 every licensed managed feeding operation to ensure liner integrity.  
13 If the owner or operator suspects that a retention structure is  
14 leaking, the owner or operator shall report suspected leakage to the  
15 Department.

16 3. The Department shall establish a compliance schedule for  
17 retrofitting liners of waste retention structures for licensed  
18 managed feeding operations constructed prior to August 1, 1998, that  
19 are located in nutrient-limited watersheds or nutrient-vulnerable  
20 groundwaters as designated by the Oklahoma Water Resources Board and  
21 do not have liners meeting the specifications established in this  
22 section.

23 I. All substances entering the retention structures shall be  
24 composed entirely of wastewaters from the proper operation and

1 maintenance of ~~an animal~~ a swine feeding operation and the runoff  
2 from the ~~animal~~ swine feeding operation area. The disposal of any  
3 materials, other than substances associated with proper operation  
4 and maintenance of the facility into the containment structures,  
5 including but not limited to human waste, is prohibited.

6 J. All new retention structures of licensed managed feeding  
7 operations shall be designed for odor abatement, groundwater  
8 protection, and nutrient conservation.

9 K. Documentation, sampling data, and any other records required  
10 by this section shall be maintained on site for as long as the  
11 facility is in operation. Samples collected during the first year  
12 of the retention structure may be considered the baseline data and  
13 shall be retained on site as long as the facility is in operation.  
14 Baseline data for the facility shall be determined based on the best  
15 information available.

16 SECTION 13. AMENDATORY 2 O.S. 2001, Section 9-205.5, as  
17 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
18 2006, Section 20-13), is amended to read as follows:

19 Section 20-13. A. All irrigation systems into which any ~~animal~~  
20 swine waste will be injected shall be equipped with one or both of  
21 the following systems:

22 1. An antipollution system, approved by the State Board of  
23 Agriculture, capable of preventing the backflow of ~~such animal~~ swine  
24 waste into the groundwater. The system shall include a safety check

1 valve with a removable inspection port, anti-syphon vent, and low-  
2 pressure escape drain. An interlock device shall be installed on  
3 pumps that pump the ~~animal~~ swine waste so that if a fresh water  
4 irrigation pump shuts down, the pump that pumps the ~~animal~~ swine  
5 waste will also immediately shut down, preventing the chance of  
6 leakage past the check valve; or

7 2. A system which provides for a complete and total  
8 disconnection between the flow of fresh water and the flow of ~~animal~~  
9 swine waste. ~~Such~~ The system shall be capable of a manual  
10 disconnection between fresh water and the ~~animal~~ swine waste.

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

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

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

18 2. Complete disconnection from fresh water when introducing  
19 ~~animal~~ swine waste into the system.

20 SECTION 14. AMENDATORY 2 O.S. 2001, Section 9-206, as  
21 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
22 2006, Section 20-14), is amended to read as follows:

23 Section 20-14. A. The State Board of Agriculture or its  
24 authorized agents are empowered to enter upon the premises of any

1 ~~animal~~ swine feeding operation for the purpose of investigating  
2 complaints as to the operation or to determine whether there are any  
3 violations of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
4 Operations Act. The Department shall make at least one unannounced  
5 inspection per year of every ~~animal~~ swine feeding operation licensed  
6 pursuant to the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
7 Operations Act.

8 B. 1. The Board shall promulgate standard precautions for the  
9 prevention of the transmission of communicable diseases to humans  
10 and animals to be used by employees of the Oklahoma Department of  
11 Agriculture, Food and Forestry when inspecting ~~animal~~ swine feeding  
12 operations pursuant to their official duties specified by the  
13 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act and rules  
14 promulgated pursuant thereto.

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

21 C. The Board shall maintain necessary records and undertake  
22 such studies, investigations, and surveys for the proper  
23 administration of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
24 Operations Act.

1 SECTION 15. AMENDATORY 2 O.S. 2001, Section 9-208, as  
2 amended by Section 22, Chapter 292, O.S.L. 2005, and as renumbered  
3 by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2006, Section  
4 20-15), is amended to read as follows:

5 Section 20-15. A. 1. It shall be unlawful for any person to  
6 operate a concentrated ~~animal~~ swine feeding operation, without first  
7 obtaining a license from the State Board of Agriculture.

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

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

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

23 a. commercial manufacturers of fertilizers, grain and  
24 feed products, and chemicals, and over manufacturing

- 1 of food and kindred products, tobacco, paper, lumber,  
2 wood, textile mill and other agricultural products,  
3 b. slaughterhouses, but not including feedlots at these  
4 facilities, and  
5 c. aquaculture and fish hatcheries, including, but not  
6 limited to, discharges of pollutants and storm water  
7 to waters of the state, surface impoundments and land  
8 application of wastes and sludge, and other pollution  
9 originating at these facilities.

10 2. Facilities storing grain, feed, seed, fertilizer, and  
11 agricultural chemicals that are required by federal National  
12 Pollutant Discharge Elimination System regulations to obtain a  
13 permit for storm water discharges shall only be subject to the  
14 jurisdiction of the Department of Environmental Quality with respect  
15 to storm water discharges.

16 SECTION 16. AMENDATORY 2 O.S. 2001, Section 9-209, as  
17 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
18 2006, Section 20-16), is amended to read as follows:

19 Section 20-16. A. Licenses ~~issued pursuant to the Oklahoma~~  
20 ~~Concentrated Animal Feeding Operations Act~~ shall expire on June 30  
21 of each year and may be renewed upon payment of the license fee and  
22 swine animal unit fees set forth in ~~subsection B~~ of this section and  
23 continued compliance with the provisions of the Oklahoma  
24

1 ~~Concentrated Animal~~ Swine Feeding Operations Act and the rules of  
2 the Board.

3 B. The fees for ~~an animal~~ a swine feeding operations license  
4 and annual renewal thereof shall be:

	Amount
<del>Animal feeding operations capacity</del>	<del>of Fee</del>
<del>Under two hundred fifty animal units</del>	<del>\$15.00</del>
<del>Two hundred fifty to five hundred animal units</del>	<del>\$37.50</del>
<del>Five hundred and one to three thousand animal units</del>	<del>\$75.00</del>
<del>Three thousand and one to ten thousand animal units</del>	<del>\$150.00</del>
<del>Over ten thousand animal units</del>	<del>\$225.00</del>

12 1. Fifteen Dollars (\$15.00) for facilities with a capacity of  
13 less than two hundred fifty (250) swine animal units;

14 2. Thirty-seven Dollars and fifty cents (\$37.50) for facilities  
15 with a capacity of two hundred fifty (250) to five hundred (500)  
16 swine animal units;

17 3. Seventy-five Dollars (\$75.00) for facilities with a capacity  
18 of five hundred one (501) to three thousand (3,000) swine animal  
19 units;

20 4. One Hundred Fifty Dollars (\$150.00) for facilities with a  
21 capacity of three thousand one (3,001) to ten thousand (10,000)  
22 swine animal units; or

23  
24

1        5. Two Hundred Twenty-five Dollars (\$225.00) for facilities  
2 with a capacity of more than ten thousand (10,000) swine animal  
3 units.

4        ~~C. For the license year ending June 30, 1999, all licensed~~  
5 ~~managed feeding operations shall pay an additional license fee for~~  
6 ~~original or renewal licenses in an amount equal to eighty cents~~  
7 ~~(\$0.80) per licensed animal unit capacity.~~

8        ~~For original applications pending with the State Department of~~  
9 ~~Agriculture on July 1, 1998, one half of such amount shall be due~~  
10 ~~and payable no later than September 1, 1998. For all other original~~  
11 ~~applications for the license year ending June 30, 1999, one half of~~  
12 ~~such amount shall be due and payable with the application.~~

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

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

21        ~~D. For the license year ending June 30, 2000, and every year~~  
22 ~~thereafter, all 1. All licensed managed feeding operations shall~~  
23 ~~pay an additional license fee for original licenses in an amount~~  
24 ~~equal to eighty cents (\$0.80) per licensed swine animal unit~~

1 capacity. One-half (1/2) of ~~such the~~ amount shall be due and  
2 payable with the application.

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

10 ~~For the license year ending June 30, 2000, and every year~~  
11 ~~thereafter all~~ 3. All licensed managed feeding operations shall pay  
12 an additional license fee for renewal licenses in an amount  
13 established by the Department pursuant to rules promulgated under  
14 ~~the Administrative Procedures Act and in accordance with subsection~~  
15 ~~E of this section.~~

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

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

6 ~~F. E.~~ All fees received ~~by the Board~~ for licensure of ~~animal~~  
7 swine feeding operations ~~pursuant to this section~~ shall be deposited  
8 in the State Department of Agriculture Revolving Fund.

9 SECTION 17. AMENDATORY 2 O.S. 2001, Section 9-209.1, as  
10 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
11 2006, Section 20-17), is amended to read as follows:

12 Section 20-17. A. Any person who is licensed to operate ~~an~~  
13 ~~animal~~ a swine feeding operation with a liquid ~~animal~~ swine waste  
14 management system within this state shall furnish to the Oklahoma  
15 Department of Agriculture, Food, and Forestry evidence of financial  
16 ability to comply with the requirements for closure of retention  
17 structures and other waste facilities as established pursuant to the  
18 provisions of this section and rules promulgated by the State Board  
19 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  
24 a general release that the information may be verified

1 with banks and other financial institutions. The  
2 financial statement shall be confidential and shall  
3 not be opened to public inspection. The statement  
4 shall prove a net worth of not less than:

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

- 22 b. Category B surety which shall include an irrevocable  
23 commercial letter of credit, cash, a cashier's check,  
24 a Certificate of Deposit, Bank Joint Custody Receipt,

1 other negotiable instrument or a blanket surety bond.  
2 Except as provided in paragraph 2 of this subsection,  
3 amount of such letter of credit, cash, check,  
4 certificate, bond, receipt or other negotiable  
5 instrument shall be in the amount of Twenty-five  
6 Thousand Dollars (\$25,000.00). The Department is  
7 authorized to determine the amount of Category B  
8 surety based upon the past performance of the owner or  
9 operator regarding compliance with the laws of this  
10 state, and any rules promulgated pursuant thereto.  
11 Any instrument shall constitute an unconditional  
12 promise to pay and be in a form negotiable by the  
13 Department.

14 2. The Department upon certification by any ~~animal~~ swine  
15 feeding operation subject to Category B surety that its liability  
16 statewide is less than the twenty-five-thousand-dollar standard  
17 specified in this section may allow ~~said~~ the owner or operator to  
18 provide Category B type surety in an amount less than the required  
19 Twenty-five Thousand Dollars (\$25,000.00), but at least sufficient  
20 to cover the estimated cost of all closure and removal operations  
21 currently the responsibility of that owner or operator.

22 C. 1. Any ~~animal~~ swine feeding operation licensed pursuant to  
23 the provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
24

1 Operations Act which does not have any outstanding contempt  
2 citations or fines may post Category A surety.

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

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

17 E. 1. If the Department, after notice and an opportunity for  
18 hearing, determines that the ~~animal~~ swine feeding operation licensed  
19 pursuant to the provisions of the Oklahoma ~~Concentrated Animal~~ Swine  
20 Feeding Operations Act has neglected, failed, or refused to close  
21 any surface impoundment, or remove or cause to be removed any  
22 equipment, or has abandoned the facility, then the ~~animal~~ swine  
23 feeding operation shall be deemed to have forfeited the letter of  
24 credit or negotiable instrument required by this section or shall

1 pay to this state, for deposit in the State Treasury, a sum equal to  
2 the cost of closure of any surface impoundment or removal of  
3 equipment.

