

EHB 1796

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

**THE STATE SENATE**  
**Wednesday March 28, 2007**

**ENGROSSED**

**House Bill No. 1796**

ENGROSSED HOUSE BILL NO. 1796 - By: ARMES and McAFFREY of the House and WYRICK of the Senate.

An Act relating to agriculture; amending 2 O.S. 2001, Sections 9-200 and 9-201, as renumbered by Section 25, Chapter 292, O.S.L. 2005, 9-202, as renumbered by Section 25, Chapter 292, O.S.L. 2005 and as amended by Section 2, Chapter 128, O.S.L. 2006, 9-203, 9-204, 9-204.1 and 9-205, as renumbered by Section 25, Chapter 292, O.S.L. 2005, 9-205.1, as renumbered by Section 25, Chapter 292, O.S.L. 2005 and as amended by Section 2, Chapter 129, O.S.L. 2006, 9-205.2, as renumbered by Section 25, Chapter 292, O.S.L. 2005, 9-205.3, as renumbered by Section 25, Chapter 292, O.S.L. 2005 and as amended by Section 3, Chapter 128, O.S.L. 2006, 9-205.3a, as renumbered by Section 25, Chapter 292, O.S.L. 2005, 9-205.4, as renumbered by Section 25, Chapter 292, O.S.L. 2005 and as amended by Section 1, Chapter 148, O.S.L. 2006, 9-205.5 and 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 Act; replacing animals with swine comprehensively through act; removing references to animal feeding operations comprehensively through act; amending definitions to conform to swine operations; modifying committee; modifying fees; modifying setback provisions; enacting the Oklahoma Concentrated Animal Feeding Operations

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

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

27 SECTION 1. AMENDATORY 2 O.S. 2001, Section 9-200, as  
28 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
29 2006, Section 20-1), is amended to read as follows:

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

1 SECTION 2. AMENDATORY 2 O.S. 2001, Section 9-201, as  
2 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
3 2006, Section 20-2), is amended to read as follows:

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

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

12 SECTION 3. AMENDATORY 2 O.S. 2001, Section 9-202, as  
13 renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended  
14 by Section 2, Chapter 128, O.S.L. 2006 (2 O.S. Supp. 2006, Section  
15 20-3), is amended to read as follows:

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

20 B. As used in the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
21 Operations Act:

22 1. "Affected property owner" means a surface landowner within:

- 1           a.    one (1) mile of the designated perimeter of ~~an animal~~  
2                    a swine feeding operation which:  
3                    (1) does not meet the definition of a licensed  
4                            managed feeding operation, or  
5                    (2) is previously unlicensed or an expanding licensed  
6                            managed feeding operation with a capacity of two  
7                            thousand (2,000) or less swine animal units, or  
8           b.    two (2) miles of the designated perimeter of a  
9                    licensed managed feeding operation or an expanding  
10                    operation with a capacity of more than two thousand  
11                    (2,000) swine animal units for which a license is  
12                    being sought;

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

- 15           a.    ~~animals~~ swine have been, are, or will be stabled or  
16                    confined and fed or maintained for a total of ninety  
17                    (90) consecutive days or more in any twelve-month  
18                    period, 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~~  
23 ~~racetrack licensed by the Oklahoma Horse Racing Commission to hold~~

1 ~~pari-mutuel race meetings pursuant to the Oklahoma Horse Racing Act~~  
2 ~~if such facility discharges to a publicly owned treatment works, or~~  
3 ~~an aquatic animal production facility;~~

4 3. "~~Animal~~ Swine animal unit" means a unit of measurement for  
5 any ~~animal~~ swine feeding operation calculated by adding the  
6 following numbers: The number of ~~slaughter and feeder cattle~~  
7 ~~multiplied by one (1), plus the number of mature dairy cattle~~  
8 ~~multiplied by one and four tenths (1.4), plus the number of swine~~  
9 ~~weighing over twenty-five (25) kilograms, approximately fifty-five~~  
10 ~~(55) pounds, multiplied by four-tenths (0.4), plus the number of~~  
11 ~~weaned swine weighing under twenty-five (25) kilograms multiplied by~~  
12 ~~one-tenth (0.1), plus the number of sheep multiplied by one tenth~~  
13 ~~(0.1), plus the number of horses multiplied by two (2);~~

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

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

1        6.    ~~Animal~~ Swine waste management system" means a combination  
2 of structures and nonstructural practices serving ~~an animal~~ a swine  
3 feeding operation that provides for the collection, treatment,  
4 disposal, distribution, storage and land application of ~~animal~~ swine  
5 waste;

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

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

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

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

18       11.   "Concentrated ~~animal~~ swine feeding operation" ~~or "CAFO"~~  
19 means:

- 20           a.    a licensed managed feeding operation, or  
21           b.    ~~an animal feeding operation which meets the following~~  
22           ~~criteria:~~

- 1                   ~~(1) more than the number of animals specified in any~~  
2                   ~~of the following categories are confined:~~  
3                   ~~(a) 1,000 slaughter and feeder cattle,~~  
4                   ~~(b) 700 mature dairy cattle, whether milk or dry~~  
5                   ~~cows,~~  
6                   ~~(c) 500 horses,~~  
7                   ~~(d) 10,000 sheep or lambs,~~  
8                   ~~(e) 55,000 turkeys,~~  
9                   ~~(f) 5,000 ducks, or~~  
10                  ~~(g) 1,000 animal units, and~~  
11                  ~~(2) pollutants are discharged into waters of the~~  
12                  ~~state. Provided, no animal feeding operation~~  
13                  ~~pursuant to this subparagraph shall be construed~~  
14                  ~~to be a concentrated animal feeding operation if~~  
15                  ~~such animal feeding operation discharges only in~~  
16                  ~~the event of a twenty five year, twenty four hour~~  
17                  ~~storm event, or~~  
18                  e. ~~an animal~~ a swine feeding operation which meets the  
19                  following criteria:  
20                  (1) more than the number of ~~animals~~ swine specified  
21                  in any of the following categories are confined:  
22                  (a) ~~300 slaughter or feeder cattle,~~

- 1                   ~~(b)~~ 200 mature dairy cattle, whether milk or dry  
2                                   cows,
- 3                   ~~(c)~~ 750 swine each weighing over 25 kilograms or  
4                                   approximately 55 pounds,
- 5                   ~~(d)~~ (b) 3,000 weaned swine each weighing under 25  
6                                   kilograms,
- 7                   ~~(e)~~ 150 horses,
- 8                   ~~(f)~~ 3,000 sheep or lambs,
- 9                   ~~(g)~~ 16,500 turkeys,
- 10                  ~~(h)~~ 30,000 laying hens or broilers, if the  
11                                   facility has continuous overflow watering,
- 12                  ~~(i)~~ 9,000 laying hens or broilers, if the  
13                                   facility has a liquid manure system,
- 14                  ~~(j)~~ 1,500 ducks, or
- 15                  ~~(k)~~ (c) 300 swine animal units, and
- 16                  (2) either one of the following conditions are met:
- 17                         (a) pollutants are discharged into waters of the  
18                                   state through an artificially constructed  
19                                   ditch, flushing system or other similar  
20                                   artificially constructed device, or
- 21                         (b) pollutants are discharged directly into  
22                                   navigable waters which originate outside of  
23                                   and pass over, across or through the facility

1 or otherwise come into direct contact with  
2 the ~~animals~~ swine confined in the operation.  
3 Provided, however, that no ~~animal~~ swine feeding  
4 operation pursuant to this subparagraph is a  
5 concentrated ~~animal~~ swine feeding operation if ~~such~~  
6 ~~animal~~ the swine feeding operation discharges only in  
7 the event of a twenty-five-year, twenty-four-hour  
8 storm event, or

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

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

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

21 14. "Expanding operation" means:

22 a. a facility that either increases its swine animal unit  
23 capacity to a number that causes the facility to

1 initially meet the definition of a licensed managed  
2 feeding operation, or

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

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

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

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

20 18. "Licensed managed feeding operations ~~(LMFO)~~" means ~~an~~  
21 ~~animal~~ a swine feeding operation primarily using a liquid ~~animal~~  
22 swine waste management system, where ~~animals~~ swine are primarily  
23 housed in a roof-covered structure and which has more than the

1 number of ~~animals~~ swine specified in any of the following categories  
2 confined:

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

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

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

21 21. "Nutrient-limited watershed" means a watershed of a  
22 ~~waterbody~~ water body which is designated as "nutrient-limited" in  
23 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;

1        ~~26.~~ 25. "Process wastewater" means any water utilized in the  
2 facility that comes into contact with any manure, litter, bedding,  
3 raw, intermediate, or final material or product used in or resulting  
4 from the production of ~~animals~~ swine and any products directly or  
5 indirectly used in the operation of a facility, such as spillage or  
6 overflow from ~~animal~~ swine watering systems; washing, cleaning, or  
7 flushing pens, barns, manure pits, direct contact, swimming, washing  
8 or spray cooling of ~~animals~~ swine; and dust control and any  
9 precipitation which comes into contact with ~~animals~~ swine or ~~animal~~  
10 swine waste;

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

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

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

1 waste storage sites, or retention structures or appurtenances or  
2 additions thereto; and

3 ~~30.~~ 29. "Waters of the state" means all streams, lakes, ponds,  
4 marshes, watercourses, waterways, wells, springs, irrigation  
5 systems, drainage systems, storm sewers and all other bodies or  
6 accumulations of water, surface and underground, natural or  
7 artificial, public or private, which are contained within, flow  
8 through or border upon this state or any portion thereof, and shall  
9 include under all circumstances the waters of the United States  
10 which are contained within the boundaries of, flow through or border  
11 upon this state or any portion thereof. ~~Process wastewaters shall~~  
12 Provided, waste treatment systems, including treatment ponds and  
13 lagoons designed to meet federal and state requirements other than  
14 cooling ponds as defined in the Clean Water Act or rules promulgated  
15 pursuant thereto, are not be considered as waters of the state if  
16 ~~contaminated at the site.~~

17 SECTION 4. AMENDATORY 2 O.S. 2001, Section 9-203, as  
18 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
19 2006, Section 20-4), is amended to read as follows:

20 Section 20-4. The State Board of Agriculture is authorized to  
21 promulgate rules for the administration, ~~and implementation,~~ and  
22 enforcement of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
23 Operations Act. For the performance of its duties and

1 responsibilities, the Board is authorized to employ such personnel  
2 and agents as may be required within the funds available.

