

1 STATE OF OKLAHOMA

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

3 SENATE BILL 601

By: Easley

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5
6 AS INTRODUCED

7 An Act relating to poultry waste management; creating
8 the Eucha-Spavinaw Poultry Waste Management Act;
9 providing short title; defining terms; stating
10 purpose; stating construction; stating priority of
11 certain laws; providing for certain registrations;
12 providing for administration and enforcement of act;
13 stating exception; stating powers for certain
14 actions; providing for certain inspectors and
15 investigators to exercise certain powers; authorizing
16 Oklahoma Department of Agriculture, Food, and
17 Forestry to promulgate rules to implement act;
18 requiring Department to monitor and enforce act;
19 delegating certain powers to State Board of
20 Agriculture and Department; requiring Department to
21 issue certain annual report; authorizing Department
22 to accept monies for certain purposes; stating
23 restrictions; stating procedures for management of
24 poultry waste in certain watershed; requiring certain
land application rate for poultry waste on certain
poultry waste management units; stating exceptions;
requiring certain soil testing; providing penalties
for violations of act; stating restrictions for
transfer of certain poultry waste; providing for
injunctive relief; providing for certain legal
actions against violators of act; stating
requirements for certain record keeping; providing
for codification; providing an effective date; and
declaring an emergency.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 8-91 of Title 2, unless there is
3 created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Eucha-Spavinaw
5 Poultry Waste Management Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 8-92 of Title 2, unless there is
8 created a duplication in numbering, reads as follows:

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

10 1. "Board" means the State Board of Agriculture;

11 2. "City of Tulsa Case" means the federal court proceeding
12 styled The City of Tulsa et al. v. Tyson Foods Inc. et al., Case No.
13 01 CV0900, filed in the United States District Court for the
14 Northern District of Oklahoma in December, 2001;

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

17 4. "Eucha-Spavinaw phosphorous index" (PI) means the phosphorus
18 assessment tool adopted by the court in the City of Tulsa Case by
19 court order entered on February 13, 2004, developed to govern the
20 terms and conditions under which poultry waste may be land applied
21 in the Eucha-Spavinaw Watershed, and includes any modifications
22 approved and adopted by the court in that case, or as approved and
23 adopted by the Board in accordance with its rule-making procedures,
24 subject to subsection A of Section 6 of this act, in the event the

1 court in the City of Tulsa Case relinquishes jurisdiction. As used
2 herein, "PI" means any form of the approved PI used in the Eucha-
3 Spavinaw Watershed, whether described as risk-based, qualitative or
4 quantitative, and may include the "PPM Calculator" PI model
5 referenced in the court's February 13, 2004 order, or any variation
6 thereof or similar phosphorus assessment tool or model, if approved
7 by the court or the Board;

8 5. "Eucha-Spavinaw watershed" means the watershed for Lakes
9 Eucha and Spavinaw located in Delaware County and Mayes Counties, as
10 further defined by Hydrologic Unit Code (HUC) 11070206 as compiled
11 by the United States Geological Survey, Natural Resources
12 Conservation Services;

13 6. "Land application" means the spreading, spraying or
14 broadcasting of poultry waste on, or incorporation into, the soil
15 primarily for beneficial purposes;

16 7. "Land applicator" means any person or entity who land
17 applies poultry waste in the watershed, or who receives or stores
18 poultry waste with the intent to land apply, whether or not
19 certified or licensed to do so, including without limitation a
20 private or commercial poultry waste applicator as defined in the
21 Poultry Act or the Oklahoma Soil Amendments Act;

22 8. "Poultry Act" means the Oklahoma Poultry Act, the Oklahoma
23 Poultry Waste and Nutrient Transfer Act and the Oklahoma Nutrient
24 Applicators Certification Act, either separately or collectively;

1 9. "Poultry waste" means any, all or any combination of the
2 following: all byproducts associated with the confinement of
3 poultry, including excrement, feed waste, bedding materials,
4 carcasses and any other animal waste, manure or commercial
5 fertilizer containing phosphorus;