4 2. The Department may cause the remedial work to be done,  
5 issuing a warrant in payment of the cost thereof drawn against the  
6 monies accruing in the State Treasury from the forfeiture or  
7 payment.

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

19 F. If title to ~~an animal~~ a swine feeding operation is  
20 transferred, the transferee shall furnish the evidence of financial  
21 ability to close surface impoundments required by the provisions of  
22 this section, prior to the transfer.

23

24

1 SECTION 18. AMENDATORY 2 O.S. 2001, Section 9-210, as  
2 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
3 2006, Section 20-18), is amended to read as follows:

4 Section 20-18. A. In addition to any other requirement of the  
5 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act, ~~animal~~  
6 swine feeding operations owners and operators who are granted an  
7 ~~animal~~ a swine feeding operations license shall:

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

10 2. Have available for use at all necessary times mechanical  
11 means of scraping, cleaning, and grading feed yards premises; and

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

14 B. 1. Any ~~animal~~ swine feeding operation licensed pursuant to  
15 the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act,  
16 operated in compliance with ~~such~~ those standards, and in compliance  
17 with the rules promulgated by the State Board of Agriculture, shall  
18 be deemed to be prima facie evidence that a nuisance does not exist;  
19 provided, no ~~animal~~ swine feeding operation shall be located or  
20 operated in violation of any zoning regulations.

21 2. Any ~~animal~~ swine feeding operation licensed pursuant to the  
22 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act, operated  
23 in compliance with ~~such~~ those standards, and in compliance with  
24 rules promulgated by the Board, that is located on land more than

1 three (3) miles outside the incorporated limits of any municipality  
2 and which is not located within one (1) mile of ten or more occupied  
3 residences shall not be deemed a nuisance unless it is shown by a  
4 preponderance of the evidence that the operation endangers the  
5 health or safety of others.

6 SECTION 19. AMENDATORY 2 O.S. 2001, Section 9-210.1, as  
7 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
8 2006, Section 20-19), is amended to read as follows:

9 Section 20-19. A. ~~Except as otherwise provided by Section 9-~~  
10 ~~210.2 of this title, the state shall be divided east and west based~~  
11 ~~on the Indian Meridian for the purpose of determining setback~~  
12 ~~requirements from occupied residences for animal feeding operations~~  
13 ~~using a liquid animal waste management system where swine are~~  
14 ~~primarily housed in a roof covered structure and which were~~  
15 ~~established between September 1, 1997, and June 1, 1998:~~

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

18 a. ~~located in the eastern half of the state shall be~~  
19 ~~constructed where its closest waste facility is within~~  
20 ~~a distance of one half (1/2) mile of any occupied~~  
21 ~~residence not owned or leased by the owner or operator~~  
22 ~~of the licensed managed feeding operation, or~~

23 b. ~~located in the western half of the state shall be~~  
24 ~~constructed where its closest waste facility is within~~

1 ~~a distance of three fourths (3/4) mile of any occupied~~  
2 ~~residence not owned or leased by the owner or operator~~  
3 ~~of the licensed managed feeding operation.~~

4 ~~2. No new or expanding animal feeding operation with a capacity~~  
5 ~~of less than two thousand (2,000) animal units but more than one~~  
6 ~~thousand (1,000) animal units:~~

7 ~~a. located in the eastern half of the state shall be~~  
8 ~~constructed where its closest waste facility is~~  
9 ~~located within a distance of one fourth (1/4) mile of~~  
10 ~~any occupied residence not owned or leased by the~~  
11 ~~owner of the animal feeding operation, or~~

12 ~~b. located in the western half of the state shall be~~  
13 ~~constructed where its closest waste facility is~~  
14 ~~located within a distance of one half (1/2) mile of~~  
15 ~~any occupied residence not owned or leased by the~~  
16 ~~owner of the animal feeding operation.~~

17 ~~3. No new or expanding animal feeding operation with a capacity~~  
18 ~~of more than three hundred (300) animal units but having one~~  
19 ~~thousand (1,000) animal units or less shall be constructed where its~~  
20 ~~closest waste facility is located within a distance of one fourth~~  
21 ~~(1/4) mile of any occupied residence not owned or leased by the~~  
22 ~~owner of the animal feeding operation.~~

23 ~~B. Except as otherwise authorized by this subsection, no liquid~~  
24 ~~animal swine waste shall be land applied within five hundred (500)~~

1 feet of the nearest corner of an occupied residence not owned or  
2 leased by the owner of the ~~animal~~ swine feeding operation.

3 ~~C.~~ B. Except as otherwise provided by Section ~~9-210.2~~ 20-20 of  
4 ~~this title~~ the Oklahoma Swine Feeding Operations Act, no  
5 concentrated ~~animal~~ swine feeding operation shall be established  
6 ~~after September 1, 1997, which is~~ within one (1) mile of ten or more  
7 residences ~~which~~ that are occupied residences at the time of the  
8 establishment of the concentrated ~~animal~~ swine feeding operation.

9 ~~D.~~ C. The proscription contained in subsections A, and B ~~and C~~  
10 of this section shall not apply if the applicable property owner  
11 executes a written waiver with the owner or operator of the ~~animal~~  
12 swine feeding operation, under ~~such~~ the terms and conditions that  
13 the parties negotiate. The written waiver becomes effective upon  
14 recording of the waiver in the offices of the recorder of deeds in  
15 the county ~~in which such~~ where the property is located. The filed  
16 waiver shall preclude enforcement of the setback requirements  
17 contained in subsections A, and B ~~and C~~ of this section. A change  
18 in ownership of the applicable property or change in the ownership  
19 of the property on which the ~~animal~~ swine feeding operation is  
20 located shall not affect the validity of the waiver.

21 ~~E.~~ D. No liquid ~~animal~~ swine waste shall be land applied within  
22 three hundred (300) feet of an existing public or private drinking  
23 water well.

24

1 F. E. Except as ~~otherwise~~ provided by Section ~~9-210.2~~ of this  
2 title 20-20 of the Oklahoma Swine Feeding Operations Act, no  
3 concentrated ~~animal~~ swine feeding operation shall be established  
4 ~~after September 1, 1997, which is~~ if located:

5 1. Within three (3) miles of a state park or resort;

6 2. On land within three (3) miles of the incorporated limits of  
7 any municipality; or

8 3. Within three (3) miles of the high water mark of a surface  
9 public water supply if the concentrated ~~animal~~ swine feeding  
10 operation is located within the drainage basin for the public water  
11 supply.

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

19 SECTION 20. AMENDATORY 2 O.S. 2001, Section 9-210.2, as  
20 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
21 2006, Section 20-20), is amended to read as follows:

22 Section 20-20. A. ~~1. Any concentrated animal feeding~~  
23 ~~operation which is licensed by or which has submitted a~~  
24 ~~substantially completed application to the State Department of~~

1 ~~Agriculture on or before September 1, 1997, shall be required to~~  
2 ~~comply with all applicable provisions within one (1) year of such~~  
3 ~~date or may enter into a compliance schedule with the Department to~~  
4 ~~come into compliance.~~

5 2. The provisions of Section ~~9-210.1~~ 20-19 of this title  
6 relating to setback requirements and the provisions of subsections B  
7 and C of Section ~~9-205.4~~ 20-12 of this title relating to utilization  
8 of liners in retention structures or documentation of no hydrologic  
9 connection and to a minimum separation of ~~four (4)~~ ten (10) feet  
10 between the bottom of the retention structure and the maximum  
11 groundwater elevation shall not apply to ~~the facilities specified by~~  
12 ~~this subsection~~ any concentrated swine feeding operation that is  
13 licensed by or submitted a substantially completed application on or  
14 before September 1, 1997.

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

23 2. ~~The provisions of Section 9-210.1 of this title relating to~~  
24 ~~setback requirements and the provisions of subsections B and C of~~

1 ~~Section 9-205.4 of this title relating to utilization of liners in~~  
2 ~~retention structures or documentation of no hydrologic connection~~  
3 ~~and to a minimum separation of four (4) feet between the bottom of~~  
4 ~~the retention structure and the maximum groundwater elevation shall~~  
5 ~~not apply to the facilities specified by this subsection.~~

6 C. ~~1. Animal feeding operations, other than a concentrated~~  
7 ~~animal feeding operation, not licensed pursuant to the provisions of~~  
8 ~~the Oklahoma Feed Yards Act in operation on the effective date of~~  
9 ~~this act shall not be subject to any setback requirements not in~~  
10 ~~effect on the date of past construction.~~

11 ~~2. Provided, that the provisions of subsections B and C of~~  
12 ~~Section 9-205.4 of this title relating to utilization of liners in~~  
13 ~~retention structures or documentation of no hydrologic connection~~  
14 ~~and to a minimum separation of four (4) feet between the bottom of~~  
15 ~~the retention structure and the maximum groundwater elevation shall~~  
16 ~~not apply to facilities specified by this subsection except as a~~  
17 ~~condition to the issuance of a license pursuant to the provisions of~~  
18 ~~the Oklahoma Concentrated Animal Feeding Operations Act.~~

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

22 SECTION 21. AMENDATORY 2 O.S. 2001, Section 9-210.3, as  
23 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
24 2006, Section 20-21), is amended to read as follows:

1 Section 20-21. A. Except as otherwise provided by Section ~~14~~  
2 ~~of this act~~ 20-19 of the Oklahoma Swine Feeding Operations Act and  
3 subsection F of this section, ~~animal~~ swine feeding operations using  
4 liquid ~~animal~~ swine waste management systems ~~where~~ and swine are  
5 housed in roof-covered structures shall not be located within the  
6 following applicable distances from an occupied residence:

- 7 1. More than 4000 swine animal units.....2 miles;
- 8 2. 2001 to 4000 swine animal units.....1 1/4 miles;
- 9 3. 1001 to 2000 swine animal units.....3/4 mile;
- 10 4. 601 to 1000 swine animal units.....1/2 mile;
- 11 5. 300 to 600 swine animal units.....1/4 mile; and
- 12 6. Less than 300 swine animal units.....no setback.

13 B. Except as otherwise provided by this section, no licensed  
14 managed feeding operation which applies for a new or expanding  
15 concentrated ~~animal~~ swine feeding operation license ~~after March 9,~~  
16 ~~1998,~~ shall be located within three (3) miles of the outside  
17 boundary of any area or facility owned or operated as a camp or  
18 recreational site by a nonprofit organization established prior to  
19 application of the concentrated ~~animal~~ swine feeding operation.

20 C. The setback requirements contained in subsections A and B of  
21 this section shall not apply to any property owner who executes a  
22 written waiver with the owner or operator of the ~~animal~~ swine  
23 feeding operation, under such terms and conditions as are agreed to  
24 by the parties. The written waiver shall be effective upon

1 recording of the waiver in the office of the county clerk in the  
2 county in which ~~such~~ the property is located. The filed waiver  
3 shall preclude enforcement of the setback requirements of  
4 subsections A or B of this section with regard to property described  
5 in the waiver and owned by the person executing ~~such~~ the waiver. A  
6 change in ownership of the applicable property or change in  
7 ownership of the property on which the ~~animal~~ swine feeding  
8 operation is located shall not affect the validity of the waiver.

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

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

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

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

17 4. Within one (1) mile of a ~~waterbody~~ water body specified as  
18 Outstanding Resource Waters that has recreational or ecological  
19 significance as outlined by the most current Water Quality Standards  
20 promulgated by the Oklahoma Water Resources Board; or

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

23 E. All distances between occupied residences and ~~animal~~ swine  
24 feeding operations shall be measured from the closest corner of the

1 walls of the occupied residence to the closest point of the nearest  
2 waste facility, as determined by the ~~State~~ Oklahoma Department of  
3 Agriculture, Food, and Forestry. The property boundary line of the  
4 real property is not used unless it coincides with the closest point  
5 of the waste facility or occupied residence.