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

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

11 1. The committee shall consist of:

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

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

14 ~~3. One member~~

15 a. three members who shall represent ~~the~~ pork producers+,1

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

17 ~~5. One~~

18 b. one member who shall represent the field of

19 hydrogeology+,1

20 ~~6. One~~

21 c. one member who shall be a soil scientist+,1

22 ~~7. One~~



1 rule advisory committee at the same time as the Department causes  
2 notice to be published in "The Oklahoma Register" pursuant to  
3 ~~subsection B of Section 303 of Title 75 of the Oklahoma Statutes~~  
4 Administrative Procedures Act. Comments of the rule advisory  
5 committee shall be submitted to the members of the Board at least  
6 fifteen (15) days prior to any official action by the Board on the  
7 rules.

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

11 SECTION 6. AMENDATORY 2 O.S. 2001, Section 9-204.1, as  
12 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
13 2006, Section 20-6), is amended to read as follows:

14 Section 20-6. A. 1. Any ~~animal~~ swine feeding operation  
15 meeting the criteria defining a concentrated ~~animal~~ swine feeding  
16 operation shall be required to obtain a license to operate pursuant  
17 to the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act and  
18 rules promulgated pursuant thereto.

19 2. No ~~animal~~ swine feeding operation which voluntarily obtains  
20 a license pursuant to the ~~Concentrated Animal~~ Oklahoma Swine Feeding  
21 Operations Act shall be considered to be a concentrated ~~animal~~ swine  
22 feeding operation unless the operation meets the definition of  
23 concentrated ~~animal~~ swine feeding operation.

1        3. Any ~~animal~~ other swine feeding operation ~~other than a~~  
2 ~~concentrated animal feeding operation~~, regardless of the number of  
3 ~~animals~~ swine, shall only be required to be licensed pursuant to the  
4 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
5 Operations Act and rules promulgated pursuant thereto if the State  
6 Board of Agriculture determines the operation to be a significant  
7 contributor of pollution to waters of the state ~~pursuant to~~  
8 ~~subsection D of this section.~~

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

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

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

21        D. 1. The State Board of Agriculture may make a case-by-case  
22 designation of concentrated ~~animal~~ swine feeding operations pursuant  
23 to this section. Any ~~animal~~ swine feeding operation may be

1 designated as a concentrated ~~animal~~ swine feeding operation if it is  
2 determined to be a significant contributor of pollution to the  
3 waters of the state. In making this designation, the Board shall  
4 consider the following factors:

- 5 a. the size of the ~~animal~~ swine feeding operation and the  
6 amount of wastes reaching waters of the state,
- 7 b. the location of the ~~animal~~ swine feeding operation  
8 relative to waters of the state,
- 9 c. the means of conveyance of ~~animal~~ swine waste and  
10 wastewater into waters of the state,
- 11 d. the method of disposal for ~~animal~~ swine waste and  
12 process wastewater disposal,
- 13 e. the slope, vegetation, rainfall and other factors  
14 affecting the likelihood or frequency of discharge of  
15 ~~animal~~ swine wastes and process wastewaters into  
16 waters of the state, and
- 17 f. other ~~such~~ factors relative to the significance of the  
18 pollution problem sought to be regulated.

19 2. In no case shall an application for a license be required  
20 from ~~an animal~~ a swine feeding operation pursuant to this subsection  
21 until there has been an on-site inspection of the operation and a  
22 determination by the ~~State~~ Oklahoma Department of Agriculture, Food,  
23 and Forestry that the operation is a concentrated ~~animal~~ swine

1 feeding operation. Should the Department determine that the  
2 operation is a concentrated ~~animal~~ swine feeding operation, the  
3 Department shall notify the operation of ~~such~~ the determination and  
4 of an opportunity for the owner or operator of the facility to  
5 request an administrative hearing on the issue.

6 3. Process wastewater in the overflow may be discharged to  
7 navigable waters whenever rainfall events, either chronic or  
8 catastrophic, cause an overflow of process wastewater from a  
9 retention structure properly designed, constructed and operated to  
10 contain all process wastewaters plus the runoff from a twenty-five-  
11 year, twenty-four-hour rainfall event for the location of the point  
12 source. There shall be no effluent limitations on discharges from a  
13 waste facility constructed and properly maintained to contain the  
14 twenty-five-year, twenty-four-hour storm event; provided the proper  
15 design, construction, and operation of the retention structure shall  
16 include but not be limited to one (1) foot of free board.

17 E. ~~After September 1, 1997, no~~ No new concentrated ~~animal~~ swine  
18 feeding operation or expansion of a concentrated ~~animal~~ swine  
19 feeding operation requiring a license pursuant to the Oklahoma  
20 ~~Concentrated Animal~~ Swine Feeding Operations Act shall be  
21 constructed or placed in operation unless final design plans,  
22 specifications and a Pollution Prevention Plan developed pursuant to

1 Section ~~9-205.2~~ 20-9 of this title have been approved by the  
2 Department.

3 F. ~~After the effective date of this act, no~~ No new licensed  
4 managed feeding operation or expanding operation shall be  
5 constructed until a building permit for such facility or expansion  
6 has been issued by the Department. No new licensed managed ~~animal~~  
7 feeding operation or expanding operation shall be placed in  
8 operation until a license for ~~such~~ the facility or expansion has  
9 been issued by the Department.

10 SECTION 7. AMENDATORY 2 O.S. 2001, Section 9-205, as  
11 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
12 2006, Section 20-7), is amended to read as follows:

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

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

- 21 1. Name and address of the owner and operator of the facility;  
22 2. Name and address of the ~~animal~~ swine feeding operation;

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

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

9           5. A copy of the Pollution Prevention Plan containing ~~an Animal~~  
10 a Swine Waste Management Plan, Best Management Practices, Odor  
11 Abatement Plan or such other plan authorized by the Oklahoma  
12 ~~Concentrated Animal~~ Swine Feeding Operations Act and approved by the  
13 Department;

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

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

21           C. 1. An application for renewal of a license to operate ~~an~~  
22 ~~animal~~ a swine feeding operation shall be considered to be properly

1 filed when the Department has received a completed renewal  
2 application and payment of fees from the applicant.

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

10 D. No new licensed managed feeding operation or expanding  
11 operation shall be constructed until a building permit for such  
12 facility or expansion has been issued by the Department. No new  
13 licensed managed feeding operation shall be placed in operation  
14 until a license for ~~such a~~ the facility or expansion has been issued  
15 by the Department.

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

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

21 2. After receipt of the information required, the Department  
22 shall review the information, and within sixty (60) days, issue

1 approval or denial of the transfer. Transfer of a license shall be  
2 denied only if:

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

15 3. If a transfer is denied, written notification of ~~such~~ the  
16 denial and an opportunity for an administrative hearing on the  
17 denial shall be given to the applicant for a transfer license by the  
18 Department. The notification shall set forth the reasons for the  
19 denial, steps necessary to meet the requirements for a transfer  
20 license, and the opportunity for the applicant to request an  
21 administrative hearing.

22 F. Any suspension or revocation or nonrenewal of a license  
23 issued pursuant to the Oklahoma ~~Concentrated Animal~~ Swine Feeding

1 Operations Act by the Board shall be made in accordance with Section  
2 ~~9-211~~ 20-25 of this title.

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

7 1. a. A statement of ownership.

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

11 (2) If the applicant is a corporation, the name and  
12 address of the corporation and the name and  
13 address of each officer and registered agent of  
14 the corporation shall be included in the  
15 application.

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

21 b. The information contained in the statement of  
22 ownership shall be public information and shall be  
23 available upon request from the Board;

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

3           3. a. An environmental history from the past three (3) years  
4 of any concentrated animal feeding operation or  
5 concentrated swine feeding operation established and  
6 operated by the applicant or any other operation with  
7 common ownership in this state or any other state.

8           ~~Such~~ The environmental history shall include but not  
9 be limited to all citations, administrative orders or  
10 penalties, civil injunctions or other civil actions,  
11 criminal actions, past, current and ongoing, taken by  
12 any person, agency or court relating to noncompliance  
13 with any environmental law, rule, agency order, or  
14 court action relating to the operation of an animal  
15 feeding operation or swine feeding operation.

16           b. A copy of all records relating to the environmental  
17 history required by this paragraph shall accompany the  
18 application.

19           c. Noncompliance with a final agency order or final order  
20 or judgment of a court of record which has been set  
21 aside by a court on appeal of ~~such~~ the final order or  
22 judgment shall not be considered a final order or  
23 judgment for the purposes of this subsection;

1           4. Environmental awards or citations received or pollution  
2 prevention or voluntary remediation efforts undertaken by the  
3 applicant; and

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

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

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

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

5           4. Appropriate curricula and course content shall be developed  
6 under the supervision of Oklahoma State University Cooperative  
7 Extension Service, which shall provide certification to the  
8 Department.

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

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

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

1 SECTION 8. AMENDATORY 2 O.S. 2001, Section 9-205.1, as  
2 renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended  
3 by Section 2, Chapter 129, O.S.L. 2006 (2 O.S. Supp. 2006, Section  
4 20-8), is amended to read as follows:

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

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

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

19 C. 1. After review and after the applicant has submitted any  
20 additional required information to the Department, the Department  
21 shall require the applicant to notify all affected property owners  
22 of the proposed facility or expanding operation. Notice shall be  
23 sent by certified mail, return receipt requested. The notice shall

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

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

10           a. the name and address of the interested party and proof  
11           of standing by showing that the interested party is an  
12           affected property owner,

13           b. a statement of specific allegations showing that the  
14           proposed facility or expanding operation may have a  
15           direct, substantial and immediate effect upon a  
16           legally protected interest of the interested party,  
17           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

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

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

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

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

21 (3) At the hearing, the interested party shall be  
22 afforded a reasonable opportunity to present  
23 evidence and argument in support of the

1           allegations identified in the prehearing order  
2           and the applicant shall be afforded a reasonable  
3           opportunity to present evidence and argument to  
4           controvert those allegations.

5           b.   For new applications submitted on and after August 1,  
6           1998, the Department shall deny the issuance of a  
7           license to an applicant for a licensed managed feeding  
8           operation if an interested party within:

9           (1)   one (1) mile of the designated perimeter of the  
10           proposed licensed managed feeding operation or  
11           expansion thereof, or

12           (2)   the setback distance of an occupied residence if  
13           setback distances are greater than one (1) mile,  
14           proves that the granting of the license will cause  
15           significant harm to the property value of the  
16           interested party.

