

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2774

6 By: DeWitt

7 COMMITTEE SUBSTITUTE

8 An Act relating to agriculture; amending 2 O.S. 2001,  
9 Section 9-210.3, as renumbered by Section 25, Chapter  
10 292, O.S.L. 2005, and as amended by Section 21,  
11 Chapter 31, O.S.L. 2007 (2 O.S. Supp. 2007, Section  
12 20-21), which relates to the Oklahoma Swine Feeding  
13 Operations Act; requiring certification from the  
14 Oklahoma Department of Agriculture, Food, and  
15 Forestry before issuance or amendment of certain  
16 permits; providing for notice and hearing; providing  
17 certain considerations for determining camp or  
18 recreational sites; exempting certain swine feeding  
19 operations; eliminating location limitation for  
20 certain swine feeding operations; amending 82 O.S.  
21 2001, Section 1020.11a, as last amended by Section  
22 105, Chapter 3, O.S.L. 2003 (82 O.S. Supp. 2007,  
23 Section 1020.11a), which relates to permits for swine  
24 feeding operations; requiring confirmation of certain  
compliance by the Oklahoma Department of Agriculture,  
Food, and Forestry before issuing certain permits;  
exempting permit renewals eliminating certain setback  
requirements; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 9-210.3, as  
renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended

1 by Section 21, Chapter 31, O.S.L. 2007 (2 O.S. Supp. 2007, Section  
2 20-21), is amended to read as follows:

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

- 9 1. More than 4000 swine animal units.....2 miles;
- 10 2. 2001 to 4000 swine animal units.....1 1/4 miles;
- 11 3. 1001 to 2000 swine animal units.....3/4 mile;
- 12 4. 601 to 1000 swine animal units.....1/2 mile;
- 13 5. 300 to 600 swine animal units.....1/4 mile; and
- 14 6. Less than 300 swine animal units.....no setback.

15 B. 1. Except as otherwise provided by this section, no  
16 licensed managed feeding operation which applies for a new or  
17 expanding concentrated swine feeding operation license shall be  
18 located within three (3) miles of the outside boundary of any area  
19 or facility owned or operated as a camp or recreational site by a  
20 nonprofit organization established prior to application of the  
21 concentrated swine feeding operation.

22 2. Except as otherwise provided for in paragraph 1 of this  
23 subsection, any swine feeding operation established after August 1,  
24 1998, which applies for a groundwater use permit or amendment

1 thereto from the Oklahoma Water Resources Board after November 1,  
2 2008, shall be required to obtain certification from the Oklahoma  
3 Department of Agriculture, Food, and Forestry that the operation is  
4 not located within three (3) miles of the outside boundary of any  
5 area or facility owned or operated as a camp or recreation site by a  
6 nonprofit organization.

7 3. The Department shall adopt the notice and hearing  
8 requirements provided for in Section 20-8 of this title in  
9 administering the provisions of this subsection.

10 4. In determining whether any area or facility is a camp or  
11 recreational site, the Board shall consider:

- 12 a. whether a reasonable person, after considering the  
13 totality of the circumstances, would determine that  
14 the area or facility is predominately used for camping  
15 or recreational purposes,
- 16 b. the type of permanent structures or fixtures of a  
17 recreational nature located on the land,
- 18 c. the frequency with which the site is used for  
19 recreational purposes,
- 20 d. the types of activities conducted or engaged in on the  
21 site, and
- 22 e. any other factors the Board deems directly relevant to  
23 the question of whether a site is recreational in  
24 nature.

1        5. The provisions of this subsection shall apply only if the  
2 real property was owned or leased by a nonprofit organization prior  
3 to the construction or establishment of the swine feeding operation.

4        C. The setback requirements contained in subsections A and B of  
5 this section shall not apply to any property owner who executes a  
6 written waiver with the owner or operator of the swine feeding  
7 operation, under such terms and conditions as are agreed to by the  
8 parties. The written waiver shall be effective upon recording of  
9 the waiver in the office of the county clerk in the county in which  
10 the property is located. The filed waiver shall preclude  
11 enforcement of the setback requirements of subsections A or B of  
12 this section with regard to property described in the waiver and  
13 owned by the person executing the waiver. A change in ownership of  
14 the applicable property or change in ownership of the property on  
15 which the swine feeding operation is located shall not affect the  
16 validity of the waiver.