6 F. The provisions of this section shall not apply to any ~~animal~~  
7 swine feeding operation which has been licensed by or which had  
8 submitted an application to the ~~State Department of Agriculture~~ on  
9 or prior to March 9, 1998. In addition, the provisions of this  
10 section shall not apply to any ~~animal~~ swine feeding operation with a  
11 capacity of 2000 swine animal units or less which was established  
12 prior to June 1, 1998.

13 SECTION 22. AMENDATORY Section 23, Chapter 292, O.S.L.  
14 2005 (2 O.S. Supp. 2006, Section 20-22), is amended to read as  
15 follows:

16 Section 20-22. The Oklahoma Department of Agriculture, Food,  
17 and Forestry shall not accept or approve any pending applications  
18 requesting permits for construction or expansion of any concentrated  
19 ~~animal~~ swine feeding operation to be located within one (1) mile  
20 upstream of the Pensacola Project boundary as described in the  
21 records of the Grand River Dam Authority and the Federal Emergency  
22 Management Agency. Any operation authorized or permitted prior to  
23 April 17, 2002, shall not be affected by the provisions of this  
24 section.

1 SECTION 23. AMENDATORY 2 O.S. 2001, Section 20-49, as  
2 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
3 2006, Section 20-23), is amended to read as follows:

4 Section 20-23. A. A concentrated ~~animal~~ swine feeding  
5 operation may exceed its swine animal unit capacity if:

6 1. A diseased or potentially diseased ~~animal~~ swine exists at  
7 the operation; or

8 2. A diseased or potentially diseased ~~animal~~ swine is in the  
9 next destination for the production line for the operation; and

10 3. The owner of the concentrated ~~animal~~ swine feeding operation  
11 has reasonable cause to believe ~~an animal~~ a swine has or may have  
12 any disease causing:

13 a. a public health emergency,

14 b. a substantial and imminent economic hardship to the  
15 owner, or

16 c. a substantial and imminent threat to the ~~state's~~  
17 ~~animal~~ swine population, of the state; or

18 4. The State Board of Agriculture issues an order establishing  
19 temporary restrictions, a quarantine, or a quarantine zone  
20 restricting the movement of persons, livestock, machinery, and  
21 personal property out of a concentrated ~~animal~~ swine feeding  
22 operation.

23 B. In no case shall ~~an~~ a swine animal unit capacity be exceeded  
24 for more than five (5) days following a confirmatory test indicating

1 that either the ~~animal~~ swine is diseased or is not diseased. A  
2 confirmatory test shall be performed within twenty (20) days of  
3 discovery that a diseased or potentially diseased ~~animal~~ swine  
4 exists at the operation.

5 C. The owner of a concentrated ~~animal~~ swine feeding operation  
6 shall provide written notification to the Oklahoma Department of  
7 Agriculture, Food, and Forestry upon discovery of a diseased or  
8 potentially diseased ~~animal~~ swine pursuant to subsection A of this  
9 section that may result in the swine animal unit capacity being  
10 exceeded.

11 D. The notice shall:

12 1. Identify the concentrated ~~animal~~ swine feeding operation  
13 that may exceed its swine animal unit capacity; and

14 2. Include an estimate of the number of ~~animals~~ swine exceeding  
15 the swine animal unit capacity at the concentrated ~~animal unit~~ swine  
16 feeding operation.

17 SECTION 24. AMENDATORY 2 O.S. 2001, Section 9-211, as  
18 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
19 2006, Section 20-25), is amended to read as follows:

20 Section 20-25. A. 1. The State Board of Agriculture is  
21 authorized and directed to promulgate a violation points system for  
22 violating the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations  
23 Act, which provides greater punishment for violations which are  
24

1 intentional and for violations which pose a greater threat to the  
2 environment.

3 2. The State Board of Agriculture shall have the power to  
4 suspend, revoke or not renew the license of any ~~animal~~ swine feeding  
5 operation based on ~~such~~ the point system after a hearing, and after  
6 an administrative determination that ~~such animal~~ the swine feeding  
7 operation has violated or has failed to comply with any of the  
8 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
9 Operations Act, or any rule promulgated pursuant thereto.

10 3. The Board shall have the power and duty to reinstate any  
11 such suspended or revoked licenses, or renew ~~such~~ the licenses, upon  
12 a satisfactory and acceptable showing and assurance that ~~such animal~~  
13 the swine feeding operation conducted ~~animal~~ swine feeding  
14 operations in conformity with, and in compliance with, the  
15 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
16 Operations Act and rules promulgated pursuant thereto, and that ~~such~~  
17 conformity and compliance will be continuous.

18 B. In order to protect the public health and safety and the  
19 environment of this state, the Board, pursuant to the Oklahoma  
20 ~~Concentrated Animal~~ Swine Feeding Operations Act, may deny issuance  
21 of a license or transfer of a license to establish and operate ~~an~~  
22 ~~animal~~ a swine feeding operation on and after September 1, 1997, to  
23 any person or other legal entity which:  
24

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

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

9 C. Any action taken in regard to the denial, suspension or  
10 revocation of a license shall be in conformity with the rules of the  
11 Board governing Administrative Procedures and the Administrative  
12 Procedures Act.

13 SECTION 25. AMENDATORY 2 O.S. 2001, Section 9-212, as  
14 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
15 2006, Section 20-26), is amended to read as follows:

16 Section 20-26. A. Any person violating the provisions of the  
17 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act or any  
18 rule of the State Board of Agriculture promulgated pursuant thereto  
19 shall, upon conviction, be deemed guilty of a misdemeanor and upon  
20 conviction thereof may be punished by a fine not exceeding Two  
21 Hundred Dollars (\$200.00).

22 B. Any owner or operator who fails to take such action as may  
23 be reasonable and necessary to avoid pollution of any stream, lake,  
24 river or creek, except as otherwise provided by law, or who violates

1 any rule of the Board adopted to prevent water pollution from ~~animal~~  
2 swine feeding operations pursuant to this act shall, upon  
3 conviction, be deemed guilty of a misdemeanor, and upon conviction  
4 thereof may be punished by a fine of Five Hundred Dollars (\$500.00)  
5 to Ten Thousand Dollars (\$10,000.00) for each violation, by  
6 imprisonment in the county jail for not more than six (6) months for  
7 each violation, or by the assessment of a civil penalty up to Ten  
8 Thousand Dollars (\$10,000.00) for each violation or by any of such  
9 fine, imprisonment, and civil penalty.

10 C. 1. In addition to the criminal and civil penalties  
11 specified by this section, the ~~State~~ Oklahoma Department of  
12 Agriculture, Food, and Forestry may:

- 13 a. assess an administrative penalty of not more than Ten  
14 Thousand Dollars (\$10,000.00) per day of  
15 noncompliance, or
- 16 b. bring an action for injunctive relief granted by a  
17 district court.

18 2. A district court may grant injunctive relief to prevent a  
19 violation of, or to compel compliance with, any of the provisions of  
20 the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act or any  
21 rule promulgated thereunder or order, license or permit issued  
22 pursuant to the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
23 Operations Act.

24

1           3. Nothing in this section shall preclude the Department from  
2 seeking penalties in district court in the maximum amount allowed by  
3 law. The assessment of penalties in an administrative enforcement  
4 proceeding shall not prevent the subsequent assessment by a court of  
5 the maximum civil or criminal penalties for violations of the  
6 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act.

7           D. Any person assessed an administrative or civil penalty may  
8 be required to pay, in addition to such penalty amount and interest  
9 thereon, attorneys fees and costs associated with the collection of  
10 such penalties.

11           E. The Attorney General or the district attorney of the  
12 appropriate district court of Oklahoma may bring an action in a  
13 court of competent jurisdiction for the prosecution of a violation  
14 by any person of a provision of the Oklahoma ~~Concentrated Animal~~  
15 Swine Feeding Operations Act or any rule promulgated thereunder, or  
16 order, license or permit issued pursuant thereto.

17           F. 1. Any action for injunctive relief to redress or restrain  
18 a violation by any person of the Oklahoma ~~Concentrated Animal~~ Swine  
19 Feeding Operations Act or for any rule promulgated thereunder, or  
20 order, license, or permit issued pursuant thereto or recovery of any  
21 administrative or civil penalty assessed pursuant to the Oklahoma  
22 ~~Concentrated Animal~~ Swine Feeding Operations Act may be brought by:

- 23           a. the district attorney of the appropriate district  
24           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           2.    The court shall have jurisdiction to determine said action,  
5 and to grant the necessary or appropriate relief, including but not  
6 limited to mandatory or prohibitive injunctive relief, interim  
7 equitable relief, and punitive damages.

8           3.    It shall be the duty of the Attorney General and district  
9 attorney if requested by the Commissioner of Agriculture to bring  
10 such actions.

11          G.    Except as otherwise provided by law, administrative and  
12 civil penalties shall be paid into the State Department of  
13 Agriculture Revolving Fund.

14          H.    In determining the amount of a civil penalty or  
15 administrative penalty, the court or the Department, as the case may  
16 be, shall consider such factors as the nature, circumstances and  
17 gravity of the violation or violations, the economic benefit, if  
18 any, resulting to the defendant from the violation, the history of  
19 such violations, any good\_faith efforts to comply with the  
20 applicable requirements, the economic impact of the penalty on the  
21 defendant, the defendant's degree of culpability, and such other  
22 matters as justice may require.

1 I. For the purposes of this section, each day upon which a  
2 violation is committed or is permitted to continue shall be deemed a  
3 separate offense.

4 J. In addition to other penalties as may be imposed by law, any  
5 person who knowingly makes any false statement, representation or  
6 certification in any water pollution form, notice or report, or who  
7 knowingly renders inaccurate any monitoring device or method  
8 required to be maintained by any water pollution rules promulgated  
9 by the Board, shall, upon conviction, be guilty of a misdemeanor and  
10 may be subject to a fine of not more than Five Thousand Dollars  
11 (\$5,000.00) for each ~~such~~ violation.

12 SECTION 26. AMENDATORY 2 O.S. 2001, Section 9-212.1, as  
13 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
14 2006, Section 20-27), is amended to read as follows:

15 Section 20-27. A. Due to the inherently unique nature of  
16 poultry-laying operations, and the increased propensity for vector  
17 propagation at such facilities, poultry-laying operations licensed  
18 pursuant to the Oklahoma Concentrated Animal Feeding Operations Act,  
19 shall be conducted only in a manner as prescribed by the State  
20 Department of Agriculture by rule promulgated pursuant to this  
21 section and the Oklahoma Concentrated Animal Feeding Operations Act.

22 B. If three valid complaints are received by the Department  
23 against a poultry-laying operation, licensed pursuant to the  
24 Oklahoma Concentrated Animal Feeding Operations Act, within a period

1 of sixty (60) days, the Oklahoma Department of Agriculture, Food,  
2 and Forestry, upon inspection and verification of the complaint,  
3 shall declare that an emergency exists.

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

16 D. If, at the hearing, it is determined that the operator is in  
17 violation of the provisions of this section and rules promulgated  
18 pursuant thereto, in addition to other administrative penalties  
19 authorized by law, the Department may order that the operator be  
20 prohibited from land applying waste for one hundred sixty (160) days  
21 after determination that the facility is in violation.

22 E. Any party aggrieved by a final order may petition the  
23 Department for rehearing, reopening or reconsideration within ten  
24 (10) days from the date of the entry of the final order. Any party

1 aggrieved by a final order, including the Attorney General on behalf  
2 of the state, may, pursuant to the Administrative Procedures Act,  
3 petition for a judicial review thereof.