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

20           6.   Establishment of property usage is the date the ~~animal~~ swine  
21           feeding operation application was made available for public review  
22           versus date of initial construction or placement of occupied  
23           residence and shall be given consideration when determining a

1 contested matter between an applicant and an interested party on  
2 issues other than pollution of the waters of the state.

3 D. 1. In addition to the individual notice, the Department  
4 shall require the applicant to give public notice of the opportunity  
5 to comment on the granting of the license.

6 2. The public notice for a new or expanding operation shall be  
7 published as a legal notice prior to the date the application is  
8 available for public viewing, in at least one newspaper of general  
9 circulation in the county where the proposed facility or expanding  
10 operation is to be located.

11 3. The notice shall identify locations where the application  
12 shall be available for viewing. The locations shall include the  
13 office of the Department and a specific public location in the  
14 county where the proposed facility or expanding operation is to be  
15 located.

16 4. The application shall be available for public review during  
17 normal business hours. The copies of the application posted for  
18 public viewing shall be complete except for proprietary provisions  
19 otherwise protected by law and shall remain posted during normal  
20 business hours for at least twenty (20) working days after notice is  
21 published.

22 5. The Department, as necessary, may hold public meetings at a  
23 location convenient to the population center nearest the proposed

1 facility or expanding operation to address public comments on the  
2 proposed facility or expanding operation.

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

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

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

12 SECTION 9. AMENDATORY 2 O.S. 2001, Section 9-205.2, as  
13 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
14 2006, Section 20-9), is amended to read as follows:

15 Section 20-9. A. A Pollution Prevention Plan shall be  
16 developed by each licensed managed feeding operation prior to the  
17 submission of an application pursuant to the provisions of this  
18 section and rules promulgated by the State Board of Agriculture  
19 pursuant thereto. The Pollution Prevention Plan shall include, but  
20 not be limited to, provisions for documentation of structural  
21 controls, documentation of Best Management Practices, an approved  
22 plan for the disposal of ~~animal~~ swine waste and recordkeeping  
23 provisions.

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

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

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

20           D. If, after reviewing the Pollution Prevention Plan, the  
21 Department determines that the Plan does not meet one or more of the  
22 minimum requirements, the ~~animal~~ swine feeding operation shall make  
23 and implement appropriate changes to the Plan as required by the

1 Department pursuant to the Oklahoma ~~Concentrated Animal~~ Swine  
2 Feeding Operations Act and rules promulgated pursuant thereto.

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

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

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

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

19 3. A spill contingency plan for potential pollutants;

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

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

4           a. the location and a description of existing structural  
5 and nonstructural controls,

6           b. documentation of retention structure capacity and the  
7 assumptions and calculations used in determining the  
8 appropriate volume capacity, and

9           c. a description of the design standards for the  
10 retention facility embankments;

11          6. A description of the design standards for any retention  
12 facilities;

13          7. Training requirements for employees;

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

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

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

22           1. Water level in the retention structure;

23           2. Daily precipitation records from on-site rain gauge;

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

1 independent testing laboratory certified by the Department of  
2 Environmental Quality and approved by the Department.

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

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

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

20 2. ~~Animal~~ Swine feeding operations licensed pursuant to the  
21 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
22 Operations Act other than licensed managed feeding operations shall  
23 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,

- 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

1 to make immediate notification to the Department. The report of the  
2 discharge shall include:

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

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

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

3           C. The ~~Animal~~ Swine Waste Management Plan shall include at a  
4 minimum:

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

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

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

12          4. Requirements including that:

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

1 (2) timing and rate of applications shall be in  
2 response to crop needs, expected precipitation  
3 and soil conditions,  
4 b. land application practices shall be managed so as to  
5 reduce or minimize:  
6 (1) the discharge of process water or ~~animal~~ swine  
7 waste to waters of the state,  
8 (2) contamination of waters of the state, and  
9 (3) odor,  
10 c. facilities including waste retention structures, waste  
11 storage sites, ponds, pipes, ditches, pumps, and  
12 diversion and irrigation equipment shall be maintained  
13 to ensure the ability to fully comply with the terms  
14 of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
15 Operations Act, and  
16 d. adequate equipment and land application area shall be  
17 available for removal of ~~such~~ waste and wastewater as  
18 required to maintain the proper operating volume of  
19 the retention structure; and  
20 5. ~~Such other~~ Other information deemed necessary by the  
21 Department to administer the provisions of the Oklahoma ~~Concentrated~~  
22 ~~Animal~~ Swine Feeding Operations Act and rules promulgated pursuant  
23 thereto.

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

4 E. If the ~~animal~~ swine waste from a licensed managed feeding  
5 operation is sold or given to other persons for land application or  
6 disposal, the licensed managed feeding operation shall maintain a  
7 log of: date of removal from the ~~animal~~ swine feeding operation;  
8 names of such other persons; and amount, in wet tons, dry tons or  
9 cubic yards, of ~~animal~~ swine waste removed from the ~~animal~~ swine  
10 feeding operation.

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

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

20 3. The licensed managed feeding operation shall remain liable  
21 and responsible for compliance with all rules promulgated by the  
22 Board regarding proper handling and disposing of ~~animal~~ swine waste

1 even if ~~such~~ disposal or application is performed by persons not  
2 employed or controlled by the licensed managed feeding operation.

3 G. Soils in areas in which ~~animal~~ swine waste is applied shall  
4 be analyzed, annually, for phosphates, nitrates and soil pH prior to  
5 the first application of the ~~animal~~ swine waste in the calendar  
6 year. A copy of the results of the analysis shall be submitted to  
7 the Department upon request by the Department. Such analysis shall  
8 be retained by the ~~animal~~ swine feeding operation as long as the  
9 facility is in operation.

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

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

17 2. The plan shall include provisions for the disposal of  
18 carcasses associated with normal mortality, with emergency disposal  
19 when a major disease outbreak or other emergency results in deaths  
20 significantly ~~higher than normal~~ higher than normal mortality rates  
21 and other provisions which will provide for a decrease in the  
22 possibility of the spread of disease and prevent the contamination

1 of waters of the state. The plan shall comply with rules  
2 promulgated by the Department.

3 SECTION 11. AMENDATORY 2 O.S. 2001, Section 9-205.3a, as  
4 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
5 2006, Section 20-11), is amended to read as follows:

6 Section 20-11. A. An Odor Abatement Plan shall be developed by  
7 each licensed managed feeding operation prior to the submission of  
8 an application pursuant to the provisions of this section and rules  
9 promulgated by the State Board of Agriculture pursuant thereto. The  
10 Odor Abatement Plan shall include, but not be limited to, provisions  
11 for documentation of structural controls, documentation of Best  
12 Management Practices, odor abatement, and recordkeeping provisions.

13 B. 1. The Odor Abatement Plan shall include specific methods  
14 of odor reduction which shall be tailored to each facility and  
15 created to address each cause of odor listed in paragraph 2 of this  
16 subsection.

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

20 3. The applicant or licensee shall examine the Odor Abatement  
21 Plan at least annually to evaluate the effectiveness of the plan,  
22 modify for changed conditions at the facility and determine if

1 economically feasible technological advances are available and  
2 appropriate for the facility.

3 C. If, after reviewing the Odor Abatement Plan, the ~~State~~  
4 Oklahoma Department of Agriculture, Food, and Forestry determines  
5 that the plan does not adequately meet one or more of the minimum  
6 requirements, the licensed managed feeding operation shall make and  
7 implement appropriate changes to the Plan which may include the  
8 utilization of economically feasible technology designed to abate  
9 odor as required by the Department pursuant to the Oklahoma  
10 ~~Concentrated Animal~~ Swine Feeding Operations Act and rules  
11 promulgated pursuant thereto.

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

- 15 1. Design of the facilities;
- 16 2. Odor control technology to be utilized;
- 17 3. Prevailing wind direction in relation to occupied  
18 residences;
- 19 4. Size of operation;
- 20 5. Distance from facility to occupied residences; and
- 21 6. All information contained in the application.

22 SECTION 12. AMENDATORY 2 O.S. 2001, Section 9-205.4, as  
23 renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended

1 by Section 1, Chapter 148, O.S.L. 2006 (2 O.S. Supp. 2006, Section  
2 20-12), is amended to read as follows:

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

7 B. Except as otherwise provided by Section 20-20 of the  
8 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act, to  
9 prevent hydrologic connections between a retention structure and  
10 waters of the state, all swine feeding operations in this state  
11 primarily using a liquid ~~animal~~ swine waste management system  
12 whether or not such waste facilities are licensed pursuant to the  
13 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act shall:

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

17 2. Provide documentation that there is no hydrologic connection  
18 between the waters of the state and the retention structure. This  
19 documentation shall be certified by an environmental, agricultural,  
20 or other approved professional engineer licensed pursuant to Section  
21 475.12 of Title 59 of the Oklahoma Statutes or a United States  
22 Department of Agriculture Natural Resources Conservation Service  
23 engineer and shall include information on the hydraulic conductivity

1 and thickness of the natural materials underlying and forming the  
2 walls of the containment structure up to the maximum operating  
3 level.

4 C. Except as provided by Section 20-20 of the Oklahoma  
5 ~~Concentrated Animal~~ Swine Feeding Operations Act and subsection E of  
6 this section, all retention structures of licensed managed feeding  
7 operations shall maintain a minimum separation of ten (10) feet  
8 between the bottom of the retention structure and the maximum  
9 historical groundwater elevation that is measured from the bottom of  
10 the retention structure and the highest point of the seasonal  
11 groundwater table. Documentation of a ten-foot separation shall be  
12 established by submission of a soil log from a soil boring extending  
13 a minimum of ten (10) feet below the bottom of all retention  
14 structures to ascertain the presence of groundwater or bedrock and a  
15 statement from a professional engineer certifying the existence of  
16 the ten-foot separation distance.

17 D. The State Board of Agriculture shall establish standards for  
18 retention structures.

19 E. The Department of Agriculture, Food, and Forestry may allow  
20 a separation of less than ten (10) feet but in no event less than  
21 four (4) feet between the bottom of the retention structure and the  
22 maximum historical groundwater elevation. In determining the

1 minimum separation to be required, the Department shall consider the  
2 following factors:

- 3 1. Soil type at the retention structure;
- 4 2. Soil tests per American Standards Testing Methods (ASTM)  
5 standards on all soils to be used as liner material;
- 6 3. Retention structure capacity;
- 7 4. Retention structure design;
- 8 5. Documentation of lack of hydrologic connection between the  
9 waters of the state and the retention structure;
- 10 6. Depth of retention structure;
- 11 7. Type and characteristics of liner to be used; and
- 12 8. Any other relevant information.