6 10. "Poultry waste management plan" (PWMP) means a documented
7 procedure of how poultry waste will be managed on a poultry waste
8 management unit, prepared by a trained qualified nutrient planner in
9 accordance with the requirements of the Eucha-Spavinaw Poultry Waste
10 Management Act, the Poultry Act and any applicable rule promulgated
11 by the Board, which contains conservation practice standards to
12 guide and assist land and facility owners and operators in the use
13 of poultry waste for soil fertility so as to protect the environment
14 and waters of the State. Poultry waste management plan includes
15 plans that may be referred to as "animal waste management plans",
16 "comprehensive nutrient management plans", or "conservation plans"
17 and is intended to encompass any written plan, however denominated,
18 that prescribes standards and conservation practices for the land
19 application of poultry waste as defined in this section, provided
20 such plans meet the requirements of the Eucha-Spavinaw Poultry Waste
21 Management Act and the Poultry Act. A plan that prescribes
22 standards and conservation practices for the land application of
23 poultry waste that is issued under or required by another federal or
24 state law, rule or regulation may qualify as a PWMP if it meets all

1 the requirements of the Eucha-Spavinaw Poultry Waste Management Act
2 and the Poultry Act;

3 11. "Poultry waste management unit" means a field, group of
4 fields or other land units, that collectively include all land area
5 used for agricultural activities and on which poultry waste will or
6 may be applied and managed pursuant to a PWMP, but does not include
7 units smaller than two and one-half (2.5) acres located inside the
8 limits of any incorporated city in the watershed, unless such areas
9 directly border on waters of the state, in which event they shall be
10 deemed a poultry waste management unit;

11 12. "Qualified nutrient planner" means a person who has been
12 qualified by training, education and experience as competent to
13 develop a poultry waste management plan pursuant to the requirements
14 of the Poultry Act or any other act, rule or regulation; provided
15 that, such person shall also have received particular training in
16 the use and application of ESPI;

17 13. "Settlement agreement" means the December 2001 settlement
18 agreement among the parties in the City of Tulsa Case, as approved
19 by that court; and

20 14. "Watershed" means the Eucha-Spavinaw Watershed lying within
21 the State of Oklahoma.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 8-93 of Title 2, unless there is
24 created a duplication in numbering, reads as follows:

1 It is the purpose of the Eucha-Spavinaw Poultry Waste Management
2 Act to preserve and promote the purposes and agreements of the
3 parties set forth in the settlement agreement with regard to the
4 standards for the management and land application of poultry waste,
5 if and when the court in the City of Tulsa Case relinquishes
6 jurisdiction of the case. The Eucha-Spavinaw Poultry Waste
7 Management Act shall also apply to any other person or entity who is
8 a land applicator, or a land or facility owner or operator in the
9 watershed, whether or not that person or entity is a party to the
10 settlement agreement. The Eucha-Spavinaw Poultry Waste Management
11 Act shall be construed in harmony with the purpose, intent and
12 provisions of all other applicable state or federal laws, rules and
13 regulations that preserve and protect the waters of the state,
14 public health and safety and the environment, including but not
15 limited to Title 2 and Title 27A of the Oklahoma Statutes. In the
16 event of any conflict between or among the provisions of the Eucha-
17 Spavinaw Poultry Waste Management Act, the Poultry Act, the
18 settlement agreement, any court Order entered in the City of Tulsa
19 Case, and any other applicable state and federal law, rule or
20 regulation, the provision that is most protective of the waters of
21 the state, the public health and safety and the environment shall
22 control. Any registration that is required by the Eucha-Spavinaw
23 Poultry Waste Management Act is in addition to, and not in lieu of,

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1 any other registration or permit that may be required for any such
2 operations or facilities by any other state or federal law.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 8-94 of Title 2, unless there is
5 created a duplication in numbering, reads as follows:

6 A. The Eucha-Spavinaw Poultry Waste Management Act shall be
7 administered and enforced by the State Board of Agriculture and the
8 Oklahoma Department of Agriculture, Food, and Forestry except to the
9 extent that the court in the City of Tulsa Case exercises
10 jurisdiction. Except as expressly provided herein, the Board and
11 the Department may exercise any powers, penalties and sanctions, or
12 conduct any inspections or investigations granted to them in the
13 Poultry Act or any other applicable law, and such rights and powers
14 shall apply to inspections or investigations of poultry waste
15 management units in the watershed to the same extent that the
16 Poultry Act authorizes them for poultry feeding operations. Any
17 inspector or investigator for the Department may exercise any right
18 or duty granted to the Watershed Monitoring Team as provided in the
19 settlement agreement, except for the preparation of PWMP, which
20 shall be prepared by a qualified nutrient planner. The Department
21 is authorized to promulgate rules to implement and enforce the
22 provisions of the Eucha-Spavinaw Poultry Waste Management Act,
23 including appropriate penalties for any violations of the Eucha-
24 Spavinaw Poultry Waste Management Act, and shall devote manpower and

1 resources to ensure the effective monitoring and enforcement of the
2 Eucha-Spavinaw Poultry Waste Management Act. The delegation of
3 powers and authority to the Board and the Department under the
4 Eucha-Spavinaw Poultry Waste Management Act is intended to further
5 the purposes of the Eucha-Spavinaw Poultry Waste Management Act
6 regarding the management and land application of poultry waste in
7 Eucha-Spavinaw Watershed, and shall not be construed as diminishing
8 or otherwise amending the powers, authority and jurisdiction
9 delegated to other state environmental agencies.