4 F. The provisions of this section may be enforced pursuant to  
5 the provisions of Section ~~9-212~~ 49 of ~~Title 2 of the Oklahoma~~  
6 ~~Statutes~~ this act.

7 SECTION 27. AMENDATORY 2 O.S. 2001, Section 9-214, as  
8 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
9 2006, Section 20-28), is amended to read as follows:

10 Section 20-28. The Oklahoma ~~Concentrated Animal~~ Swine Feeding  
11 Operations Act shall be enacted as a part of the Agricultural Code  
12 and shall be codified accordingly.

13 SECTION 28. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 20-40 of Title 2, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. Sections 28 through 50 of this act shall be known and may be  
17 cited as the "Oklahoma Concentrated Animal Feeding Operations Act".

18 B. The purpose of the Oklahoma Concentrated Animal Feeding  
19 Operations Act is to provide for environmentally responsible  
20 construction and expansion of animal feeding operations and to  
21 protect the safety, welfare and quality of life of persons who live  
22 in the vicinity of an animal feeding operation.

23

24

1 SECTION 29. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 20-41 of Title 2, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. Concentrated animal feeding operations are point sources  
5 subject to the license program established pursuant to the  
6 provisions of the Oklahoma Concentrated Animal Feeding Operations  
7 Act.

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

10 1. "Affected property owner" means a surface landowner within  
11 one (1) mile of the designated perimeter of an animal feeding  
12 operation;

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

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

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

22 The term "animal feeding operation" shall not include a racetrack  
23 licensed by the Oklahoma Horse Racing Commission to hold pari-mutuel  
24 race meetings pursuant to the Oklahoma Horse Racing Act if the

1 facility discharges to a publicly owned treatment works, or an  
2 aquatic animal production facility;

3 3. "Animal unit" means a unit of measurement for any animal  
4 feeding operation calculated by adding the following numbers: The  
5 number of slaughter and feeder cattle multiplied by one (1), plus  
6 the number of mature dairy cattle multiplied by one and four-tenths  
7 (1.4), plus the number of sheep multiplied by one-tenth (0.1), plus  
8 the number of horses multiplied by two (2);

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

12 5. "Animal Waste Management Plan" or "Nutrient Management Plan"  
13 means a written plan that includes a combination of conservation and  
14 management practices designed to protect the natural resources of  
15 the state prepared by an owner or operator of an animal feeding  
16 operation as required by the Department pursuant to the provisions  
17 of Section 36 of this act;

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

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

23 8. "Best Management Practices" means schedules of activities,  
24 prohibitions of practices, maintenance procedures, and other

1 management practices to prevent or reduce the pollution of waters of  
2 the state as established by the Oklahoma Department of Agriculture,  
3 Food, and Forestry pursuant to Section 36 of this act;

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

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

9 11. "Concentrated animal feeding operation" means:

10 a. an animal feeding operation which meets the following  
11 criteria:

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

14 (a) 1,000 slaughter and feeder cattle,

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

17 (c) 500 horses,

18 (d) 10,000 sheep or lambs,

19 (e) 55,000 turkeys,

20 (f) 100,000 laying hens or broilers, if the  
21 facility has continuous overflow watering,

22 (g) 30,000 laying hens or broilers, if the  
23 facility has a liquid manure system,

24 (h) 5,000 ducks, or

- 1 (i) 1,000 animal units, and  
2 (2) pollutants are discharged into waters of the  
3 state.

4 Provided, no animal feeding operation pursuant to this  
5 subparagraph shall be construed to be a concentrated  
6 animal feeding operation if the animal feeding  
7 operation discharges only in the event of a twenty-  
8 five-year, twenty-four-hour storm event, or

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

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

- 13 (a) 300 slaughter or feeder cattle,  
14 (b) 200 mature dairy cattle, whether milk or dry  
15 cows,  
16 (c) 150 horses,  
17 (d) 3,000 sheep or lambs,  
18 (e) 16,500 turkeys,  
19 (f) 30,000 laying hens or broilers, if the  
20 facility has continuous overflow watering,  
21 (g) 9,000 laying hens or broilers, if the  
22 facility has a liquid manure system,  
23 (h) 1,500 ducks, or  
24 (i) 300 animal units, and

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

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

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

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

17 c. the Board determines that the operation is a  
18 significant contributor of pollution to waters of the  
19 state pursuant to Section 32 of this act;

20 12. "Department" means the Oklahoma Department of Agriculture,  
21 Food, and Forestry;

22 13. "Designated perimeter" means the perimeter of any structure  
23 or combination of structures utilized to control animal waste until  
24 it can be disposed of in an authorized manner. The structures shall

1 include but not be limited to pits, burial sites, barns or roof-  
2 covered structures housing animals, composters, waste storage sites,  
3 or retention structures or appurtenances or additions thereto;

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

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

14 16. "Land application" means the spreading on, or incorporation  
15 of, animal waste into the soil mantle primarily for beneficial  
16 purposes;

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

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

23

24

1 19. "Nutrient-vulnerable groundwater" means groundwater which  
2 is designated "nutrient-vulnerable" in the most recent Oklahoma  
3 Water Quality Standards;

4 20. "Occupied residence" means a habitable structure designed  
5 and constructed for full-time occupancy in all weather conditions  
6 which:

- 7 a. is not readily mobile,
- 8 b. is connected to a public or permanent source of  
9 electricity and a permanent waste disposal system or  
10 public waste disposal system, and
- 11 c. is occupied as a residence;

12 21. "Pollution Prevention Plan" means a written plan to control  
13 the discharge of pollutants which has been prepared in accordance  
14 with industry-acceptable engineering and management practices by the  
15 owner or operator of an animal feeding operation as required  
16 pursuant to Section 35 of this act;

17 22. "Process wastewater" means any water utilized in the  
18 facility that comes into contact with any manure, litter, bedding,  
19 raw, intermediate, or final material or product used in or resulting  
20 from the production of animals and any products directly or  
21 indirectly used in the operation of a facility, such as spillage or  
22 overflow from animal watering systems; washing, cleaning, or  
23 flushing pens, barns, manure pits, direct contact, swimming, washing  
24

1 or spray cooling of animals; and dust control and any precipitation  
2 which comes into contact with animals or animal waste;

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

7 24. "Waste facility" means any structure or combination of  
8 structures utilized to control animal waste until it can be disposed  
9 of in an authorized manner. The structures shall include but not be  
10 limited to pits, burial sites, barns or roof-covered structures  
11 housing animals, composters, waste storage sites, or retention  
12 structures or appurtenances or additions thereto; and

13 25. "Waters of the state" means all streams, lakes, ponds,  
14 marshes, watercourses, waterways, wells, springs, irrigation  
15 systems, drainage systems, storm sewers and all other bodies or  
16 accumulations of water, surface and underground, natural or  
17 artificial, public or private, which are contained within, flow  
18 through or border upon this state or any portion thereof, and shall  
19 include under all circumstances the waters of the United States  
20 which are contained within the boundaries of, flow through or border  
21 upon this state or any portion thereof. Provided, waste treatment  
22 systems, including treatment ponds and lagoons, designed to meet  
23 federal and state requirements other than cooling ponds as defined

24

1 in the Clean Water Act or rules promulgated pursuant thereto are not  
2 waters of the state.

3 SECTION 30. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 20-42 of Title 2, unless there  
5 is created a duplication in numbering, reads as follows:

6 The State Board of Agriculture is authorized to promulgate rules  
7 for the administration, implementation, and enforcement of the  
8 Oklahoma Concentrated Animal Feeding Operations Act. For the  
9 performance of its duties and responsibilities, the Board is  
10 authorized to employ such personnel and agents as may be required  
11 with the funds available.

12 SECTION 31. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 20-43 of Title 2, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. The State Board of Agriculture shall appoint a rule advisory  
16 committee who, without compensation, shall act as advisors to the  
17 Board in the formulation of the rules promulgated pursuant to the  
18 Oklahoma Concentrated Animal Feeding Operations Act.

19 1. The committee shall consist of:

- 20 a. one member who shall represent the beef cattle  
21 producers,  
22 b. one member who shall represent the dairy producers,  
23 c. one member who shall represent the poultry producers,  
24

- d. one member who shall represent the field of hydrogeology,
- e. one member who shall be a soil scientist,
- f. one member designated by the Secretary of the Environment,
- g. one member who shall be a professional engineer,
- h. one member who shall represent the field of water quality science,
- i. one member who shall represent the field of ecology,
- and
- j. two members who shall represent the general public.

2. Of the initial members, four shall serve for one-year terms; four shall serve for two-year terms; and three shall serve for three-year terms. Thereafter, all members shall serve for three-year terms; provided, all members shall serve at the pleasure of the Board.

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

B. Except for emergency rules, proposed rules shall be submitted to the rule advisory committee at the same time as the Department causes notice to be published in "The Oklahoma Register" pursuant to the Administrative Procedures Act. Comments of the rule advisory committee shall be submitted to the members of the Board at

1 | least fifteen (15) days prior to any official action by the Board on  
2 | the rules.

3 | C. Proposed emergency rules shall be submitted by the  
4 | Department to the rule advisory committee at least five (5) days  
5 | prior to the rules being considered by the Board.

6 | SECTION 32. NEW LAW A new section of law to be codified  
7 | in the Oklahoma Statutes as Section 20-44 of Title 2, unless there  
8 | is created a duplication in numbering, reads as follows:

9 | A. 1. Any animal feeding operation meeting the criteria  
10 | defining a concentrated animal feeding operation shall be required  
11 | to obtain a license to operate pursuant to the Oklahoma Concentrated  
12 | Animal Feeding Operations Act and rules promulgated pursuant  
13 | thereto.

14 | 2. No animal feeding operation which voluntarily obtains a  
15 | license pursuant to the Oklahoma Concentrated Animal Feeding  
16 | Operations Act shall be considered to be a concentrated animal  
17 | feeding operation unless the operation meets the definition of  
18 | concentrated animal feeding operation.

19 | 3. Any animal feeding operation other than a concentrated  
20 | animal feeding operation, regardless of the number of animals, shall  
21 | only be required to be licensed pursuant to the provisions of the  
22 | Oklahoma Concentrated Animal Feeding Operations Act and rules  
23 | promulgated pursuant thereto if the State Board of Agriculture  
24 | determines the operation to be a significant contributor of

1 pollution to waters of the state pursuant to subsection C of this  
2 section.

3 B. Two or more animal feeding operations under common ownership  
4 are considered, for the purposes of licensure, to be a single animal  
5 feeding operation if they adjoin each other or if they use a common  
6 area or system for the disposal of wastes.

7 C. 1. The State Board of Agriculture may make a case-by-case  
8 designation of concentrated animal feeding operations pursuant to  
9 this section. Any animal feeding operation may be designated as a  
10 concentrated animal feeding operation if it is determined to be a  
11 significant contributor of pollution to the waters of the state. In  
12 making this designation, the Board shall consider the following  
13 factors:

- 14 a. the size of the animal feeding operation and the  
15 amount of wastes reaching waters of the state,
- 16 b. the location of the animal feeding operation relative  
17 to waters of the state,
- 18 c. the means of conveyance of animal waste and wastewater  
19 into waters of the state,
- 20 d. the method of disposal for animal waste and process  
21 wastewater disposal,
- 22 e. the slope, vegetation, rainfall and other factors  
23 affecting the likelihood or frequency of discharge of  
24

1 animal wastes and process wastewaters into waters of  
2 the state, and

3 f. other such factors relative to the significance of the  
4 pollution problem sought to be regulated.