13 F. 1. Licensed managed feeding operations shall install and  
14 maintain in good working order a leak detection system or sufficient  
15 monitoring wells both upgradient and downgradient around the  
16 perimeter of each retention structure prior to using the retention  
17 structure for storage of liquid waste pursuant to rules promulgated  
18 by the State Board of Agriculture.

19 2. a. Samples of water shall be collected by the Oklahoma  
20 Department of Agriculture, Food, and Forestry and  
21 submitted for testing at least annually. The analysis  
22 of the water samples shall be performed by a qualified  
23 environmental laboratory approved by the Oklahoma

1 Department of Environmental Quality or by the relevant  
2 certification agency for the state in which the  
3 laboratory is located and approved by the Oklahoma  
4 Department of Agriculture, Food, and Forestry; and the  
5 cost shall be the responsibility of the owner of the  
6 licensed managed feeding operation.

7 b. The frequency of sampling set forth in subparagraph a  
8 of this paragraph may be reduced to once every three  
9 (3) years for those monitoring wells which have been  
10 sampled for at least three (3) consecutive years and  
11 have always been found to be dry. However, if any  
12 subsequent sampling event indicates the monitoring  
13 well is no longer dry, that monitoring well shall be  
14 sampled pursuant to subparagraph a of this paragraph.

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

18 4. Analysis from the sampling taken prior to the operation of  
19 the facility may be considered the baseline data and shall be  
20 retained on site for the life of the facility. If no sampling or  
21 other baseline data is available prior to the operation of the  
22 facility, the samples taken during the first year may be considered  
23 the baseline data and shall be retained on site for the life of the

1 facility. Baseline data for the facility shall be determined based  
2 on the best information available.

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

5 G. Site-specific conditions shall be considered in the design  
6 and construction of liners. Liners for retention structures shall  
7 be designed and constructed in accordance with the provisions of  
8 this section and generally accepted engineering practices  
9 established by rules of the Board or as required by the federal  
10 Environmental Protection Agency. Liners for lagoons owned or  
11 operated by ~~an animal~~ a swine feeding operation with less than one  
12 thousand (1,000) swine animal units may be designed and constructed  
13 pursuant to Technical Note 716 of the United States Department of  
14 Agriculture Natural Resources Conservation Service or its current  
15 equivalent so long as the facility is designed by the United States  
16 Department of Agriculture Natural Resources Conservation Service.

17 H. 1. When a liner is installed to prevent hydrologic  
18 connection, the licensee or the owner shall maintain the liner to  
19 inhibit infiltration of wastewaters. Documentation of liner  
20 maintenance shall be maintained at the facility.

21 2. An environmental, agricultural, or other approved  
22 professional engineer licensed pursuant to Section 475.12 of Title  
23 59 of the Oklahoma Statutes shall conduct a site evaluation every

1 five (5) years on the retention structure of every concentrated  
2 ~~animal~~ swine feeding operation with such a structure and annually on  
3 every licensed managed feeding operation to ensure liner integrity.  
4 If the owner or operator suspects that a retention structure is  
5 leaking, the owner or operator shall report suspected leakage to the  
6 Department.

7 3. The Department shall establish a compliance schedule for  
8 retrofitting liners of waste retention structures for licensed  
9 managed feeding operations constructed prior to August 1, 1998, that  
10 are located in nutrient-limited watersheds or nutrient-vulnerable  
11 groundwaters as designated by the Oklahoma Water Resources Board and  
12 do not have liners meeting the specifications established in this  
13 section.

14 I. All substances entering the retention structures shall be  
15 composed entirely of wastewaters from the proper operation and  
16 maintenance of ~~an animal~~ a swine feeding operation and the runoff  
17 from the ~~animal~~ swine feeding operation area. The disposal of any  
18 materials, other than substances associated with proper operation  
19 and maintenance of the facility into the containment structures,  
20 including but not limited to human waste, is prohibited.

21 J. All new retention structures of licensed managed feeding  
22 operations shall be designed for odor abatement, groundwater  
23 protection, and nutrient conservation.

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

8 SECTION 13. AMENDATORY 2 O.S. 2001, Section 9-205.5, as  
9 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
10 2006, Section 20-13), is amended to read as follows:

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

14 1. An antipollution system, approved by the State Board of  
15 Agriculture, capable of preventing the backflow of ~~such animal~~ swine  
16 waste into the groundwater. The system shall include a safety check  
17 valve with a removable inspection port, anti-syphon vent, and low-  
18 pressure escape drain. An interlock device shall be installed on  
19 pumps that pump the ~~animal~~ swine waste so that if a fresh water  
20 irrigation pump shuts down, the pump that pumps the ~~animal~~ swine  
21 waste will also immediately shut down, preventing the chance of  
22 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 swine waste. ~~Such~~ The system shall be capable of a manual  
4 disconnection between fresh water and the ~~animal~~ swine 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 ~~said~~ the irrigation system shall be  
9 responsible to ensure:

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

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

14           SECTION 14.           AMENDATORY           2 O.S. 2001, Section 9-206, as  
15 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
16 2006, Section 20-14), is amended to read as follows:

17           Section 20-14. A. The State Board of Agriculture or its  
18 authorized agents are empowered to enter upon the premises of any  
19 ~~animal~~ swine feeding operation for the purpose of investigating  
20 complaints as to the operation or to determine whether there are any  
21 violations of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
22 Operations Act. The Department shall make at least one unannounced  
23 inspection per year of every ~~animal~~ swine feeding operation licensed

1 pursuant to the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
2 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 Oklahoma Department of  
6 Agriculture, Food and Forestry when inspecting ~~animal~~ swine feeding  
7 operations pursuant to their official duties specified by the  
8 Oklahoma ~~Concentrated Animal~~ Swine 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~~ Swine Feeding  
12 Operations Act requires the use of the standard precautions as  
13 promulgated by the Board pursuant to paragraph 1 of this subsection,  
14 Department 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~~ Swine Feeding  
19 Operations Act.

20 SECTION 15. AMENDATORY 2 O.S. 2001, Section 9-208, as  
21 amended by Section 22, Chapter 292, O.S.L. 2005, and as renumbered  
22 by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2006, Section  
23 20-15), is amended to read as follows:

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

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

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

17 B. 1. The Department of Environmental Quality shall have  
18 environmental jurisdiction over:

19 a. commercial manufacturers of fertilizers, grain and  
20 feed products, and chemicals, and over manufacturing  
21 of food and kindred products, tobacco, paper, lumber,  
22 wood, textile mill and other agricultural products,

1           b.    slaughterhouses, but not including feedlots at these  
2                    facilities, and  
3           c.    aquaculture and fish hatcheries, including, but not  
4                    limited to, discharges of pollutants and storm water  
5                    to waters of the state, surface impoundments and land  
6                    application of wastes and sludge, and other pollution  
7                    originating at these facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 D. ~~For the license year ending June 30, 2000, and every year~~  
19 ~~thereafter, all 1. All licensed managed feeding operations shall~~  
20 ~~pay an additional license fee for original licenses in an amount~~  
21 ~~equal to eighty cents (\$0.80) per licensed swine animal unit~~  
22 ~~capacity. One-half (1/2) of ~~such~~ the amount shall be due and~~  
23 ~~payable with the application.~~

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

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

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

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

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

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

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

19 B. 1. To establish evidence of financial ability the  
20 Department shall require:

21 a. Category A surety which shall include a financial  
22 statement listing assets and liabilities and including  
23 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,

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

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

1 C. 1. Any ~~animal~~ swine feeding operation licensed pursuant to  
2 the provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
3 Operations Act which does not have any outstanding contempt  
4 citations or fines may post Category A surety.

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

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

19 E. 1. If the Department, after notice and an opportunity for  
20 hearing, determines that the ~~animal~~ swine feeding operation licensed  
21 pursuant to the provisions of the Oklahoma ~~Concentrated Animal~~ Swine  
22 Feeding Operations Act has neglected, failed, or refused to close  
23 any surface impoundment, or remove or cause to be removed any

1 equipment, or has abandoned the facility, then the ~~animal~~ swine  
2 feeding operation shall be deemed to have forfeited the letter of  
3 credit or negotiable instrument required by this section or shall  
4 pay to this state, for deposit in the State Treasury, a sum equal to  
5 the cost of closure of any surface impoundment or removal of  
6 equipment.

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

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

22 F. If title to ~~an animal~~ a swine feeding operation is  
23 transferred, the transferee shall furnish the evidence of financial

1 ability to close surface impoundments required by the provisions of  
2 this section, prior to the transfer.

3 SECTION 18. AMENDATORY 2 O.S. 2001, Section 9-210, as  
4 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
5 2006, Section 20-18), is amended to read as follows:

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

- 10 1. Provide adequate veterinarian services for detection,  
11 control, and elimination of livestock diseases;
- 12 2. Have available for use at all necessary times mechanical  
13 means of scraping, cleaning, and grading feed yards premises; and
- 14 3. Provide weather resistant aprons adjacent to all permanently  
15 affixed feed bunks, water tanks, and feeding devices.

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

1           2. Any ~~animal~~ swine feeding operation licensed pursuant to the  
2 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act, operated  
3 in compliance with ~~such~~ those standards, and in compliance with  
4 rules promulgated by the Board, that is located on land more than  
5 three (3) miles outside the incorporated limits of any municipality  
6 and which is not located within one (1) mile of ten or more occupied  
7 residences shall not be deemed a nuisance unless it is shown by a  
8 preponderance of the evidence that the operation endangers the  
9 health or safety of others.

10           SECTION 19.           AMENDATORY           2 O.S. 2001, Section 9-210.1, as  
11 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
12 2006, Section 20-19), is amended to read as follows:

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

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

22           a. ~~located in the eastern half of the state shall be~~  
23           ~~constructed where its closest waste facility is within~~

1 ~~a distance of one half (1/2) mile of any occupied~~  
2 ~~residence not owned or leased by the owner or operator~~  
3 ~~of the licensed managed feeding operation, or~~

4 ~~b. located in the western half of the state shall be~~  
5 ~~constructed where its closest waste facility is within~~  
6 ~~a distance of three fourths (3/4) mile of any occupied~~  
7 ~~residence not owned or leased by the owner or operator~~  
8 ~~of the licensed managed feeding operation.~~

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

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

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

22 ~~3. No new or expanding animal feeding operation with a capacity~~  
23 ~~of more than three hundred (300) animal units but having one~~

1 thousand (1,000) animal units or less shall be constructed where its  
2 closest waste facility is located within a distance of one fourth  
3 (1/4) mile of any occupied residence not owned or leased by the  
4 owner of the animal feeding operation.

