

THE HOUSE OF REPRESENTATIVES
Thursday, March 6, 2008

Committee Substitute for
House Bill No. 2774

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2774 - By: DEWITT of the House and LERBLANCE of the Senate.

An Act relating to agriculture; amending 2 O.S. 2001, Section 9-210.3, as renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended by Section 21, Chapter 31, O.S.L. 2007 (2 O.S. Supp. 2007, Section 20-21), which relates to the Oklahoma Swine Feeding Operations Act; requiring certification from the Oklahoma Department of Agriculture, Food, and Forestry before issuance or amendment of certain permits; providing for notice and hearing; providing certain considerations for determining camp or recreational sites; exempting certain swine feeding operations; eliminating location limitation for certain swine feeding operations; amending 82 O.S. 2001, Section 1020.11a, as last amended by Section 105, Chapter 3, O.S.L. 2003 (82 O.S. Supp. 2007, Section 1020.11a), which relates to permits for swine 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:

1 SECTION 1. AMENDATORY 2 O.S. 2001, Section 9-210.3, as renumbered by
2 Section 25, Chapter 292, O.S.L. 2005, and as amended by Section 21, Chapter 31, O.S.L.
3 2007 (2 O.S. Supp. 2007, Section 20-21), is amended to read as follows:
4 Section 20-21. A. Except as otherwise provided by Section 20-19 of the Oklahoma
5 Swine Feeding Operations Act and subsection F of this section, swine feeding operations
6 using liquid swine waste management systems and swine are housed in roof-covered

1 structures shall not be located within the following applicable distances from an occupied
2 residence:

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

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

14 2. Except as otherwise provided for in paragraph 1 of this subsection, any swine
15 feeding operation established after August 1, 1998, which applies for a groundwater use
16 permit or amendment thereto from the Oklahoma Water Resources Board after
17 November 1, 2008, shall be required to obtain certification from the Oklahoma
18 Department of Agriculture, Food, and Forestry that the operation is not located within
19 three (3) miles of the outside boundary of any area or facility owned or operated as a
20 camp or recreation site by a nonprofit organization.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 4. In determining whether any area or facility is a camp or recreational site, the

2 Board shall consider:

- 3 a. whether a reasonable person, after considering the totality of the
4 circumstances, would determine that the area or facility is
5 predominately used for camping or recreational purposes,
6 b. the type of permanent structures or fixtures of a recreational nature
7 located on the land,
8 c. the frequency with which the site is used for recreational purposes,
9 d. the types of activities conducted or engaged in on the site, and
10 e. any other factors the Board deems directly relevant to the question of
11 whether a site is recreational in nature.

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

15 C. The setback requirements contained in subsections A and B of this section shall
16 not apply to any property owner who executes a written waiver with the owner or
17 operator of the swine feeding operation, under such terms and conditions as are agreed to
18 by the parties. The written waiver shall be effective upon recording of the waiver in the
19 office of the county clerk in the county in which the property is located. The filed waiver
20 shall preclude enforcement of the setback requirements of subsections A or B of this
21 section with regard to property described in the waiver and owned by the person
22 executing the waiver. A change in ownership of the applicable property or change in

1 ownership of the property on which the swine feeding operation is located shall not affect
2 the validity of the waiver.

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

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

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

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

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

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

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

20 F. The provisions of this section shall not apply to any swine feeding operation
21 which has been licensed by or which had submitted an application to the Department on
22 or prior to March 9, 1998. In addition, the provisions of this section shall not apply to

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1 any swine feeding operation with a capacity of 2000 swine animal units or less which was
2 established prior to June 1, 1998.

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

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

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

- 16 a. ~~whether a reasonable person, after considering the totality of the~~
17 ~~circumstances, would determine that the area or facility is~~
18 ~~predominately used for camping or recreational purposes,~~
19 b. ~~the type of permanent structures or fixtures of a recreational nature~~
20 ~~located on the land,~~
21 c. ~~the frequency with which the site is used for recreational purposes,~~

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

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

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

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

10 COMMITTEE REPORT BY: COMMITTEE ON NATURAL RESOURCES, dated 03-05-
11 08 - DO PASS, As Amended and Coauthored.