5 2. In no case shall an application for a license be required  
6 from an animal feeding operation pursuant to this subsection until  
7 there has been an on-site inspection of the operation and a  
8 determination by the Oklahoma Department of Agriculture, Food, and  
9 Forestry that the operation is a concentrated animal feeding  
10 operation. Should the Department determine that the operation is a  
11 concentrated animal feeding operation, the Department shall notify  
12 the operation of the determination and of an opportunity for the  
13 owner or operator of the facility to request an administrative  
14 hearing on the issue.

15 3. Process wastewater in the overflow may be discharged to  
16 navigable waters whenever rainfall events, either chronic or  
17 catastrophic, cause an overflow of process wastewater from a  
18 retention structure properly designed, constructed and operated to  
19 contain all process wastewaters plus the runoff from a twenty-five-  
20 year, twenty-four-hour rainfall event for the location of the point  
21 source. There shall be no effluent limitations on discharges from a  
22 waste facility constructed, and properly maintained to contain the  
23 twenty-five-year, twenty-four-hour storm event; provided the proper  
24

1 design, construction, and operation of the retention structure shall  
2 include, but not be limited to, one (1) foot of free board.

3 D. No new concentrated animal feeding operation or expansion of  
4 a concentrated animal feeding operation requiring a license pursuant  
5 to the Oklahoma Concentrated Animal Feeding Operations Act shall be  
6 constructed or placed in operation unless final design plans,  
7 specifications and a Pollution Prevention Plan developed pursuant to  
8 Section 35 of this act have been approved by the Department.

9 SECTION 33. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 20-45 of Title 2, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. The State Board of Agriculture shall cause to be prepared  
13 and available, for any person desiring or required to apply for a  
14 license to operate a new or previously unlicensed animal feeding  
15 operation, the necessary forms and applications.

16 B. The application for a license to operate a new or previously  
17 unlicensed animal feeding operation shall contain, as a minimum, the  
18 following information:

19 1. Name and address of the owner and operator of the facility;

20 2. Name and address of the animal feeding operation;

21 3. Capacity in animal units, and number and type of animals  
22 housed or confined;

23 4. A diagram or map and legal description showing geographical  
24 location of the facility on which the perimeters of the facility are

1 designated, location of waters of the state, including, but not  
2 limited to, drainage from the facility, animal waste storage  
3 facilities and land application sites owned or leased by the  
4 applicant;

5 5. A copy of the Pollution Prevention Plan containing an Animal  
6 Waste Management Plan, Best Management Practices, or such other plan  
7 authorized by the Oklahoma Concentrated Animal Feeding Operations  
8 Act and approved by the Department;

9 6. A copy of the written waiver by an adjacent property owner  
10 to the facility releasing specified setback requirements as provided  
11 by Section 44 of the Oklahoma Concentrated Animal Feeding Operations  
12 Act; and

13 7. Any other information deemed necessary by the Oklahoma  
14 Department of Agriculture, Food, and Forestry to administer the  
15 provisions of the Oklahoma Concentrated Animal Feeding Operations  
16 Act and rules promulgated pursuant thereto.

17 C. 1. An application for renewal of a license to operate an  
18 animal feeding operation shall be considered to be properly filed  
19 when the Department has received a completed renewal application and  
20 payment of fees from the applicant.

21 2. If the application for renewal is denied, written  
22 notification of the denial and an opportunity for an administrative  
23 hearing on the denial shall be given to the applicant by the  
24 Department. The notification shall set forth the reasons for the

1 denial, steps necessary to meet the requirements for issuance of the  
2 renewal license and the opportunity for the applicant to request an  
3 administrative hearing.

4 D. For transfer of a license to a new owner or operator, the  
5 following conditions shall be met:

6 1. The new owner or operator shall submit to the Department a  
7 transfer application, attaching any change of conditions resulting  
8 from the transfer of ownership or operation;

9 2. After receipt of the information required, the Department  
10 shall review the information, and within sixty (60) days, issue  
11 approval or denial of the transfer. Transfer of a license shall be  
12 denied only if:

- 13 a. the new owner or operator cannot comply with the  
14 requirements of transfer,
- 15 b. the Department finds a material or substantial change  
16 in conditions since the issuance of the original  
17 license to operate the animal feeding operation,
- 18 c. failure of the new owner or operator to meet any other  
19 conditions or requirements for compliance established  
20 by the Department pursuant to the Oklahoma  
21 Concentrated Animal Feeding Operations Act and rules  
22 promulgated pursuant thereto, or

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24

1           d.    the new owner or operator has failed to meet the  
2                    requirements of Section 48 of the Oklahoma  
3                    Concentrated Animal Feeding Operations Act; and

4           3.    If a transfer is denied, written notification of the denial  
5   and an opportunity for an administrative hearing on the denial shall  
6   be given to the applicant for a transfer license by the Department.  
7   The notification shall set forth the reasons for the denial, steps  
8   necessary to meet the requirements for a transfer license, and the  
9   opportunity for the applicant to request an administrative hearing.

10          E.    Any suspension or revocation or nonrenewal of a license  
11   issued pursuant to the Oklahoma Concentrated Animal Feeding  
12   Operations Act by the Board shall be made in accordance with Section  
13   48 of this act.

14          F.    In addition to other information required for issuance of a  
15   new or transfer license, an application for a new or transfer  
16   license for a concentrated animal feeding operation shall be under  
17   oath and shall contain the following information:

18          1.    a.    A statement of ownership.

19                   (1)   If the applicant is a firm or partnership, the  
20                            name and address of each member thereof shall be  
21                            included in the application.

22                   (2)   If the applicant is a corporation, the name and  
23                            address of the corporation and the name and  
24                            address of each officer and registered agent of

1 the corporation shall be included in the  
2 application.

3 (3) If the applicant is a partnership or other legal  
4 entity, the name and address of each partner and  
5 stockholder with an ownership interest of ten  
6 percent (10%) or more shall be included in the  
7 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 and is acting as agent for the applicant;

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

1           b. A copy of all records relating to the environmental  
2           history required by this paragraph shall accompany the  
3           application.

4           c. Noncompliance with a final agency order or final order  
5           or judgment of a court of record which has been set  
6           aside by a court on appeal of the final order or  
7           judgment shall not be considered a final order or  
8           judgment for the purposes of this subsection;

9           4. Environmental awards or citations received or pollution  
10          prevention or voluntary remediation efforts undertaken by the  
11          applicant; and

12          5. Any other information or records required by the Department  
13          for purposes of implementing the Oklahoma Concentrated Animal  
14          Feeding Operations Act or rules promulgated pursuant thereto.

15          G. 1. In addition to other penalties as may be imposed by law,  
16          any person who knowingly makes any false statement, representation,  
17          or certification in, omits material data from, or tampers with any  
18          application for a license, or notice relating to the determination  
19          of affected property owners, shall, upon conviction thereof, be  
20          guilty of a misdemeanor and may be subject to a fine of not more  
21          than Ten Thousand Dollars (\$10,000.00) for each such violation. In  
22          addition, the Department shall deny licensure to the applicant or  
23          may require submission of a new application.

1        2. The responsibility for ensuring that all affected property  
2 owners are notified pursuant to the provisions of this section shall  
3 be upon the applicant.

4        SECTION 34.        NEW LAW        A new section of law to be codified  
5 in the Oklahoma Statutes as Section 20-46 of Title 2, unless there  
6 is created a duplication in numbering, reads as follows:

7        A. 1. Any person applying for a license for a new animal  
8 feeding operation shall comply with the notice and hearing  
9 requirements as specified by this section and rules promulgated by  
10 the State Board of Agriculture.

11        2. Notice requirements shall include notice to affected  
12 property owners by certified mail, return receipt requested pursuant  
13 to subsection C of this section and public notice pursuant to  
14 subsection D of this section.

15        B. After submission of a completed application as provided by  
16 the Oklahoma Concentrated Animal Feeding Operations Act and rules  
17 promulgated pursuant thereto, the Oklahoma Department of  
18 Agriculture, Food, and Forestry shall have sixty (60) working days  
19 to review the application for a new operation for physical and  
20 technical suitability.

21        C. 1. After review and after the applicant has submitted any  
22 additional required information to the Department, the Department  
23 shall require the applicant to notify all affected property owners  
24 of the proposed facility. Notice shall be sent by certified mail,

1 return receipt requested. The notice shall identify that an  
2 application for a new animal feeding operation has been submitted to  
3 the Department, the location where the facility is to be located,  
4 that a hearing may be requested pursuant to this subsection, and the  
5 date the application will be available for public review beginning  
6 no earlier than the day following the certified mailing of all the  
7 required notices, and any other information required by the  
8 Department.

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

- 11 a. the name and address of the interested party and proof  
12 of standing by showing that the interested party is an  
13 affected property owner,
- 14 b. a statement of specific allegations showing that the  
15 proposed facility operation may have a direct,  
16 substantial and immediate effect upon a legally  
17 protected interest of the interested party, and
- 18 c. the relief sought by the interested party.

19 3. If any of the affected property owners request an  
20 administrative hearing and all information listed in paragraph 2 of  
21 this subsection is found to be complete and adequate in the request  
22 for hearing, the scheduling conference for the hearing shall be held  
23 by the Department at a reasonable time within sixty (60) calendar  
24 days after the close of the public review period. Should the

1 interested party have failed to provide any of the information  
2 listed in paragraph 2 of this subsection, the interested party shall  
3 have thirty (30) calendar days with which to cure any deficiencies  
4 after notice by the Department of such failure and receipt thereof  
5 in writing by the interested party. All interested parties may be  
6 joined as parties to the hearing.

7 4. In addition to any other information deemed necessary by the  
8 Department, at the hearing the Department shall hear testimony and  
9 accept evidence pertaining to the physical and technical suitability  
10 of the proposed facility.

11 a. Prior to the hearing, and after a reasonable  
12 opportunity for discovery, the interested party shall  
13 identify with specificity the reasons why the  
14 applicant has failed to show that the application  
15 should be granted.

16 b. In a prehearing order, the Department shall identify  
17 the allegations that are relevant and applicable to  
18 the hearing.

19 c. At the hearing, the interested party shall be afforded  
20 a reasonable opportunity to present evidence and  
21 argument in support of the allegations identified in  
22 the prehearing order and the applicant shall be  
23 afforded a reasonable opportunity to present evidence  
24 and argument to controvert those allegations.

1           5. Any administrative hearing held pursuant to the provisions  
2 of this subsection shall comply with the Administrative Procedures  
3 Act and rules promulgated by the Board.

4           6. Establishment of property usage is the date the animal  
5 feeding operation application was made available for public review  
6 versus date of initial construction or placement of occupied  
7 residence and shall be given consideration when determining a  
8 contested matter between an applicant and an interested party on  
9 issues other than pollution of the waters of the state.

10          D. 1. In addition to the individual notice, the Department  
11 shall require the applicant to give public notice of the opportunity  
12 to comment on the granting of the license.

13          2. The public notice for a new operation shall be published as  
14 a legal notice prior to the date the application is available for  
15 public viewing, in at least one newspaper of general circulation in  
16 the county where the proposed facility is to be located.

17          3. The notice shall identify locations where the application  
18 shall be available for viewing. The locations shall include the  
19 office of the Department and a specific public location in the  
20 county where the proposed facility is to be located.

21          4. The application shall be available for public review during  
22 normal business hours. The copies of the application posted for  
23 public viewing shall be complete except for proprietary provisions  
24 otherwise protected by law and shall remain posted during normal

1 business hours for at least twenty (20) working days after notice is  
2 published.

3 5. The Department, as necessary, may hold public meetings at a  
4 location convenient to the population center nearest the proposed  
5 facility to address public comments on the proposed facility.