5 B. Except as otherwise authorized by this subsection, no liquid  
6 animal swine waste shall be land applied within five hundred (500)  
7 feet of the nearest corner of an occupied residence not owned or  
8 leased by the owner of the animal swine feeding operation.

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

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

1 in ownership of the applicable property or change in the ownership  
2 of the property on which the ~~animal~~ swine feeding operation is  
3 located shall not affect the validity of the waiver.

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

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

- 11 1. Within three (3) miles of a state park or resort;
- 12 2. On land within three (3) miles of the incorporated limits of  
13 any municipality; or
- 14 3. Within three (3) miles of the high water mark of a surface  
15 public water supply if the concentrated ~~animal~~ swine feeding  
16 operation is located within the drainage basin for the public water  
17 supply.

18 ~~G. F.~~ All distances between occupied residences and ~~animal~~  
19 swine feeding operations shall be measured from the closest corner  
20 of the walls of the occupied residence to the closest point of the  
21 nearest waste facility, as determined by the ~~State Department of~~  
22 ~~Agriculture~~. The property boundary line of the real property is not

1 used unless it coincides with the closest point of the waste  
2 facility or occupied residence.

3 SECTION 20. AMENDATORY 2 O.S. 2001, Section 9-210.2, as  
4 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
5 2006, Section 20-20), is amended to read as follows:

6 Section 20-20. A. 1. ~~Any concentrated animal feeding~~  
7 ~~operation which is licensed by or which has submitted a~~  
8 ~~substantially completed application to the State Department of~~  
9 ~~Agriculture on or before September 1, 1997, shall be required to~~  
10 ~~comply with all applicable provisions within one (1) year of such~~  
11 ~~date or may enter into a compliance schedule with the Department to~~  
12 ~~come into compliance.~~

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

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

9        2. ~~The provisions of Section 9-210.1 of this title relating to~~  
10 ~~setback requirements and the provisions of subsections B and C of~~  
11 ~~Section 9-205.4 of this title relating to utilization of liners in~~  
12 ~~retention structures or documentation of no hydrologic connection~~  
13 ~~and to a minimum separation of four (4) feet between the bottom of~~  
14 ~~the retention structure and the maximum groundwater elevation shall~~  
15 ~~not apply to the facilities specified by this subsection.~~

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

21        2. ~~Provided, that the provisions of subsections B and C of~~  
22 ~~Section 9-205.4 of this title relating to utilization of liners in~~  
23 ~~retention structures or documentation of no hydrologic connection~~

1 ~~and to a minimum separation of four (4) feet between the bottom of~~  
2 ~~the retention structure and the maximum groundwater elevation shall~~  
3 ~~not apply to facilities specified by this subsection except as a~~  
4 ~~condition to the issuance of a license pursuant to the provisions of~~  
5 ~~the Oklahoma Concentrated Animal Feeding Operations Act.~~

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

9 SECTION 21. AMENDATORY 2 O.S. 2001, Section 9-210.3, as  
10 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
11 2006, Section 20-21), is amended to read as follows:

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

- 18 1. More than 4000 swine animal units.....2 miles;
- 19 2. 2001 to 4000 swine animal units.....1 1/4 miles;
- 20 3. 1001 to 2000 swine animal units.....3/4 mile;
- 21 4. 601 to 1000 swine animal units.....1/2 mile;
- 22 5. 300 to 600 swine animal units.....1/4 mile; and
- 23 6. Less than 300 swine animal units.....no setback.

1           B. Except as otherwise provided by this section, no licensed  
2 managed feeding operation which applies for a new or expanding  
3 concentrated ~~animal~~ swine feeding operation license ~~after March 9,~~  
4 ~~1998,~~ shall be located within three (3) miles of the outside  
5 boundary of any area or facility owned or operated as a camp or  
6 recreational site by a nonprofit organization established prior to  
7 application of the concentrated ~~animal~~ swine feeding operation.

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

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

- 1           1. Within three (3) miles of any designated scenic river area  
2 as specified by the Scenic Rivers Act;
- 3           2. Within three (3) miles of the outside boundary of any  
4 historic property or museum owned by the State of Oklahoma;
- 5           3. Within three (3) miles of a public drinking water well;
- 6           4. Within one (1) mile of a ~~waterbody~~ water body specified as  
7 Outstanding Resource Waters that has recreational or ecological  
8 significance as outlined by the most current Water Quality Standards  
9 promulgated by the Oklahoma Water Resources Board; or
- 10          5. Within three (3) miles of a national park designated by the  
11 United States Department of the Interior National Park Service.
- 12          E. All distances between occupied residences and ~~animal~~ swine  
13 feeding operations shall be measured from the closest corner of the  
14 walls of the occupied residence to the closest point of the nearest  
15 waste facility, as determined by the ~~State~~ Oklahoma Department of  
16 Agriculture, Food, and Forestry. The property boundary line of the  
17 real property is not used unless it coincides with the closest point  
18 of the waste facility or occupied residence.
- 19          F. The provisions of this section shall not apply to any ~~animal~~  
20 swine feeding operation which has been licensed by or which had  
21 submitted an application to the ~~State~~ Department ~~of Agriculture~~ on  
22 or prior to March 9, 1998. In addition, the provisions of this  
23 section shall not apply to any ~~animal~~ swine feeding operation with a

1 capacity of 2000 swine animal units or less which was established  
2 prior to June 1, 1998.

3 SECTION 22. AMENDATORY Section 23, Chapter 292, O.S.L.  
4 2005 (2 O.S. Supp. 2006, Section 20-22), is amended to read as  
5 follows:

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

15 SECTION 23. AMENDATORY 2 O.S. 2001, Section 20-49, as  
16 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
17 2006, Section 20-23), is amended to read as follows:

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

20 1. A diseased or potentially diseased ~~animal~~ swine exists at  
21 the operation; or

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

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

4           a. a public health emergency,

5           b. a substantial and imminent economic hardship to the  
6 owner, or

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

9           4. The State Board of Agriculture issues an order establishing  
10 temporary restrictions, a quarantine, or a quarantine zone  
11 restricting the movement of persons, livestock, machinery, and  
12 personal property out of a concentrated ~~animal~~ swine feeding  
13 operation.

14           B. In no case shall ~~an~~ a swine animal unit capacity be exceeded  
15 for more than five (5) days following a confirmatory test indicating  
16 that either the ~~animal~~ swine is diseased or is not diseased. A  
17 confirmatory test shall be performed within twenty (20) days of  
18 discovery that a diseased or potentially diseased ~~animal~~ swine  
19 exists at the operation.

20           C. The owner of a concentrated ~~animal~~ swine feeding operation  
21 shall provide written notification to the Oklahoma Department of  
22 Agriculture, Food, and Forestry upon discovery of a diseased or  
23 potentially diseased ~~animal~~ swine pursuant to subsection A of this

1 section that may result in the swine animal unit capacity being  
2 exceeded.

3 D. The notice shall:

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

6 2. Include an estimate of the number of ~~animals~~ swine exceeding  
7 the swine animal unit capacity at the concentrated ~~animal-unit~~ swine  
8 feeding operation.

9 SECTION 24. AMENDATORY 2 O.S. 2001, Section 9-211, as  
10 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
11 2006, Section 20-25), is amended to read as follows:

12 Section 20-25. A. 1. The State Board of Agriculture is  
13 authorized and directed to promulgate a violation points system for  
14 violating the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations  
15 Act, which provides greater punishment for violations which are  
16 intentional and for violations which pose a greater threat to the  
17 environment.

18 2. The State Board of Agriculture shall have the power to  
19 suspend, revoke or not renew the license of any ~~animal~~ swine feeding  
20 operation based on ~~such~~ the point system after a hearing, and after  
21 an administrative determination that ~~such animal~~ the swine feeding  
22 operation has violated or has failed to comply with any of the

1 provisions of the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
2 Operations Act, or any rule promulgated pursuant thereto.

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

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

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

21 2. Has evidenced a reckless disregard for the protection of the  
22 public and the environment as demonstrated by a history of

1 noncompliance with environmental laws and rules resulting in  
2 endangerment of human health or the environment.

3 C. Any action taken in regard to the denial, suspension or  
4 revocation of a license shall be in conformity with the rules of the  
5 Board governing Administrative Procedures and the Administrative  
6 Procedures Act.

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

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

16 B. Any owner or operator who fails to take such action as may  
17 be reasonable and necessary to avoid pollution of any stream, lake,  
18 river or creek, except as otherwise provided by law, or who violates  
19 any rule of the Board adopted to prevent water pollution from ~~animal~~  
20 swine feeding operations pursuant to this act shall, upon  
21 conviction, be deemed guilty of a misdemeanor, and upon conviction  
22 thereof may be punished by a fine of Five Hundred Dollars (\$500.00)  
23 to Ten Thousand Dollars (\$10,000.00) for each violation, by

1 imprisonment in the county jail for not more than six (6) months for  
2 each violation, or by the assessment of a civil penalty up to Ten  
3 Thousand Dollars (\$10,000.00) for each violation or by any of such  
4 fine, imprisonment, and civil penalty.

5 C. 1. In addition to the criminal and civil penalties  
6 specified by this section, the State Oklahoma Department of  
7 Agriculture, Food, and Forestry may:

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

11 b. bring an action for injunctive relief granted by a  
12 district court.

13 2. A district court may grant injunctive relief to prevent a  
14 violation of, or to compel compliance with, any of the provisions of  
15 the Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act or any  
16 rule promulgated thereunder or order, license or permit issued  
17 pursuant to the Oklahoma ~~Concentrated Animal~~ Swine Feeding  
18 Operations Act.

19 3. Nothing in this section shall preclude the Department from  
20 seeking penalties in district court in the maximum amount allowed by  
21 law. The assessment of penalties in an administrative enforcement  
22 proceeding shall not prevent the subsequent assessment by a court of

1 the maximum civil or criminal penalties for violations of the  
2 Oklahoma ~~Concentrated Animal~~ Swine Feeding Operations Act.

