

THE HOUSE OF REPRESENTATIVES
Thursday, March 8, 2007

Committee Substitute for
House Bill No. 1490

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1490 - By: SULLIVAN of the House and EASLEY of the Senate.

(environment - Eucha-Spavinaw Poultry Waste Management Act – priority - State Board of Agriculture - Oklahoma Department of Agriculture, Food, and Forestry - poultry waste - requiring soil testing – injunctive relief - land application of poultry waste - soil and poultry waste tests – codification - effective date -
emergency)

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

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

4 Sections 2 through 6 of this act shall be known and may be cited as the “Eucha-
5 Spavinaw Poultry Waste Management Act”.

6 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 10-10.2 of Title 2, unless there is created a duplication in numbering,
8 reads as follows:

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

10 1. “Board” means the State Board of Agriculture;

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

4 3. “Department” means the Oklahoma Department of Agriculture, Food, and
5 Forestry;

6 4. “Eucha-Spavinaw phosphorous index (PI)” means the phosphorus assessment
7 tool adopted by the court in the City of Tulsa Case by court order entered on February
8 13, 2004, developed to govern the terms and conditions under which poultry waste may
9 be land applied in the Eucha-Spavinaw Watershed, and includes any modifications
10 approved and adopted by the court in that case, or as approved and adopted by the Board
11 in accordance with its rule-making procedures, in the event the court in the City of Tulsa
12 Case relinquishes jurisdiction. PI shall also mean any form of the approved PI used in
13 the Eucha-Spavinaw Watershed, whether described as risk-based, qualitative or
14 quantitative, and may include the “PPM Calculator” phosphorous index model referenced
15 in the City of Tulsa case February 13, 2004, order, or any variation of that model or
16 similar phosphorus assessment tool or model, if approved by the court or the Board;

17 5. “Eucha-Spavinaw Watershed” means the watershed for Lakes Eucha and
18 Spavinaw located in Delaware County and Mayes County, Oklahoma as further defined
19 by Hydrologic Unit Code (HUC) 11070206 as compiled by the United States Geological
20 Survey, Natural Resources Conservation Services;

21 6. "Land application" means the application of nutrients or poultry litter to the
22 land in the Eucha-Spavinaw Watershed, through any means whatsoever, for any

1 purpose, but shall not include the incidental placing of poultry litter on land during the
2 process of hauling or moving to storage or composting for a temporary period of time, not
3 to exceed three (3) days as defined in Definition No. 11 of Section A of the Settlement
4 Agreement;

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

8 8. “Poultry Act” means the Oklahoma Registered Poultry Feeding Operations Act,
9 the Oklahoma Poultry Waste Transfer Act, and the Oklahoma Poultry Waste Applicators
10 Certification Act, either separately or collectively;

11 9. “Poultry litter” or “litter” means all by-products associated with the confinement
12 of poultry, including excrement, feed waste, and bedding materials as defined in
13 Definition No. 13 of Section A of the Settlement Agreement;

14 10. “Poultry waste management plan (PWMP)” means a nutrient management plan
15 further described in Section G of the Settlement Agreement, and includes other similarly
16 named plans, regardless of how denominated, such as waste management plan, as
17 defined in Definition No. 14 of Section A of the Settlement Agreement;

18 11. “Poultry waste management unit” means any tract of land in the Eucha-
19 Spavinaw Watershed larger than two and one half (2 1/2) acres outside of any city limits
20 where poultry litter or other nutrients from any contract grower or company farm, as
21 defined in the Settlement Agreement, are land applied or expected to be land applied, as

1 defined as an application site in Definition No. 2 of Section A of the Settlement
2 Agreement; and

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

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

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

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

17 C. The Eucha-Spavinaw Poultry Waste Management Act shall be construed in
18 harmony with the purpose, intent and provisions of all other applicable state or federal
19 laws, rules and regulations that preserve and protect the waters of the state, public
20 health and safety and the environment, including but not limited to Title 2 and Title 27A
21 of the Oklahoma Statutes. In the event of any conflict between or among the provisions
22 of the Eucha-Spavinaw Poultry Waste Management Act, the Poultry Act, the Settlement

1 Agreement, any court order entered in the City of Tulsa Case, and any other applicable
2 state and federal law, rule or regulation, the provision that is most protective of the
3 waters of the state, the public health and safety and the environment shall control. Any
4 registration that is required by the Eucha-Spavinaw Poultry Waste Management Act is
5 in addition to, and not in lieu of, any other registration or permit that may be required
6 for any operation or facility by any other state for federal law.

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

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

1 B. In addition to any legislative appropriation allocated to the Board or
2 Department for normal operations and duties, the Board or Department is hereby
3 authorized to accept any monetary grant, donation or other contribution of money or
4 resources from any person or entity for the purpose of hiring, training, compensating,
5 providing benefits and supervising any investigator, inspector, or qualified nutrient
6 planner to carry out the provisions of the Eucha-Spavinaw Poultry Waste Management
7 Act.

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

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

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

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

1 Section 10-9.19 1. Prior to any land application of poultry waste by a certified
2 poultry waste applicator, the applicator shall obtain the most recent soil and poultry
3 waste tests as required by the Oklahoma Poultry Waste Applicators Certification Act, the
4 Settlement Agreement as defined in the Eucha-Spavinaw Poultry Waste Management
5 Act, or rules promulgated by the Oklahoma Department of Agriculture, Food, and
6 Forestry, whichever law or rule requires the most frequent testing.

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

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

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TECHNOLOGY, dated
22 03-07-07 - DO PASS, As Amended and Coauthored.