

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1957

By: McNiel

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5
6 AS INTRODUCED

7 An Act relating to agriculture; amending 2 O.S. 2001,
8 Section 9-210.3, as renumbered by Section 25, Chapter
9 292, O.S.L. 2005, and as amended by Section 21,
10 Chapter 31, O.S.L. 2007 (2 O.S. Supp. 2010, Section
11 20-21), which relates to the Oklahoma Swine Feeding
12 Operations Act; prohibiting new licenses for certain
13 swine feeding operations; requiring swine feeding
14 operations applying for groundwater use permits to
15 obtain Department certification; directing Board to
16 consider list of factors to determine if area is a
17 camp or recreational site; stating applicability
18 where property is owned or leased prior to
19 establishment of swine feeding operation; providing
20 license exemption for certain swine feeding
21 operations; amending 82 O.S. 2001, Section 1020.11a,
22 as last amended by Section 105, Chapter 3, O.S.L.
23 2003 (82 O.S. Supp. 2010, Section 1020.11a), which
24 relates to permits for swine feeding operations;
directing Oklahoma Water Resources Board to obtain
certain confirmation prior to issuing or amending a
permit; providing exception for permit renewals;
deleting certain permit procedures and requirements;
and providing an effective date.

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

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

1 by Section 21, Chapter 31, O.S.L. 2007 (2 O.S. Supp. 2010, Section
2 20-21), is amended to read as follows:

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

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

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

22 2. Except as otherwise provided by this section, no swine
23 feeding operation with fewer than one thousand one (1,001) swine
24 animal units that applies for a new license on or after November 1,

1 2011, shall be located within three (3) miles of the outside
2 boundary of any area or facility owned or operated as a camp or
3 recreational site by a nonprofit organization established prior to
4 the application of the swine feeding operation.

5 3. Any swine feeding operation that applies for a groundwater
6 use permit from the Oklahoma Water Resources Board on or after
7 November 1, 2011, shall be required to obtain certification from the
8 Oklahoma Department of Agriculture, Food, and Forestry that the
9 operation is not located within three (3) miles of the outside
10 boundary of any area or facility owned or operated as a camp or
11 recreational site by a nonprofit organization.

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

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

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1 e. any other factors the Board deems directly relevant to
2 the question of whether a site is recreational in
3 nature.

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

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

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

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

- 1 2. Within three (3) miles of the outside boundary of any
2 historic property or museum owned by the State of Oklahoma;
- 3 3. Within three (3) miles of a public drinking water well;
- 4 4. Within one (1) mile of a water body specified as Outstanding
5 Resource Waters that has recreational or ecological significance as
6 outlined by the most current Water Quality Standards promulgated by
7 the Oklahoma Water Resources Board; or
- 8 5. Within three (3) miles of a national park designated by the
9 United States Department of the Interior National Park Service.

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

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

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1 G. Nothing in this section shall be construed as requiring a
2 swine feeding operation with fewer than one thousand one (1,001)
3 swine animal units to apply for a license from the Department.

4 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1020.11a, as
5 last amended by Section 105, Chapter 3, O.S.L. 2003 (82 O.S. Supp.
6 2010, Section 1020.11a), is amended to read as follows:

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

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

1 ~~d. the types of activities which are conducted or engaged~~
2 ~~in on the site, and~~

3 ~~e. any other factors the decision-making body deems~~
4 ~~directly relevant to the question of whether a site is~~
5 ~~recreational in nature~~ obtain written confirmation
6 from the Oklahoma Department of Agriculture, Food, and
7 Forestry that the swine animal feeding operation is in
8 compliance with all applicable setback requirements.

9 ~~2. B. The provisions of this subsection~~ section shall not apply
10 ~~only if the real property was owned or leased by such organization~~
11 ~~prior to the construction or establishment of the swine animal~~
12 ~~feeding operation~~ to permit renewals.

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

1 ~~feeding operation is located shall not affect the validity of the~~
2 ~~waiver.~~

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

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

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

12 ~~3. The person or entity to whom the permit is to be transferred~~
13 ~~is not, at the time of the transfer, seeking to increase the amount~~
14 ~~of water authorized for use.~~

15 SECTION 3. This act shall become effective November 1, 2011.

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