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

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

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

- 19 a. the district attorney of the appropriate district  
20 court of the State of Oklahoma,  
21 b. the Attorney General on behalf of the State of  
22 Oklahoma, or  
23 c. the Department on behalf of the State of Oklahoma.

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

5           3. It shall be the duty of the Attorney General and district  
6 attorney if requested by the Commissioner of Agriculture to bring  
7 such actions.

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

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

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

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

9 SECTION 26. AMENDATORY 2 O.S. 2001, Section 9-212.1, as  
10 renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
11 2006, Section 20-27), is amended to read as follows:

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

19 B. If three valid complaints are received by the Department  
20 against a poultry-laying operation, licensed pursuant to the  
21 Oklahoma Concentrated Animal Feeding Operations Act, within a period  
22 of sixty (60) days, the Oklahoma Department of Agriculture, Food,

1 and Forestry, upon inspection and verification of the complaint,  
2 shall declare that an emergency exists.

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

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

21 E. Any party aggrieved by a final order may petition the  
22 Department for rehearing, reopening or reconsideration within ten  
23 (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.

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

1 race meetings pursuant to the Oklahoma Horse Racing Act if the  
2 facility discharges to a publicly owned treatment works, or an  
3 aquatic animal production facility;

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

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

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

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

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

1           8. "Best Management Practices" means schedules of activities,  
2 prohibitions of practices, maintenance procedures, and other  
3 management practices to prevent or reduce the pollution of waters of  
4 the state as established by the Oklahoma Department of Agriculture,  
5 Food, and Forestry pursuant to Section 36 of this act;

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

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

11          11. "Concentrated animal feeding operation" means:

12           a. an animal feeding operation which meets the following  
13 criteria:

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

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

17           (b) 700 mature dairy cattle, whether milk or dry  
18 cows,

19           (c) 500 horses,

20           (d) 10,000 sheep or lambs,

21           (e) 55,000 turkeys,

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

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

3 (h) 5,000 ducks, or

4 (i) 1,000 animal units, and

5 (2) pollutants are discharged into waters of the  
6 state.

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

12 b. an animal feeding operation which meets the following  
13 criteria:

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

16 (a) 300 slaughter or feeder cattle,

17 (b) 200 mature dairy cattle, whether milk or dry  
18 cows,

19 (c) 150 horses,

20 (d) 3,000 sheep or lambs,

21 (e) 16,500 turkeys,

22 (f) 30,000 laying hens or broilers, if the  
23 facility has continuous overflow watering,

1 (g) 9,000 laying hens or broilers, if the  
2 facility has a liquid manure system,

3 (h) 1,500 ducks, or

4 (i) 300 animal units, and

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

7 (a) pollutants are discharged into waters of the  
8 state through an artificially constructed  
9 ditch, flushing system or other similar  
10 artificially constructed device, or

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

16 Provided, however, that no animal feeding operation  
17 pursuant to this subparagraph is a concentrated animal  
18 feeding operation if the animal feeding operation  
19 discharges only in the event of a twenty-five-year,  
20 twenty-four-hour storm event, or

21 c. the Board determines that the operation is a  
22 significant contributor of pollution to waters of the  
23 state pursuant to Section 32 of this act;

1           12. "Department" means the Oklahoma Department of Agriculture,  
2 Food, and Forestry;

3           13. "Designated perimeter" means the perimeter of any structure  
4 or combination of structures utilized to control animal waste until  
5 it can be disposed of in an authorized manner. The structures shall  
6 include but not be limited to pits, burial sites, barns or roof-  
7 covered structures housing animals, composters, waste storage sites,  
8 or retention structures or appurtenances or additions thereto;

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

13           15. "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 Feeding Operations  
16 Act and rules promulgated pursuant thereto regarding the issuance of  
17 an animal feeding operation license and asserts rights to relief in  
18 respect to or arising out of the same license;

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

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

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

7        19. "Nutrient-vulnerable groundwater" means groundwater which  
8 is designated "nutrient-vulnerable" in the most recent Oklahoma  
9 Water Quality Standards;

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

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

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

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

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

20       25. "Waters of the state" means all streams, lakes, ponds,  
21 marshes, watercourses, waterways, wells, springs, irrigation  
22 systems, drainage systems, storm sewers and all other bodies or  
23 accumulations of water, surface and underground, natural or

1 artificial, public or private, which are contained within, flow  
2 through or border upon this state or any portion thereof, and shall  
3 include under all circumstances the waters of the United States  
4 which are contained within the boundaries of, flow through or border  
5 upon this state or any portion thereof. Provided, waste treatment  
6 systems, including treatment ponds and lagoons, designed to meet  
7 federal and state requirements other than cooling ponds as defined  
8 in the Clean Water Act or rules promulgated pursuant thereto are not  
9 waters of the state.

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

13 The State Board of Agriculture is authorized to promulgate rules  
14 for the administration, implementation, and enforcement of the  
15 Oklahoma Concentrated Animal Feeding Operations Act. For the  
16 performance of its duties and responsibilities, the Board is  
17 authorized to employ such personnel and agents as may be required  
18 with the funds available.

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

22 A. The State Board of Agriculture shall appoint a rule advisory  
23 committee who, without compensation, shall act as advisors to the

1 Board in the formulation of the rules promulgated pursuant to the  
2 Oklahoma Concentrated Animal Feeding Operations Act.

3 1. The committee shall consist of:

- 4 a. one member who shall represent the beef cattle  
5 producers,
- 6 b. one member who shall represent the dairy producers,
- 7 c. one member who shall represent the poultry producers,
- 8 d. one member who shall represent the field of  
9 hydrogeology,
- 10 e. one member who shall be a soil scientist,
- 11 f. one member designated by the Secretary of the  
12 Environment,
- 13 g. one member who shall be a professional engineer,
- 14 h. one member who shall represent the field of water  
15 quality science,
- 16 i. one member who shall represent the field of ecology,  
17 and
- 18 j. two members who shall represent the general public.

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

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

4           B.       Except for emergency rules, proposed rules shall be  
5 submitted to the rule advisory committee at the same time as the  
6 Department causes notice to be published in "The Oklahoma Register"  
7 pursuant to the Administrative Procedures Act. Comments of the rule  
8 advisory committee shall be submitted to the members of the Board at  
9 least fifteen (15) days prior to any official action by the Board on  
10 the rules.

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

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

17          A.    1.    Any animal feeding operation meeting the criteria  
18 defining a concentrated animal feeding operation shall be required  
19 to obtain a license to operate pursuant to the Oklahoma Concentrated  
20 Animal Feeding Operations Act and rules promulgated pursuant  
21 thereto.

22          2.    No animal feeding operation which voluntarily obtains a  
23 license pursuant to the Oklahoma Concentrated Animal Feeding

1 Operations Act shall be considered to be a concentrated animal  
2 feeding operation unless the operation meets the definition of  
3 concentrated animal feeding operation.

4 3. Any animal feeding operation other than a concentrated  
5 animal feeding operation, regardless of the number of animals, shall  
6 only be required to be licensed pursuant to the provisions of the  
7 Oklahoma Concentrated Animal Feeding Operations Act and rules  
8 promulgated pursuant thereto if the State Board of Agriculture  
9 determines the operation to be a significant contributor of  
10 pollution to waters of the state pursuant to subsection C of this  
11 section.

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

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

- 1           a.    the size of the animal feeding operation and the  
2                    amount of wastes reaching waters of the state,  
3           b.    the location of the animal feeding operation relative  
4                    to waters of the state,  
5           c.    the means of conveyance of animal waste and wastewater  
6                    into waters of the state,  
7           d.    the method of disposal for animal waste and process  
8                    wastewater disposal,  
9           e.    the slope, vegetation, rainfall and other factors  
10                   affecting the likelihood or frequency of discharge of  
11                   animal wastes and process wastewaters into waters of  
12                   the state, and  
13           f.    other such factors relative to the significance of the  
14                   pollution problem sought to be regulated.

15           2.    In no case shall an application for a license be required  
16                   from an animal feeding operation pursuant to this subsection until  
17                   there has been an on-site inspection of the operation and a  
18                   determination by the Oklahoma Department of Agriculture, Food, and  
19                   Forestry that the operation is a concentrated animal feeding  
20                   operation. Should the Department determine that the operation is a  
21                   concentrated animal feeding operation, the Department shall notify  
22                   the operation of the determination and of an opportunity for the

1 owner or operator of the facility to request an administrative  
2 hearing on the issue.

3 3. Process wastewater in the overflow may be discharged to  
4 navigable waters whenever rainfall events, either chronic or  
5 catastrophic, cause an overflow of process wastewater from a  
6 retention structure properly designed, constructed and operated to  
7 contain all process wastewaters plus the runoff from a twenty-five-  
8 year, twenty-four-hour rainfall event for the location of the point  
9 source. There shall be no effluent limitations on discharges from a  
10 waste facility constructed, and properly maintained to contain the  
11 twenty-five-year, twenty-four-hour storm event; provided the proper  
12 design, construction, and operation of the retention structure shall  
13 include, but not be limited to, one (1) foot of free board.

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

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

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

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

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

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

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

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

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

22          6. A copy of the written waiver by an adjacent property owner  
23 to the facility releasing specified setback requirements as provided

1 by Section 44 of the Oklahoma Concentrated Animal Feeding Operations  
2 Act; and

3 7. Any other information deemed necessary by the Oklahoma  
4 Department of Agriculture, Food, and Forestry to administer the  
5 provisions of the Oklahoma Concentrated Animal Feeding Operations  
6 Act and rules promulgated pursuant thereto.

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

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

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

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

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

- 5           a. the new owner or operator cannot comply with the  
6                 requirements of transfer,
- 7           b. the Department finds a material or substantial change  
8                 in conditions since the issuance of the original  
9                 license to operate the animal feeding operation,
- 10          c. failure of the new owner or operator to meet any other  
11                 conditions or requirements for compliance established  
12                 by the Department pursuant to the Oklahoma  
13                 Concentrated Animal Feeding Operations Act and rules  
14                 promulgated pursuant thereto, or
- 15          d. the new owner or operator has failed to meet the  
16                 requirements of Section 48 of the Oklahoma  
17                 Concentrated Animal Feeding Operations Act; and

18          3. If a transfer is denied, written notification of the denial  
19 and an opportunity for an administrative hearing on the denial shall  
20 be given to the applicant for a transfer license by the Department.  
21 The notification shall set forth the reasons for the denial, steps  
22 necessary to meet the requirements for a transfer license, and the  
23 opportunity for the applicant to request an administrative hearing.