6 E. Prior to the issuance of any license for an animal feeding  
7 operation, the Department shall require the applicant to submit:

8 1. Documentation certifying notice has been issued to all  
9 affected property owners. A map of all affected property owners and  
10 the corresponding mailing list shall be submitted with each  
11 application; and

12 2. Proof of publication notice of a new application for an  
13 animal feeding operation license.

14 SECTION 35. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 20-47 of Title 2, unless there  
16 is created a duplication in numbering, reads as follows:

17 A. An animal feeding operation licensed pursuant to the  
18 provisions of the Oklahoma Concentrated Animal Feeding Operations  
19 Act shall develop a Pollution Prevention Plan or may substitute  
20 equivalent measures contained in a site-specific Animal Waste  
21 Management Plan prepared pursuant to Section 36 of this act. Design  
22 and construction criteria developed by the United States Department  
23 of Agriculture Natural Resources Conservation Service, may be  
24

1 substituted for the documentation of design capacity and  
2 construction requirements.

3 B. 1. The Pollution Prevention Plan shall be signed by the  
4 owner or as otherwise authorized by the Oklahoma Department of  
5 Agriculture, Food, and Forestry and a copy shall be retained on  
6 site.

7 2. The animal feeding operation shall amend the Pollution  
8 Prevention Plan and obtain approval of the Department prior to any  
9 change in design, construction, operation or maintenance which has  
10 significant effect on the potential for the discharge of pollutants  
11 to the waters of the state.

12 C. If, after reviewing the Pollution Prevention Plan, the  
13 Department determines that the Plan does not meet one or more of the  
14 minimum requirements, the animal feeding operation shall make and  
15 implement appropriate changes to the Plan as required by the  
16 Department pursuant to the Oklahoma Concentrated Animal Feeding  
17 Operations Act and rules promulgated pursuant thereto.

18 D. The Pollution Prevention Plan shall provide and require  
19 presite approval by Departmental personnel prior to construction.  
20 During construction, the Department shall monitor the construction  
21 process as deemed necessary by the Department in an attempt to  
22 verify the construction of the facility is done according to plans  
23 and acceptable engineering standards to reduce or eliminate the  
24 potential of pollution.

1 E. In addition to other requirements specified by this section,  
2 the Pollution Prevention Plan shall include but not be limited to:

3 1. A description of potential sources, activities and materials  
4 which may reasonably be expected to or could potentially add  
5 pollutants to runoff from the facility;

6 2. A map, indicating an outline of the drainage area of the  
7 facility, and each existing structural control measure designed to  
8 reduce pollutants in wastewater and precipitation runoff in all  
9 surface waters of the state;

10 3. A spill contingency plan for potential pollutants;

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

14 5. A description of management controls appropriate for the  
15 facility. The management controls shall include, but not be limited  
16 to:

17 a. the location and a description of existing structural  
18 and nonstructural controls,

19 b. documentation of retention structure capacity and the  
20 assumptions and calculations used in determining the  
21 appropriate volume capacity, and

22 c. a description of the design standards for the  
23 retention facility embankments;

24

- 1       6. A description of the design standards for any retention
- 2 facilities;
- 3       7. Training requirements for employees;
- 4       8. Documentation relating to any hydrologic connection between
- 5 the contained wastewater and waters of the state which complies with
- 6 Section 37 of this act; and
- 7       9. Requirements that all irrigation systems into which any
- 8 animal waste will be injected shall be equipped as specified by
- 9 Section 38 of this act.
- 10      G. The following records shall be maintained at the site as
- 11 long as the facility is in operation:
  - 12       1. Water level in the retention structure;
  - 13       2. Daily precipitation records from on-site rain gauge;
  - 14       3. Incident reports such as spills and other discharges;
  - 15       4. Inspection and maintenance reports;
  - 16       5. Findings from annual inspections of the entire facility;
  - 17       6. Log of preventive maintenance and employee training that was
  - 18 completed;
  - 19       7. Log of removal of animal waste sold or given to other
  - 20 persons for disposal;
  - 21       8. Other specific information deemed necessary by the
  - 22 Department to implement the provisions of the Oklahoma Concentrated
  - 23 Animal Feeding Operations Act and rules promulgated pursuant
  - 24 thereto;

1           9. Copy of general permit issued by the United States  
2 Environmental Protection Agency if applicable, a copy of the  
3 completed Pollution Prevention Plan, and other specific records  
4 deemed necessary by the Department to implement the provisions of  
5 the Oklahoma Concentrated Animal Feeding Operations Act and rules  
6 promulgated pursuant thereto; and

7           10. The notarized statement signed by the applicant accepting  
8 full responsibility for properly closing all waste retention  
9 structures pursuant to subsection H of this section.

10          G. Any analyses required by the provisions of the Oklahoma  
11 Concentrated Animal Feeding Operations Act or rules promulgated  
12 pursuant thereto shall be performed by a qualified independent  
13 testing laboratory certified by the Oklahoma Department of  
14 Environmental Quality and approved by the Department.

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

23

24

1 SECTION 36. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 20-48 of Title 2, unless there  
3 is created a duplication in numbering, reads as follows:

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

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

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

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

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

24

1 4. Animal waste handling, treatment, management and removal  
2 shall:

- 3 a. not create an environmental or a public health hazard,
- 4 b. not result in the contamination of public or private  
5 drinking water supplies,
- 6 c. conform with Oklahoma Water Quality Standards,
- 7 d. not violate any state or federal laws relating to  
8 endangered or threatened species of plant, fish or  
9 wildlife or to migratory birds,
- 10 e. conform to such other handling, treatment and  
11 management and removal requirements deemed necessary  
12 by the Oklahoma Department of Agriculture, Food, and  
13 Forestry to implement the Oklahoma Concentrated Animal  
14 Feeding Operations Act and rules promulgated pursuant  
15 thereto, and
- 16 f. ensure that watersheds and groundwater are adequately  
17 protected;

18 5. If, for any reason, there is a discharge other than a spill  
19 of less than one hundred (100) gallons, the licensee is required to  
20 make immediate notification to the Department. The report of the  
21 discharge shall include:

- 22 a. a description and cause of the discharge, including a  
23 description of the flow path to the receiving water  
24 body,

- b. an estimation of the flow rate and volume discharged,
- c. the period of discharge, including exact dates and times, and if not already corrected, the anticipated time the discharge is expected to continue,
- d. steps taken to reduce, eliminate and prevent recurrence of the discharge, and
- e. test results for fecal coliform bacteria, five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), ammonia nitrogen, total Kjeldahl nitrogen (TKN), any pesticides which the operator has reason to believe could be in the discharge, or other parameters as required by the Department which the Department has reason to believe could be in the discharge;

6. Notwithstanding the provisions of paragraph 5 of this subsection, any spill that leaves the property owned or controlled by the licensee shall be reported to the Department regardless of total number of gallons spilled; and

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

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

1. Animal waste removal procedures;
2. Records of inspections of retention structures, including, but not limited to, specific measurement of wastewater level;

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

4 4. Requirements including that:

5 a. (1) land application of animal waste shall not exceed  
6 the nitrogen uptake of the crop coverage or  
7 planned crop planting with any land application  
8 of wastewater or manure. Where local water  
9 quality is threatened by phosphorous, in no case  
10 shall the applicant or licensee exceed the  
11 application rates in the most current Natural  
12 Resources Conservation Service publication titled  
13 Waste Utilization Standard, and

14 (2) timing and rate of applications shall be in  
15 response to crop needs, expected precipitation  
16 and soil conditions,

17 b. land application practices shall be managed so as to  
18 reduce or minimize:

19 (1) the discharge of process water or animal waste to  
20 waters of the state,

21 (2) contamination of waters of the state, and

22 (3) odor,

23 c. facilities including waste retention structures, waste  
24 storage sites, ponds, pipes, ditches, pumps, and

1 diversion and irrigation equipment shall be maintained  
2 to ensure ability to fully comply with the terms of  
3 the Oklahoma Concentrated Animal Feeding Operations  
4 Act, and

5 d. adequate equipment and land application area shall be  
6 available for removal of such waste and wastewater as  
7 required to maintain the proper operating volume of  
8 the retention structure; and

9 5. Such other information deemed necessary by the Department to  
10 administer the provisions of the Oklahoma Concentrated Animal  
11 Feeding Operations Act and rules promulgated pursuant thereto.

12 D. Records shall be maintained of all animal wastes applied on  
13 land owned or controlled by the licensee, and sold or given to other  
14 persons for disposal.

15 E. Soils in areas in which animal waste is applied shall be  
16 analyzed, annually, for phosphates, nitrates and soil pH prior to  
17 the first application of the animal waste in the calendar year. A  
18 copy of the results of the analysis shall be submitted to the  
19 Department upon request by the Department. Such analysis shall be  
20 retained by the animal feeding operation as long as the facility is  
21 in operation.

22 F. Every animal feeding operation licensed pursuant to the  
23 provisions of Oklahoma Concentrated Animal Feeding Operations Act  
24

1 shall develop a plan approved by the Department for the disposal of  
2 carcasses associated with normal mortality.

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

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

14 SECTION 37. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 20-50 of Title 2, unless there  
16 is created a duplication in numbering, reads as follows:

17 A. Any hydrologic connection between wastewater and waters of  
18 the state outside that authorized by the provisions of the Oklahoma  
19 Concentrated Animal Feeding Operations Act shall constitute a  
20 discharge to waters of the state.

21 B. Site-specific conditions shall be considered in the design  
22 and construction of liners. Liners for retention structures shall  
23 be designed and constructed in accordance with the provisions of  
24 this section and generally accepted engineering practices

1 established by rules of the Board or as required by the federal  
2 Environmental Protection Agency. Liners for lagoons owned or  
3 operated by an animal feeding operation with less than one thousand  
4 (1,000) animal units may be designed and constructed pursuant to  
5 Technical Note 716 of the United States Department of Agriculture  
6 Natural Resources Conservation Service or its current equivalent so  
7 long as the facility is designed by the United States Department of  
8 Agriculture Natural Resources Conservation Service.

9 C. 1. When a liner is installed to prevent hydrologic  
10 connection, the licensee or the owner shall maintain the liner to  
11 inhibit infiltration of wastewaters. Documentation of liner  
12 maintenance shall be maintained at the facility.

13 2. An environmental, agricultural, or other approved  
14 professional engineer licensed pursuant to Section 475.12 of Title  
15 59 of the Oklahoma Statutes shall conduct a site evaluation every  
16 five (5) years on the retention structure of every concentrated  
17 animal feeding operation with such a structure to ensure liner  
18 integrity. If the owner or operator suspects that a retention  
19 structure is leaking, the owner or operator shall report suspected  
20 leakage to the Department.

21 D. All substances entering the retention structures shall be  
22 composed entirely of wastewaters from the proper operation and  
23 maintenance of an animal feeding operation and the runoff from the  
24 animal feeding operation area. The disposal of any materials, other

1 than substances associated with proper operation and maintenance of  
2 the facility into the containment structures, including but not  
3 limited to human waste, is prohibited.

4 E. Documentation, sampling data, and any other records required  
5 by this section shall be maintained on site for as long as the  
6 facility is in operation. Samples collected during the first year  
7 of the retention structure may be considered the baseline data and  
8 shall be retained on site as long as the facility is in operation.  
9 Baseline data for the facility shall be determined based on the best  
10 information available.