17        D. No licensed managed feeding operation established after the  
18 effective date of this act which applies for a new or expanding  
19 license shall be located:

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

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

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

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

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

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

14 F. The provisions of this section shall not apply to any swine  
15 feeding operation which has been licensed by or which had submitted  
16 an application to the Department on or prior to March 9, 1998. In  
17 addition, the provisions of this section shall not apply to any  
18 swine feeding operation with a capacity of 2000 swine animal units  
19 or less which was established prior to June 1, 1998.

20 G. Nothing in this section shall be construed as requiring a  
21 swine feeding operation with fewer than one thousand one animal  
22 units to apply for a license from the Department.

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1 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1020.11a, as  
2 last amended by Section 105, Chapter 3, O.S.L. 2003 (82 O.S. Supp.  
3 2007, Section 1020.11a), is amended to read as follows:

4 Section 1020.11a A. 1. ~~Except for renewals, the Oklahoma~~  
5 ~~Water Resources Board shall not issue~~ Prior to issuing any permit or  
6 amendment thereto or other authorization for the use of water for  
7 any to a permit for a swine animal feeding operation, ~~wholly or~~  
8 ~~partially located within three (3) miles of the outside boundary of~~  
9 ~~any area or facility owned or operated as a camp or recreational~~  
10 ~~site by a nonprofit organization. In determining whether any such~~  
11 ~~area or facility is a camp or recreational site, the Board shall~~  
12 ~~consider:~~

- 13 a. ~~whether a reasonable person, after considering the~~  
14 ~~totality of the circumstances, would determine that~~  
15 ~~the area or facility is predominately used for camping~~  
16 ~~or recreational purposes,~~
- 17 b. ~~the type of permanent structures or fixtures of a~~  
18 ~~recreational nature located on the land,~~
- 19 c. ~~the frequency with which the site is used for~~  
20 ~~recreational purposes,~~
- 21 d. ~~the types of activities which are conducted or engaged~~  
22 ~~in on the site, and~~

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1           e. ~~any other factors the decision-making body deems~~  
2           ~~directly relevant to the question of whether a site is~~  
3           ~~recreational in nature.~~

4           2. ~~The provisions of this subsection shall apply only if the~~  
5 ~~real property was owned or leased by such organization prior to the~~  
6 ~~construction or establishment of the swine animal feeding operation.~~

7           B. ~~The setback requirement contained in subsection A of this~~  
8 ~~section shall not apply to any property owner who executes a written~~  
9 ~~waiver with the owner or operator of the swine feeding operation,~~  
10 ~~under such terms and conditions as are agreed to by the parties.~~

11 ~~The written waiver shall be effective upon recording of the waiver~~  
12 ~~in the office of the county clerk in the county in which such~~  
13 ~~property is located. The filed waiver shall preclude enforcement of~~  
14 ~~the setback requirements of subsection A of this section with regard~~  
15 ~~to property described in the waiver and owned by the person~~  
16 ~~executing such waiver. A change in ownership of the applicable~~  
17 ~~property or change in ownership of the property on which the swine~~  
18 ~~feeding operation is located shall not affect the validity of the~~  
19 ~~waiver.~~

20           C. ~~Requests for transfer of water permits authorizing the use~~  
21 ~~of groundwater for swine feeding operations shall be approved if the~~  
22 ~~Executive Director of the Oklahoma Water Resources Board determines~~  
23 ~~all of the following conditions are met:~~

1       ~~1. The transfer is needed due to a change in ownership of the~~  
2 ~~swine feeding operation;~~

3       ~~2. The person or entity to whom the permit is to be transferred~~  
4 ~~is not, at the time of the transfer, seeking to increase the number~~  
5 ~~of animals or animal unit capacity; and~~

6       ~~3. The person or entity to whom the permit is to be transferred~~  
7 ~~is not, at the time of the transfer, seeking to increase the amount~~  
8 ~~of water authorized for use~~ the Oklahoma Water Resources Board shall  
9 obtain written confirmation from the Oklahoma Department of  
10 Agriculture, Food, and Forestry that the swine feeding operation is  
11 in compliance with all applicable setback requirements.

12       2. The provisions of this section shall not apply to renewals  
13 of permits.

14       SECTION 3. This act shall become effective November 1, 2008.

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16       51-2-10492       SAB       03/03/08

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