1 E. Any suspension or revocation or nonrenewal of a license  
2 issued pursuant to the Oklahoma Concentrated Animal Feeding  
3 Operations Act by the Board shall be made in accordance with Section  
4 48 of this act.

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

9 1. a. A statement of ownership.

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

13 (2) If the applicant is a corporation, the name and  
14 address of the corporation and the name and  
15 address of each officer and registered agent of  
16 the corporation shall be included in the  
17 application.

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

- 1           b.    The information contained in the statement of  
2                   ownership shall be public information and shall be  
3                   available upon request from the Board;
- 4           2.    The name and address of the management, if the management is  
5 not the applicant and is acting as agent for the applicant;
- 6           3.    a.   An environmental history from the past three (3) years  
7                   of any concentrated animal or swine feeding operation  
8                   established and operated by the applicant or any other  
9                   operation with common ownership in this state or any  
10                  other state.  The environmental history shall include  
11                  but not be limited to all citations, administrative  
12                  orders or penalties, civil injunctions or other civil  
13                  actions, criminal actions, past, current and ongoing,  
14                  taken by any person, agency or court relating to  
15                  noncompliance with any environmental law, rule, agency  
16                  order, or court action relating to the operation of an  
17                  animal or swine feeding operation.
- 18           b.    A copy of all records relating to the environmental  
19                  history required by this paragraph shall accompany the  
20                  application.
- 21           c.    Noncompliance with a final agency order or final order  
22                  or judgment of a court of record which has been set  
23                  aside by a court on appeal of the final order or

1 judgment shall not be considered a final order or  
2 judgment for the purposes of this subsection;

3 4. Environmental awards or citations received or pollution  
4 prevention or voluntary remediation efforts undertaken by the  
5 applicant; and

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

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

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

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

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

5       2. Notice requirements shall include notice to affected  
6 property owners by certified mail, return receipt requested pursuant  
7 to subsection C of this section and public notice pursuant to  
8 subsection D of this section.

9       B. After submission of a completed application as provided by  
10 the Oklahoma Concentrated Animal Feeding Operations Act and rules  
11 promulgated pursuant thereto, the Oklahoma Department of  
12 Agriculture, Food, and Forestry shall have sixty (60) working days  
13 to review the application for a new operation for physical and  
14 technical suitability.

15       C. 1. After review and after the applicant has submitted any  
16 additional required information to the Department, the Department  
17 shall require the applicant to notify all affected property owners  
18 of the proposed facility. Notice shall be sent by certified mail,  
19 return receipt requested. The notice shall identify that an  
20 application for a new animal feeding operation has been submitted to  
21 the Department, the location where the facility is to be located,  
22 that a hearing may be requested pursuant to this subsection, and the  
23 date the application will be available for public review beginning

1 no earlier than the day following the certified mailing of all the  
2 required notices, and any other information required by the  
3 Department.

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

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

14 3. If any of the affected property owners request an  
15 administrative hearing and all information listed in paragraph 2 of  
16 this subsection is found to be complete and adequate in the request  
17 for hearing, the scheduling conference for the hearing shall be held  
18 by the Department at a reasonable time within sixty (60) calendar  
19 days after the close of the public review period. Should the  
20 interested party have failed to provide any of the information  
21 listed in paragraph 2 of this subsection, the interested party shall  
22 have thirty (30) calendar days with which to cure any deficiencies  
23 after notice by the Department of such failure and receipt thereof

1 in writing by the interested party. All interested parties may be  
2 joined as parties to the hearing.

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

7 a. Prior to the hearing, and after a reasonable  
8 opportunity for discovery, the interested party shall  
9 identify with specificity the reasons why the  
10 applicant has failed to show that the application  
11 should be granted.

12 b. In a prehearing order, the Department shall identify  
13 the allegations that are relevant and applicable to  
14 the hearing.

15 c. At the hearing, the interested party shall be afforded  
16 a reasonable opportunity to present evidence and  
17 argument in support of the allegations identified in  
18 the prehearing order and the applicant shall be  
19 afforded a reasonable opportunity to present evidence  
20 and argument to controvert those allegations.

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

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

7           D. 1. In addition to the individual notice, the Department  
8 shall require the applicant to give public notice of the opportunity  
9 to comment on the granting of the license.

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

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

18           4. The application shall be available for public review during  
19 normal business hours. The copies of the application posted for  
20 public viewing shall be complete except for proprietary provisions  
21 otherwise protected by law and shall remain posted during normal  
22 business hours for at least twenty (20) working days after notice is  
23 published.

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

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

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

10          2. Proof of publication notice of a new application for an  
11 animal feeding operation license.

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

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

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

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

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

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

- 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          F. 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

1 Animal Feeding Operations Act and rules promulgated pursuant  
2 thereto;

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

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

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

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

1 structures if the facility ceases to function or is ordered to close  
2 by action of the Department.

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

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

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

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

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

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

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

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

6           b. not result in the contamination of public or private  
7 drinking water supplies,

8           c. conform with Oklahoma Water Quality Standards,

9           d. not violate any state or federal laws relating to  
10 endangered or threatened species of plant, fish or  
11 wildlife or to migratory birds,

12           e. conform to such other handling, treatment and  
13 management and removal requirements deemed necessary  
14 by the Oklahoma Department of Agriculture, Food, and  
15 Forestry to implement the Oklahoma Concentrated Animal  
16 Feeding Operations Act and rules promulgated pursuant  
17 thereto, and

18           f. ensure that watersheds and groundwater are adequately  
19 protected;

20           5. If, for any reason, there is a discharge other than a spill  
21 of less than one hundred (100) gallons, the licensee is required to  
22 make immediate notification to the Department. The report of the  
23 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 other  
15                   parameters as required by the Department which the  
16                   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.

- 1 C. The Animal Waste Management Plan shall include at a minimum:
- 2 1. Animal waste removal procedures;
- 3 2. Records of inspections of retention structures, including,
- 4 but not limited to, specific measurement of wastewater level;
- 5 3. All calculations in determining land application rates,
- 6 acreage and crops for the land application rate of both solid and
- 7 liquid animal wastes on land owned or controlled by the licensee;
- 8 4. Requirements including that:
- 9 a. (1) land application of animal waste shall not exceed
- 10 the nitrogen uptake of the crop coverage or
- 11 planned crop planting with any land application
- 12 of wastewater or manure. Where local water
- 13 quality is threatened by phosphorous, in no case
- 14 shall the applicant or licensee exceed the
- 15 application rates in the most current Natural
- 16 Resources Conservation Service publication titled
- 17 Waste Utilization Standard, and
- 18 (2) timing and rate of applications shall be in
- 19 response to crop needs, expected precipitation
- 20 and soil conditions,
- 21 b. land application practices shall be managed so as to
- 22 reduce or minimize:

1                   (1) the discharge of process water or animal waste to  
2                   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 ability to fully comply with the terms of  
9           the Oklahoma Concentrated Animal Feeding Operations  
10          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 information deemed necessary by the Department to  
16          administer the provisions of the Oklahoma Concentrated Animal  
17          Feeding Operations Act and rules promulgated pursuant thereto.  
18          D. Records shall be maintained of all animal wastes applied on  
19          land owned or controlled by the licensee, and sold or given to other  
20          persons for disposal.  
21          E. Soils in areas in which animal waste is applied shall be  
22          analyzed, annually, for phosphates, nitrates and soil pH prior to  
23          the first application of the animal waste in the calendar year. A

1 copy of the results of the analysis shall be submitted to the  
2 Department upon request by the Department. Such analysis shall be  
3 retained by the animal feeding operation as long as the facility is  
4 in operation.

5 F. Every animal feeding operation licensed pursuant to the  
6 provisions of Oklahoma Concentrated Animal Feeding Operations Act  
7 shall develop a plan approved by the Department for the disposal of  
8 carcasses associated with normal mortality.

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

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

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

1           A. Any hydrologic connection between wastewater and waters of  
2 the state outside that authorized by the provisions of the Oklahoma  
3 Concentrated Animal Feeding Operations Act shall constitute a  
4 discharge to waters of the state.

5           B. Site-specific conditions shall be considered in the design  
6 and construction of liners. Liners for retention structures shall  
7 be designed and constructed in accordance with the provisions of  
8 this section and generally accepted engineering practices  
9 established by rules of the Board or as required by the federal  
10 Environmental Protection Agency. Liners for lagoons owned or  
11 operated by an animal feeding operation with less than one thousand  
12 (1,000) animal units may be designed and constructed pursuant to  
13 Technical Note 716 of the United States Department of Agriculture  
14 Natural Resources Conservation Service or its current equivalent so  
15 long as the facility is designed by the United States Department of  
16 Agriculture Natural Resources Conservation Service.

17           C. 1. When a liner is installed to prevent hydrologic  
18 connection, the licensee or the owner shall maintain the liner to  
19 inhibit infiltration of wastewaters. Documentation of liner  
20 maintenance shall be maintained at the facility.

21           2. An environmental, agricultural, or other approved  
22 professional engineer licensed pursuant to Section 475.12 of Title  
23 59 of the Oklahoma Statutes shall conduct a site evaluation every

1 five (5) years on the retention structure of every concentrated  
2 animal feeding operation with such a structure to ensure liner  
3 integrity. If the owner or operator suspects that a retention  
4 structure is leaking, the owner or operator shall report suspected  
5 leakage to the Department.

6 D. All substances entering the retention structures shall be  
7 composed entirely of wastewaters from the proper operation and  
8 maintenance of an animal feeding operation and the runoff from the  
9 animal feeding operation area. The disposal of any materials, other  
10 than substances associated with proper operation and maintenance of  
11 the facility into the containment structures, including but not  
12 limited to human waste, is prohibited.

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

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

1           A. All irrigation systems into which any animal waste will be  
2 injected shall be equipped with one or both of the following  
3 systems:

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

12           2. A system which provides for a complete and total  
13 disconnection between the flow of fresh water and the flow of animal  
14 waste. The system shall be capable of a manual disconnection  
15 between fresh water and the animal waste.

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

19           C. The operator of the irrigation system shall be responsible  
20 to ensure:

21           1. That the valves and interlock devices remain operative  
22 between annual inspections by the Oklahoma Department of  
23 Agriculture, Food, and Forestry; or

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

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

6           A. The State Board of Agriculture or its authorized agents are  
7 empowered to enter upon the premises of any animal feeding operation  
8 for the purpose of investigating complaints as to the operation or  
9 to determine whether there are any violations of the Oklahoma  
10 Concentrated Animal Feeding Operations Act. The Department shall  
11 make at least one unannounced inspection per year of every animal  
12 feeding operation licensed pursuant to the Oklahoma Concentrated  
13 Animal Feeding Operations Act.