11 SECTION 38. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 20-51 of Title 2, unless there  
13 is created a duplication in numbering, reads as follows:

14 A. All irrigation systems into which any animal waste will be  
15 injected shall be equipped with one or both of the following  
16 systems:

17 1. An antipollution system, approved by the State Board of  
18 Agriculture, capable of preventing the backflow of animal waste into  
19 the groundwater. The system shall include a safety check valve with  
20 a removable inspection port, anti-syphon vent, and low-pressure  
21 escape drain. An interlock device shall be installed on pumps that  
22 pump the animal waste so that if a fresh water irrigation pump shuts  
23 down, the pump that pumps the animal waste will also immediately  
24 shut down, preventing the chance of leakage past the check valve; or

1           2. A system which provides for a complete and total  
2 disconnection between the flow of fresh water and the flow of animal  
3 waste. The system shall be capable of a manual disconnection  
4 between fresh water and the animal waste.

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

8           C. The operator of the irrigation system shall be responsible  
9 to ensure:

10           1. That the valves and interlock devices remain operative  
11 between annual inspections by the Oklahoma Department of  
12 Agriculture, Food, and Forestry; or

13           2. Complete disconnection from fresh water when introducing  
14 animal waste into the system.

15           SECTION 39.       NEW LAW       A new section of law to be codified  
16 in the Oklahoma Statutes as Section 20-52 of Title 2, unless there  
17 is created a duplication in numbering, reads as follows:

18           A. The State Board of Agriculture or its authorized agents are  
19 empowered to enter upon the premises of any animal feeding operation  
20 for the purpose of investigating complaints as to the operation or  
21 to determine whether there are any violations of the Oklahoma  
22 Concentrated Animal Feeding Operations Act. The Department shall  
23 make at least one unannounced inspection per year of every animal  
24

1 feeding operation licensed pursuant to the Oklahoma Concentrated  
2 Animal Feeding Operations Act.

3 B. 1. The Board shall promulgate standard precautions for the  
4 prevention of the transmission of communicable diseases to humans  
5 and animals to be used by employees of the Department of  
6 Agriculture, Food, and Forestry when inspecting animal feeding  
7 operations pursuant to their official duties specified by the  
8 Oklahoma Concentrated Animal Feeding Operations Act and rules  
9 promulgated pursuant thereto.

10 2. Except for emergency situations or when enforcement of the  
11 provisions of the Oklahoma Concentrated Animal Feeding Operations  
12 Act requires the use of the standard precautions as promulgated by  
13 the Board pursuant to paragraph 1 of this subsection, Department  
14 employees shall observe the health standards and sanitary  
15 requirements of the facility.

16 C. The Board shall maintain necessary records and undertake  
17 such studies, investigations and surveys for the proper  
18 administration of the Oklahoma Concentrated Animal Feeding  
19 Operations Act.

20 SECTION 40. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 20-53 of Title 2, unless there  
22 is created a duplication in numbering, reads as follows:  
23  
24

1       A. 1. It shall be unlawful for any person to operate a  
2 concentrated animal feeding operation without first obtaining a  
3 license from the State Board of Agriculture.

4       2. The owner or operator of an animal feeding operation not  
5 classified as a concentrated animal feeding operation may apply for  
6 a license if the owner or operator elects to come under the  
7 provisions of the Oklahoma Concentrated Animal Feeding Operations  
8 Act and the rules of the State Board of Agriculture.

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

- 11           a. commercial manufacturers of fertilizers, grain and  
12            feed products, and chemicals, and over manufacturing  
13            of food and kindred products, tobacco, paper, lumber,  
14            wood, textile mill and other agricultural products,
- 15           b. slaughterhouses, but not including feedlots at these  
16            facilities, and
- 17           c. aquaculture and fish hatcheries, including, but not  
18            limited to, discharges of pollutants and storm water  
19            to waters of the state, surface impoundments and land  
20            application of wastes and sludge, and other pollution  
21            originating at these facilities.

22       2. Facilities storing grain, feed, seed, fertilizer, and  
23 agricultural chemicals that are required by federal National  
24 Pollutant Discharge Elimination System regulations to obtain a

1 permit for storm water discharges shall only be subject to the  
2 jurisdiction of the Department of Environmental Quality with respect  
3 to storm water discharges.

4 SECTION 41. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 20-54 of Title 2, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. Licenses shall expire on June 30 of each year and may be  
8 renewed upon payment of the license fee set forth in this section  
9 and continued compliance with the provisions of the Oklahoma  
10 Concentrated Animal Feeding Operations Act and the rules of the  
11 Board.

12 B. The fees for an animal feeding operations license and annual  
13 renewal shall be:

14 1. Fifteen Dollars (\$15.00) for facilities with a capacity of  
15 less than two hundred fifty (250) animal units;

16 2. Thirty-seven Dollars and fifty cents (\$37.50) for facilities  
17 with a capacity of two hundred fifty (250) to five hundred (500)  
18 animal units;

19 3. Seventy-five Dollars (\$75.00) for facilities with a capacity  
20 of five hundred one (501) to three thousand (3,000) animal units;

21 4. One Hundred Fifty Dollars (\$150.00) for facilities with a  
22 capacity of three thousand one (3,001) to ten thousand (10,000)  
23 animal units; or  
24

1           5. Two Hundred Twenty-five Dollars (\$225.00) for facilities  
2 with a capacity of more than ten thousand (10,000) animal units.

3           C. All fees received by the Board for licensure of animal  
4 feeding operations pursuant to this section shall be deposited in  
5 the State Department of Agriculture Revolving Fund.

6           SECTION 42.       NEW LAW       A new section of law to be codified  
7 in the Oklahoma Statutes as Section 20-55 of Title 2, unless there  
8 is created a duplication in numbering, reads as follows:

9           A. Any person who is licensed to operate an animal feeding  
10 operation with a liquid animal waste management system within this  
11 state shall furnish to the Oklahoma Department of Agriculture, Food,  
12 and Forestry evidence of financial ability to comply with the  
13 requirements for closure of retention structures and other waste  
14 facilities as established pursuant to the provisions of this section  
15 and rules promulgated by the State Board of Agriculture.

16           B. 1. To establish evidence of financial ability the  
17 Department shall require:

18               a. Category A surety which shall include a financial  
19 statement listing assets and liabilities and including  
20 a general release that the information may be verified  
21 with banks and other financial institutions. The  
22 financial statement shall be confidential and shall  
23 not be opened to public inspection. The statement  
24 shall prove a net worth of not less than:

1 (1) Ten Thousand Dollars (\$10,000.00) for any animal  
2 feeding operation licensed pursuant to the  
3 Oklahoma Concentrated Animal Feeding Operations  
4 Act having a capacity of more than three hundred  
5 (300) animal units but having one thousand  
6 (1,000) animal units or less,

7 (2) Twenty-five Thousand Dollars (\$25,000.00) for any  
8 animal feeding operation licensed pursuant to the  
9 Oklahoma Concentrated Animal Feeding Operations  
10 Act having a capacity of more than one thousand  
11 (1,000) animal units but less than two thousand  
12 (2,000) animal units, or

13 (3) Fifty Thousand Dollars (\$50,000.00) for any  
14 animal feeding operation licensed pursuant to the  
15 Oklahoma Concentrated Animal Feeding Operations  
16 Act having a capacity of more than two thousand  
17 (2,000) animal units, or

18 b. Category B surety which shall include an irrevocable  
19 commercial letter of credit, cash, a cashier's check,  
20 a Certificate of Deposit, Bank Joint Custody Receipt,  
21 other negotiable instrument or a blanket surety bond.  
22 Except as provided in paragraph 2 of this subsection,  
23 amount of such letter of credit, cash, check,  
24 certificate, bond, receipt or other negotiable

1 instrument shall be in the amount of Twenty-five  
2 Thousand Dollars (\$25,000.00). The Department is  
3 authorized to determine the amount of Category B  
4 surety based upon the past performance of the owner or  
5 operator regarding compliance with the laws of this  
6 state, and any rules promulgated pursuant thereto.  
7 Any instrument shall constitute an unconditional  
8 promise to pay and be in a form negotiable by the  
9 Department.

10 2. The Department upon certification by any animal feeding  
11 operation subject to Category B surety that its liability statewide  
12 is less than the twenty-five-thousand-dollar standard specified in  
13 this section may allow the owner or operator to provide Category B  
14 type surety in an amount less than the required Twenty-five Thousand  
15 Dollars (\$25,000.00), but at least sufficient to cover the estimated  
16 cost of all closure and removal operations currently the  
17 responsibility of that owner or operator.

18 C. 1. Any animal feeding operation licensed pursuant to the  
19 provisions of the Oklahoma Concentrated Animal Feeding Operations  
20 Act which does not have any outstanding contempt citations or fines  
21 may post Category A surety.

22 2. Any animal feeding operation licensed pursuant to the  
23 provisions of the Oklahoma Concentrated Animal Feeding Operations  
24 Act which does have outstanding fines or contempt citations shall be

1 required to post Category B surety. Animal feeding operations which  
2 have posted Category B surety and have operated under this type  
3 surety and have no outstanding fines at the end of three (3) years  
4 may post Category A surety.

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

11 E. 1. If the Department, after notice and an opportunity for  
12 hearing, determines that the animal feeding operation licensed  
13 pursuant to the provisions of the Oklahoma Concentrated Animal  
14 Feeding Operations Act has neglected, failed, or refused to close  
15 any surface impoundment, or remove or cause to be removed any  
16 equipment, or has abandoned the facility, then the animal feeding  
17 operation shall be deemed to have forfeited the letter of credit or  
18 negotiable instrument required by this section or shall pay to this  
19 state, for deposit in the State Treasury, a sum equal to the cost of  
20 closure of any surface impoundment or removal of equipment.

21 2. The Department may cause the remedial work to be done,  
22 issuing a warrant in payment of the cost thereof drawn against the  
23 monies accruing in the State Treasury from the forfeiture or  
24 payment.

1           3. The Department shall also recover any costs arising from  
2 litigation to enforce this provision. Provided, before an animal  
3 feeding operation is required to forfeit or pay any monies to the  
4 state pursuant to this section, the Department shall notify the  
5 animal feeding operation at the last-known address of the  
6 determination of neglect, failure or refusal to close any surface  
7 impoundment or remove equipment and the animal feeding operation  
8 shall have ten (10) days from the date of notification within which  
9 to commence remedial operations. Failure to commence remedial  
10 operations shall result in forfeiture or payment as provided in this  
11 subsection.

12           F. If title to an animal feeding operation is transferred, the  
13 transferee shall furnish the evidence of financial ability to close  
14 surface impoundments required by the provisions of this section  
15 prior to the transfer.

16           SECTION 43.       NEW LAW       A new section of law to be codified  
17 in the Oklahoma Statutes as Section 20-56 of Title 2, unless there  
18 is created a duplication in numbering, reads as follows:

19           A. In addition to any other requirement of the Oklahoma  
20 Concentrated Animal Feeding Operations Act, animal feeding  
21 operations owners and operators who are granted an animal feeding  
22 operations license shall:

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

1           2. Have available for use at all necessary times mechanical  
2 means of scraping, cleaning, and grading feed yards premises; and

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

5           B. 1. Any animal feeding operation licensed pursuant to the  
6 Oklahoma Concentrated Animal Feeding Operations Act, operated in  
7 compliance with those standards, and in compliance with the rules  
8 promulgated by the Board, shall be deemed to be prima facie evidence  
9 that a nuisance does not exist; provided, no animal feeding  
10 operation shall be located or operated in violation of any zoning  
11 regulations.

12           2. Any animal feeding operation licensed pursuant to the  
13 Oklahoma Concentrated Animal Feeding Operations Act, operated in  
14 compliance with those standards, and in compliance with rules  
15 promulgated by the Board, that is located on land more than three  
16 (3) miles outside the incorporated limits of any municipality and  
17 which is not located within one (1) mile of ten or more occupied  
18 residences shall not be deemed a nuisance unless it is shown by a  
19 preponderance of the evidence that the operation endangers the  
20 health or safety of others.