10 B. The Board may promulgate any rule in accordance with its
11 rule-making procedures and powers to implement the provisions of the
12 Eucha-Spavinaw Poultry Waste Management Act. The Board or the
13 Department shall further prescribe such rules and forms, and collect
14 such information in the watershed as is necessary to issue a report
15 each year containing the following information:

16 1. The number of facilities in the watershed producing poultry
17 waste in the watershed and total amount of poultry waste produced,
18 categorized by integrator;

19 2. The total amount of poultry waste applied in the watershed
20 each year on land owned or operated by poultry feeding operations,
21 and the total area of land on which it was applied, categorized by
22 integrator;

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1 3. The total amount of poultry waste applied in the watershed
2 each year on land not owned or operated by poultry feeding
3 operations and the total area of land on which it was applied;

4 4. The total amount of poultry waste removed from the
5 watershed, categorized by integrator; and

6 5. The number of PWMPs written in the watershed during the
7 year, categorized by integrator, and the aggregate number of PWMPs
8 written for poultry waste management units that are not poultry
9 feeding operations.

10 C. In addition to any legislative appropriation allocated to
11 the Board or Department for its normal operations and duties, the
12 Department is hereby authorized to accept any monetary grant,
13 donation or other contribution of money or resources from any person
14 or entity for the purpose of funding the hiring, training,
15 compensation, benefits and supervision of any investigator,
16 inspector or qualified nutrient planner to carry out the intent of
17 the Eucha-Spavinaw Poultry Waste Management Act. Any person whose
18 duties are funded by such funds shall be subject to the supervision
19 and control of the Department as a Department employee or
20 independent contactor, provided, however, the time, attention and
21 duties of such person shall be substantially dedicated to the
22 implementation of the Eucha-Spavinaw Poultry Waste Management Act,
23 and shall take precedence over other duties that may be assigned to
24 such person by the Department.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 8-95 of Title 2, unless there is
3 created a duplication in numbering, reads as follows:

4 The collection, treatment, disposal, distribution,
5 transportation, storage, land application and management of poultry
6 waste on all lands and facilities in the watershed shall at all
7 times comply with best management practices and the requirements of
8 the applicable PWMP, which at a minimum shall follow the Eucha-
9 Spavinaw Poultry Waste Management Act, the Poultry Act and any other
10 applicable state or federal laws, rules or regulations.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 8-96 of Title 2, unless there is
13 created a duplication in numbering, reads as follows:

14 A. The land application rate for all poultry waste on all
15 poultry waste management units in the watershed shall be specified
16 in the PWMP for each such unit, and shall follow the requirements
17 and limitations of the applicable PI, unless a more restrictive or
18 protective application rate is prescribed by some other state or
19 federal law, rule or court order, in which case the more restrictive
20 or protective rate shall be followed. In the event the court in the
21 City of Tulsa Case relinquishes jurisdiction, the State Board of
22 Agriculture may adopt by rule, according to its rule making
23 procedures, any revisions to the PI that it deems necessary to
24 further the purposes of the Eucha-Spavinaw Poultry Waste Management

1 Act; provided, however, that the Board may not revise the PI to make
2 it less protective or restrictive.

3 B. Soil testing and poultry waste testing shall be performed
4 for all poultry waste management units in the watershed in the
5 manner and frequency prescribed in the Poultry Act for nutrient-
6 limited watersheds, and the records thereof shall be maintained as
7 prescribed by the Poultry Act.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 8-97 of Title 2, unless there is
10 created a duplication in numbering, reads as follows:

11 It shall be unlawful and punishable as provided in the Poultry
12 Act or other applicable law, for any land applicator, or owner or
13 operator of any facility or poultry waste management unit in the
14 watershed, to apply poultry waste to any land in the watershed
15 without first having obtained a PWMP, or to knowingly apply poultry
16 waste in violation or disregard of a PWMP prepared by a qualified
17 nutrient planner. Every land applicator must certify in writing at
18 the time of application that the land applicator has received and
19 read a copy of the PWMP and that the poultry waste has been applied
20 in accordance therewith. The land applicator shall provide a copy
21 of such certification to the operator or owner of the poultry waste
22 management unit and to the Oklahoma Department of Agriculture, Food,
23 and Forestry upon filing an annual report as required in the Poultry
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1 Act. Any false certification shall be punishable as provided in the
2 Poultry Act.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 8-98 of Title 2, unless there is
5 created a duplication in numbering, reads as follows:

6 It shall be unlawful and punishable as provided in the Poultry
7 Act or other applicable law, for an owner or operator of a poultry
8 feeding operation, poultry waste utilization business, or other
9 facility or operation that produces or distributes poultry waste in
10 the watershed, to sell, barter, distribute, give or transfer poultry
11 waste to any other landowner, transporter, land applicator or any
12 other person without first:

13 1. Obtaining written certification from such transferee that
14 the poultry waste will not be applied in the watershed; or

15 2. If the poultry waste is intended for land application in the
16 watershed, obtaining a copy of the poultry waste management plan
17 from such transferee for the intended poultry waste management unit,
18 if known, and verifying that the poultry waste management plan
19 allows such land application; or

20 3. If the transferee is a transporter, licensed fertilizer
21 distributor or applicator, or certified poultry waste applicator,
22 and such transferee does not know at the time of transfer the legal
23 description and owner or operator of the poultry waste management
24 unit where the poultry waste will be applied, obtaining from such

1 transferee written certification that such poultry waste will only
2 be applied in accordance with a current poultry waste management
3 plan; and

4 4. In the case of all such transfers, delivering to the
5 transferee a copy of the most recent poultry waste sample or
6 analysis in the possession of the transferor.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 8-99 of Title 2, unless there is
9 created a duplication in numbering, reads as follows:

10 A. Any action for injunctive relief to redress or restrain a
11 violation by any person of the Eucha-Spavinaw Poultry Waste
12 Management Act, or for any rule promulgated hereunder, or order
13 issued pursuant thereto, or for recovery of any administrative
14 penalty assessed pursuant to the Eucha-Spavinaw Poultry Waste
15 Management Act, may be brought by: the district attorney of the
16 appropriate district court of the State of Oklahoma; the Attorney
17 General on behalf of the State of Oklahoma; or the Oklahoma
18 Department of Agriculture, Food, and Forestry on behalf of the State
19 of Oklahoma. It shall be the duty of the Attorney General and
20 district attorney to bring such actions, if requested by the
21 Secretary of Agriculture.

22 B. The court shall have jurisdiction to determine the action
23 and grant the necessary or appropriate relief, including but not
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1 limited to mandatory or prohibitive injunctive relief, interim
2 equitable relief and punitive damages or other monetary sanctions.

3 C. If, after investigation of a complaint by the Department,
4 the Department, district attorney or Attorney General decline to
5 take any action or seek relief as authorized herein, the Department
6 shall issue a letter or report to the complaining party stating its
7 conclusions and findings and the reasons for not taking any such
8 action, and further advising the complaining party that it has a
9 right of private civil action in any court of competent jurisdiction
10 to seek money damages or injunctive relief against alleged violators
11 for any harm or injury caused to the complaining party; provided
12 that, any such private action must be brought within one (1) year
13 from the date of issuance of the Department's letter. The
14 prevailing party in any such private action shall be entitled to a
15 reasonable attorneys' fee and costs.

16 SECTION 10. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 8-100 of Title 2, unless there
18 is created a duplication in numbering, reads as follows:

19 All records, copies of poultry waste management plans, written
20 assurances, certifications or other records required to be obtained
21 by the Eucha-Spavinaw Poultry Waste Management Act shall be
22 maintained by the person required to obtain such records for a
23 period of not less than five (5) years. In addition to such
24 records, the transferor of poultry waste shall maintain a log of the

1 date of removal or transfer; name address and contact information of
2 the transferee; if the transferee is licensed or certified by the
3 State to distribute or apply such poultry waste, the license number
4 for such transferee; and the amount in wet tons, dry tons or cubic
5 yards of poultry waste transferred. All records required to be
6 maintained by the Eucha-Spavinaw Poultry Waste Management Act or the
7 Poultry Act may be inspected and copied by any Department inspector
8 or investigator, and shall be subject to discovery in any
9 enforcement action authorized by the Eucha-Spavinaw Poultry Waste
10 Management Act.

11 SECTION 11. This act shall become effective July 1, 2007.

12 SECTION 12. It being immediately necessary for the preservation
13 of the public peace, health and safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

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