14           B. 1. The Board shall promulgate standard precautions for the  
15 prevention of the transmission of communicable diseases to humans  
16 and animals to be used by employees of the Department of  
17 Agriculture, Food, and Forestry when inspecting animal feeding  
18 operations pursuant to their official duties specified by the  
19 Oklahoma Concentrated Animal Feeding Operations Act and rules  
20 promulgated pursuant thereto.

21           2. Except for emergency situations or when enforcement of the  
22 provisions of the Oklahoma Concentrated Animal Feeding Operations  
23 Act requires the use of the standard precautions as promulgated by

1 the Board pursuant to paragraph 1 of this subsection, Department  
2 employees shall observe the health standards and sanitary  
3 requirements of the facility.

4 C. The Board shall maintain necessary records and undertake  
5 such studies, investigations and surveys for the proper  
6 administration of the Oklahoma Concentrated Animal Feeding  
7 Operations Act.

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

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

14 2. The owner or operator of an animal feeding operation not  
15 classified as a concentrated animal feeding operation may apply for  
16 a license if the owner or operator elects to come under the  
17 provisions of the Oklahoma Concentrated Animal Feeding Operations  
18 Act and the rules of the State Board of Agriculture.

19 B. 1. The Department of Environmental Quality shall have  
20 environmental jurisdiction over:

21 a. commercial manufacturers of fertilizers, grain and  
22 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 41. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 20-54 of Title 2, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. Licenses shall expire on June 30 of each year and may be  
20 renewed upon payment of the license fee set forth in this section  
21 and continued compliance with the provisions of the Oklahoma  
22 Concentrated Animal Feeding Operations Act and the rules of the  
23 Board.

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

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

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

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

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

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

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

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

21          A. Any person who is licensed to operate an animal feeding  
22 operation with a liquid animal waste management system within this  
23 state shall furnish to the Oklahoma Department of Agriculture, Food,

1 and Forestry evidence of financial ability to comply with the  
2 requirements for closure of retention structures and other waste  
3 facilities as established pursuant to the provisions of this section  
4 and rules promulgated by the State Board of Agriculture.

5 B. 1. To establish evidence of financial ability the  
6 Department shall require:

7 a. Category A surety which shall include a financial  
8 statement listing assets and liabilities and including  
9 a general release that the information may be verified  
10 with banks and other financial institutions. The  
11 financial statement shall be confidential and shall  
12 not be opened to public inspection. The statement  
13 shall prove a net worth of not less than:

- 14 (1) Ten Thousand Dollars (\$10,000.00) for any animal  
15 feeding operation licensed pursuant to the  
16 Oklahoma Concentrated Animal Feeding Operations  
17 Act having a capacity of more than three hundred  
18 (300) animal units but having one thousand  
19 (1,000) animal units or less,  
20 (2) Twenty-five Thousand Dollars (\$25,000.00) for any  
21 animal feeding operation licensed pursuant to the  
22 Oklahoma Concentrated Animal Feeding Operations  
23 Act having a capacity of more than one thousand

1 (1,000) animal units but less than two thousand  
2 (2,000) animal units, or  
3 (3) Fifty Thousand Dollars (\$50,000.00) for any  
4 animal feeding operation licensed pursuant to the  
5 Oklahoma Concentrated Animal Feeding Operations  
6 Act having a capacity of more than two thousand  
7 (2,000) animal units, or  
8 b. Category B surety which shall include an irrevocable  
9 commercial letter of credit, cash, a cashier's check,  
10 a Certificate of Deposit, Bank Joint Custody Receipt,  
11 other negotiable instrument or a blanket surety bond.  
12 Except as provided in paragraph 2 of this subsection,  
13 amount of such letter of credit, cash, check,  
14 certificate, bond, receipt or other negotiable  
15 instrument shall be in the amount of Twenty-five  
16 Thousand Dollars (\$25,000.00). The Department is  
17 authorized to determine the amount of Category B  
18 surety based upon the past performance of the owner or  
19 operator regarding compliance with the laws of this  
20 state, and any rules promulgated pursuant thereto.  
21 Any instrument shall constitute an unconditional  
22 promise to pay and be in a form negotiable by the  
23 Department.

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

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

13           2. Any animal feeding operation licensed pursuant to the  
14 provisions of the Oklahoma Concentrated Animal Feeding Operations  
15 Act which does have outstanding fines or contempt citations shall be  
16 required to post Category B surety. Animal feeding operations which  
17 have posted Category B surety and have operated under this type  
18 surety and have no outstanding fines at the end of three (3) years  
19 may post Category A surety.

20           D. For good cause shown concerning pollution by the animal  
21 feeding operations posting either Category A or B surety, the  
22 Department, after notice and hearing, may require the filing of  
23 additional Category B surety in an amount greater than Twenty-five

1 Thousand Dollars (\$25,000.00) but not to exceed Five Dollars (\$5.00)  
2 times the number of animal units for the facility being licensed.

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

13 2. The Department may cause the remedial work to be done,  
14 issuing a warrant in payment of the cost thereof drawn against the  
15 monies accruing in the State Treasury from the forfeiture or  
16 payment.

17 3. The Department shall also recover any costs arising from  
18 litigation to enforce this provision. Provided, before an animal  
19 feeding operation is required to forfeit or pay any monies to the  
20 state pursuant to this section, the Department shall notify the  
21 animal feeding operation at the last-known address of the  
22 determination of neglect, failure or refusal to close any surface  
23 impoundment or remove equipment and the animal feeding operation

1 shall have ten (10) days from the date of notification within which  
2 to commence remedial operations. Failure to commence remedial  
3 operations shall result in forfeiture or payment as provided in this  
4 subsection.

5 F. If title to an animal feeding operation is transferred, the  
6 transferee shall furnish the evidence of financial ability to close  
7 surface impoundments required by the provisions of this section  
8 prior to the transfer.

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

12 A. In addition to any other requirement of the Oklahoma  
13 Concentrated Animal Feeding Operations Act, animal feeding  
14 operations owners and operators who are granted an animal feeding  
15 operations license shall:

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

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

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

22 B. 1. Any animal feeding operation licensed pursuant to the  
23 Oklahoma Concentrated Animal Feeding Operations Act, operated in

1 compliance with those standards, and in compliance with the rules  
2 promulgated by the Board, shall be deemed to be prima facie evidence  
3 that a nuisance does not exist; provided, no animal feeding  
4 operation shall be located or operated in violation of any zoning  
5 regulations.

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

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

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

22 B. Except as provided by Section 45 of this act, no  
23 concentrated animal feeding operation shall be established after

1 September 1, 1997, which is within one (1) mile of ten or more  
2 residences that are occupied residences at the time of the  
3 establishment of the concentrated animal feeding operation.

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

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

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

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

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

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

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

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

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

21           SECTION 46.       NEW LAW       A new section of law to be codified  
22 in the Oklahoma Statutes as Section 20-59 of Title 2, unless there  
23 is created a duplication in numbering, reads as follows:

1           The Oklahoma Department of Agriculture, Food, and Forestry shall  
2 not accept or approve any pending applications requesting permits  
3 for construction of any concentrated animal feeding operation to be  
4 located within one (1) mile upstream of the Pensacola Project  
5 boundary as described in the records of the Grand River Dam  
6 Authority and the Federal Emergency Management Agency. Any  
7 operation authorized or permitted prior to April 17, 2002, shall not  
8 be affected by the provisions of this section.

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

12           A. A concentrated animal feeding operation may exceed its  
13 animal unit capacity if:

14           1. A diseased or potentially diseased animal exists at the  
15 operation; or

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

18           3. The owner of the concentrated animal feeding operation has  
19 reasonable cause to believe an animal has or may have any disease  
20 causing:

21           a. a public health emergency,

22           b. a substantial and imminent economic hardship to the  
23 owner, or



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.

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

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.

1           2. A district court may grant injunctive relief to prevent a  
2 violation of, or to compel compliance with, any of the provisions of  
3 the Oklahoma Concentrated Animal Feeding Operations Act or any rule  
4 promulgated thereunder or order, license or permit issued pursuant  
5 to the Oklahoma Concentrated Animal Feeding Operations Act.

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

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

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

22           F. 1. Any action for injunctive relief to redress or restrain  
23 a violation by any person of the Oklahoma Concentrated Animal

1 Feeding Operations Act or for any rule promulgated thereunder, or  
2 order, license, or permit issued pursuant thereto or recovery of any  
3 administrative or civil penalty assessed pursuant to the Oklahoma  
4 Concentrated Animal Feeding Operations Act may be brought by:

5 a. the district attorney of the appropriate district  
6 court of the State of Oklahoma,

7 b. the Attorney General on behalf of the State of  
8 Oklahoma, or

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

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

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

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

20 H. In determining the amount of a civil penalty or  
21 administrative penalty, the court or the Department, as the case may  
22 be, shall consider such factors as the nature, circumstances and  
23 gravity of the violation or violations, the economic benefit, if

1 any, resulting to the defendant from the violation, the history of  
2 such violations, any good-faith efforts to comply with the  
3 applicable requirements, the economic impact of the penalty on the  
4 defendant, the defendant's degree of culpability, and such other  
5 matters as justice may require.

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

9 J. In addition to other penalties as may be imposed by law, any  
10 person who knowingly makes any false statement, representation or  
11 certification in any water pollution form, notice or report, or who  
12 knowingly renders inaccurate any monitoring device or method  
13 required to be maintained by any water pollution rules promulgated  
14 by the Board shall, upon conviction, be guilty of a misdemeanor and  
15 may be subject to a fine of not more than Five Thousand Dollars  
16 (\$5,000.00) for each violation.

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

20 The Oklahoma Concentrated Animal Feeding Operations Act shall be  
21 enacted as a part of the Agricultural Code and shall be codified  
22 accordingly.

1           SECTION 51.           RECODIFICATION           2 O.S. 2001, Section 9-212.1,  
2 as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp.  
3 2006, Section 20-27), and as amended by Section 26 of this act,  
4 shall be recodified as Section 20-63 of Title 2 unless there is  
5 created a duplication in numbering.

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

7 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,  
8 dated 3-26-07 - DO PASS.