21           SECTION 44.           NEW LAW           A new section of law to be codified  
22 in the Oklahoma Statutes as Section 20-57 of Title 2, unless there  
23 is created a duplication in numbering, reads as follows:

24

1       A. Except as authorized by this subsection, no liquid animal  
2 waste shall be land applied within five hundred (500) feet of the  
3 nearest corner of an occupied residence not owned or leased by the  
4 owner of the animal feeding operation.

5       B. Except as provided by Section 45 of this act, no  
6 concentrated animal feeding operation shall be established after  
7 September 1, 1997, which is within one (1) mile of ten or more  
8 residences that are occupied residences at the time of the  
9 establishment of the concentrated animal feeding operation.

10       C. The proscription contained in subsections A and B of this  
11 section shall not apply if the applicable property owner executes a  
12 written waiver with the owner or operator of the animal feeding  
13 operation, under the terms and conditions that the parties  
14 negotiate. The written waiver becomes effective upon recording of  
15 the waiver in the offices of the recorder of deeds in the county  
16 where the property is located. The filed waiver shall preclude  
17 enforcement of the setback requirements contained in subsections A  
18 and B of this section. A change in ownership of the applicable  
19 property or change in the ownership of the property on which the  
20 animal feeding operation is located shall not affect the validity of  
21 the waiver.

22       D. No liquid animal waste shall be land applied within three  
23 hundred (300) feet of an existing public or private drinking water  
24 well.

1 E. Except as provided by Section 45 of this act, no  
2 concentrated animal feeding operation shall be established after  
3 September 1, 1997, which is located:

4 1. Within three (3) miles of a state park or resort;

5 2. On land within three (3) miles of the incorporated limits of  
6 any municipality;

7 3. Within three (3) miles of the high water mark of a surface  
8 public water supply if the concentrated animal feeding operation is  
9 located within the drainage basin for the public water supply.

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

17 SECTION 45. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 20-58 of Title 2, unless there  
19 is created a duplication in numbering, reads as follows:

20 Animal feeding operations, other than a concentrated animal  
21 feeding operation, not licensed pursuant to the provisions of the  
22 Oklahoma Feed Yards Act in operation on the effective date of this  
23 act shall not be subject to any setback requirements not in effect  
24 on the date of past construction.

1 SECTION 46. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 20-59 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 of any concentrated animal feeding operation to be  
7 located within one (1) mile upstream of the Pensacola Project  
8 boundary as described in the records of the Grand River Dam  
9 Authority and the Federal Emergency Management Agency. Any  
10 operation authorized or permitted prior to April 17, 2002, shall not  
11 be affected by the provisions of this section.

12 SECTION 47. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 20-60 of Title 2, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. A concentrated animal feeding operation may exceed its  
16 animal unit capacity if:

17 1. A diseased or potentially diseased animal exists at the  
18 operation; or

19 2. A diseased or potentially diseased animal is in the next  
20 destination for the production line for the operation; and

21 3. The owner of the concentrated animal feeding operation has  
22 reasonable cause to believe an animal has or may have any disease  
23 causing:

24 a. a public health emergency,

1           b. a substantial and imminent economic hardship to the  
2           owner, or

3           c. a substantial and imminent threat to the animal  
4           population of the state, or

5           4. The State Board of Agriculture issues an order establishing  
6 temporary restrictions, a quarantine, or a quarantine zone  
7 restricting the movement of persons, livestock, machinery, and  
8 personal property out of a concentrated animal feeding operation.

9           B. In no case shall an animal unit capacity be exceeded for  
10 more than five (5) days following a confirmatory test indicating  
11 that either the animal is diseased or is not diseased. A  
12 confirmatory test shall be performed within twenty (20) days of  
13 discovery that a diseased or potentially diseased animal exists at  
14 the operation.

15           C. The owner of a concentrated animal feeding operation shall  
16 provide written notification to the Oklahoma Department of  
17 Agriculture, Food, and Forestry upon discovery of a diseased or  
18 potentially diseased animal pursuant to subsection A of this section  
19 that may result in the animal unit capacity being exceeded.

20           D. The notice shall:

21           1. Identify the concentrated animal feeding operation that may  
22 exceed its animal unit capacity; and

23           2. Include an estimate of the number of animals exceeding the  
24 animal unit capacity at the concentrated animal feeding operation.

1           SECTION 48.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 20-61 of Title 2, unless there  
3 is created a duplication in numbering, reads as follows:

4           A.   1.   The Board is authorized and directed to promulgate a  
5 violation points system for violating the Oklahoma Concentrated  
6 Animal Feeding Operations Act which provides greater punishment for  
7 violations which are intentional and for violations which pose a  
8 greater threat to the environment.

9           2.   The State Board of Agriculture shall have the power to  
10 suspend, revoke or not renew the license of any animal feeding  
11 operation based on the point system after a hearing, and after an  
12 administrative determination that the animal feeding operation has  
13 violated or has failed to comply with any of the provisions of the  
14 Oklahoma Concentrated Animal Feeding Operations Act, or any rule  
15 promulgated pursuant thereto.

16           3.   The Board shall have the power and duty to reinstate any  
17 such suspended or revoked licenses, or renew the licenses, upon a  
18 satisfactory and acceptable showing and assurance that the animal  
19 feeding operation conducted animal feeding operations in conformity  
20 with, and in compliance with, the provisions of the Oklahoma  
21 Concentrated Animal Feeding Operations Act and rules promulgated  
22 pursuant thereto, and that such conformity and compliance will be  
23 continuous.

24

1 B. In order to protect the public health and safety and the  
2 environment of this state, the Board, pursuant to the Oklahoma  
3 Concentrated Animal Feeding Operations Act, may deny issuance of a  
4 license or transfer of a license to establish and operate an animal  
5 feeding operation on and after September 1, 1997, to any person or  
6 other legal entity which:

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

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

14 C. Any action taken in regard to the denial, suspension or  
15 revocation of a license shall be in conformity with the rules of the  
16 Board governing Administrative Procedures and the Administrative  
17 Procedures Act.

18 SECTION 49. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 20-62 of Title 2, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. Any person violating the provisions of the Oklahoma  
22 Concentrated Animal Feeding Operations Act or any rule of the Board  
23 promulgated pursuant thereto shall, upon conviction, be deemed  
24

1 guilty of a misdemeanor and upon conviction thereof may be punished  
2 by a fine not exceeding Two Hundred Dollars (\$200.00).

3 B. Any owner or operator who fails to take such action as may  
4 be reasonable and necessary to avoid pollution of any stream, lake,  
5 river or creek, except as otherwise provided by law, or who violates  
6 any rule of the Board adopted to prevent water pollution from animal  
7 feeding operations pursuant to this act shall, upon conviction, be  
8 deemed guilty of a misdemeanor, and upon conviction thereof may be  
9 punished by a fine of Five Hundred Dollars (\$500.00) to Ten Thousand  
10 Dollars (\$10,000.00) for each violation, by imprisonment in the  
11 county jail for not more than six (6) months for each violation, or  
12 by the assessment of a civil penalty up to Ten Thousand Dollars  
13 (\$10,000.00) for each violation or by any of such fine,  
14 imprisonment, and civil penalty.

15 C. 1. In addition to the criminal and civil penalties  
16 specified by this section, the Oklahoma Department of Agriculture,  
17 Food, and Forestry may:

18 a. assess an administrative penalty of not more than Ten  
19 Thousand Dollars (\$10,000.00) per day of  
20 noncompliance, or

21 b. bring an action for injunctive relief granted by a  
22 district court.

23 2. A district court may grant injunctive relief to prevent a  
24 violation of, or to compel compliance with, any of the provisions of

1 the Oklahoma Concentrated Animal Feeding Operations Act or any rule  
2 promulgated thereunder or order, license or permit issued pursuant  
3 to the Oklahoma Concentrated Animal Feeding Operations Act.

4 3. Nothing in this section shall preclude the Department from  
5 seeking penalties in district court in the maximum amount allowed by  
6 law. The assessment of penalties in an administrative enforcement  
7 proceeding shall not prevent the subsequent assessment by a court of  
8 the maximum civil or criminal penalties for violations of the  
9 Oklahoma Concentrated Animal Feeding Operations Act.

10 D. Any person assessed an administrative or civil penalty may  
11 be required to pay, in addition to such penalty amount and interest  
12 thereon, attorney fees and costs associated with the collection of  
13 such penalties.

14 E. The Attorney General or the district attorney of the  
15 appropriate district court of Oklahoma may bring an action in a  
16 court of competent jurisdiction for the prosecution of a violation  
17 by any person of a provision of the Oklahoma Concentrated Animal  
18 Feeding Operations Act or any rule promulgated thereunder, or order,  
19 license or permit issued pursuant thereto.

20 F. 1. Any action for injunctive relief to redress or restrain  
21 a violation by any person of the Oklahoma Concentrated Animal  
22 Feeding Operations Act or for any rule promulgated thereunder, or  
23 order, license, or permit issued pursuant thereto or recovery of any  
24

1 administrative or civil penalty assessed pursuant to the Oklahoma  
2 Concentrated Animal Feeding Operations Act may be brought by:

3 a. the district attorney of the appropriate district  
4 court of the State of Oklahoma,

5 b. the Attorney General on behalf of the State of  
6 Oklahoma, or

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

8 2. The court shall have jurisdiction to determine said action,  
9 and to grant the necessary or appropriate relief, including but not  
10 limited to mandatory or prohibitive injunctive relief, interim  
11 equitable relief, and punitive damages.

12 3. It shall be the duty of the Attorney General and district  
13 attorney, if requested by the Commissioner of Agriculture, to bring  
14 such actions.

15 G. Except as otherwise provided by law, administrative and  
16 civil penalties shall be paid into the Department of Agriculture  
17 Revolving Fund.

18 H. In determining the amount of a civil penalty or  
19 administrative penalty, the court or the Department, as the case may  
20 be, shall consider such factors as the nature, circumstances and  
21 gravity of the violation or violations, the economic benefit, if  
22 any, resulting to the defendant from the violation, the history of  
23 such violations, any good-faith efforts to comply with the  
24 applicable requirements, the economic impact of the penalty on the

1 defendant, the defendant's degree of culpability, and such other  
2 matters as justice may require.

3 I. For the purposes of this section, each day upon which a  
4 violation is committed or is permitted to continue shall be deemed a  
5 separate offense.

6 J. In addition to other penalties as may be imposed by law, any  
7 person who knowingly makes any false statement, representation or  
8 certification in any water pollution form, notice or report, or who  
9 knowingly renders inaccurate any monitoring device or method  
10 required to be maintained by any water pollution rules promulgated  
11 by the Board shall, upon conviction, be guilty of a misdemeanor and  
12 may be subject to a fine of not more than Five Thousand Dollars  
13 (\$5,000.00) for each violation.

14 SECTION 50. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 20-64 of Title 2, unless there  
16 is created a duplication in numbering, reads as follows:

17 The Oklahoma Concentrated Animal Feeding Operations Act shall be  
18 enacted as a part of the Agricultural Code and shall be codified  
19 accordingly.

20 SECTION 51. RECODIFICATION 2 O.S. 2001, Section 9-212.1,  
21 as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
22 2006, Section 20-27), and as amended by Section 26 of this act,  
23 shall be recodified as Section 20-63 of Title 2 unless there is  
24 created a duplication in numbering.

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SECTION 52. This act shall become effective November 1, 2007.

51-1-6963            SAB            02/08/07