STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1514 By: Murdock

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 2011, Sections 20-41 and 20-46, which relate to the Oklahoma Concentrated Animal Feeding Operations Act; updating references; modifying definition of interested party; authorizing the Oklahoma Department of Agriculture, Food, and Forestry to request and review additional information for certain applications; requiring the Department make certain determination within a certain timeframe; modifying certain notification requirements; deleting certain hearing requirements; requiring hearing be requested within certain timeframe; prohibiting the Department from taking action on certain application within certain time period; requiring application to be submitted under certain circumstances; requiring certain information in request for a hearing; requiring the Department to schedule a preliminary hearing under certain circumstances; providing timeframe to cure certain deficiencies; declaring that all affected property owners be a party to certain hearing; providing location of hearing; providing rebuttable presumption; providing burden of proof; requiring administrative law judge to allow certain responses and issue certain orders; requiring certain orders be sent to the Department; requiring full administrative hearing under certain circumstances; requiring scheduling conference; allowing affected property owner to waive right to a hearing if certain requirements are met; requiring administrative law judge to hear certain testimony and evidence at administrative hearing; providing burden of proof; requiring evidence admitted meet certain requirements; requiring interested party and applicant be afforded opportunity to present certain evidence and arguments; requiring administrative

hearing comply with certain act and rules; and providing effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 20-41, is amended to read as follows:

Section 20-41. A. Concentrated animal feeding operations are point sources subject to the license program established pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

B. As used in the Oklahoma Concentrated Animal Feeding Operations Act:

1. "Affected property owner" means a surface landowner within one (1) mile of the designated perimeter of an animal feeding operation;

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

a. animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period, and

b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

The term "animal feeding operation" shall not include a racetrack licensed by the Oklahoma Horse Racing Commission to hold pari-mutuel race meetings pursuant to the Oklahoma Horse Racing Act if the facility discharges to a publicly owned treatment works, or an aquatic animal production facility;

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

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

5. "Animal Waste Management Plan" or "Nutrient Management Plan" means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state prepared by an owner or operator of an animal feeding operation as required by the Department pursuant to the provisions of Section ~~36~~ 20-48 of this ~~act~~ title;

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

7. "Artificially constructed" means constructed by humans;

8. "Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state as established by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to Section ~~36 of this act~~ 20-48 of this title;

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

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

11. "Concentrated animal feeding operation" means:

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

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

(a) 1,000 slaughter and feeder cattle,

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

(c) 500 horses,

(d) 10,000 sheep or lambs,

(e) 55,000 turkeys,

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

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

(h) 5,000 ducks, or

(i) 1,000 animal units, and

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

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

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

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

(a) 300 slaughter or feeder cattle,

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

(c) 150 horses,

(d) 3,000 sheep or lambs,

(e) 16,500 turkeys,

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

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

(h) 1,500 ducks, or

(i) 300 animal units, and

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

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

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

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

c. the Board determines that the operation is a significant contributor of pollution to waters of the state pursuant to Section ~~32~~ 20-44 of this ~~act~~ title;

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

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

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

15. "Interested party" means an affected property owner ~~who validly requests an individual hearing, in accordance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto regarding the issuance of an animal feeding operation license and asserts rights to relief in respect to or arising out of the same license~~ found to meet the burden of proof pursuant to the provisions of Section 20-46 of this title;

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

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

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

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

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

a. is not readily mobile,

b. is connected to a public or permanent source of electricity and a permanent waste disposal system or public waste disposal system, and

c. is occupied as a residence;

21. "Pollution Prevention Plan" means a written plan to control the discharge of pollutants which has been prepared in accordance with industry-acceptable engineering and management practices by the

owner or operator of an animal feeding operation as required pursuant to Section ~~35 of this act~~ 20-47 of this title;

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

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

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

25. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or

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

SECTION 2. AMENDATORY 2 O.S. 2011, Section 20-46, is amended to read as follows:

Section 20-46. A. 1. Any person applying for a license for a new animal feeding operation shall comply with the notice and hearing requirements as specified by this section and rules promulgated by the State Board of Agriculture.

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

B. 1. After submission of a completed application as provided by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, the Oklahoma Department of Agriculture, Food, and Forestry shall have sixty (60) working days

to review the application for a new operation for physical and technical suitability.

2. a. After review of the application, the Department may request additional information from the applicant. Upon receipt of the additional information, the Department shall have an additional thirty (30) working days to review the additional information.

b. On or before the expiration of the additional thirty (30) working days, the Department shall make a determination as to whether the application is complete and in compliance with all statutory requirements and relevant rules of the Department or request additional information pursuant to subparagraph a of this paragraph.

C. 1. After ~~review and after the applicant has submitted any additional required information to~~ the Department has determined that the application is complete, the Department shall require the applicant to notify all affected property owners ~~of the proposed facility~~ that a completed application is on file with the Department. Notice shall be sent by certified mail, return receipt requested. The notice shall ~~identify~~ state that an application for a new animal feeding operation has been submitted to the Department and has been deemed to be complete, the location ~~where~~ of the facility ~~is to be located~~, that a hearing may be requested ~~pursuant~~

~~to this subsection, and the date the application will be available for public review beginning no earlier than the day following the certified mailing of all the required notices, and any other information required by the Department.~~

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

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

~~b. a statement of specific allegations showing that the proposed facility operation may have a direct, substantial and immediate effect upon a legally protected interest of the interested party, and~~

~~c. the relief sought by the interested party.~~

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

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

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

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

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

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

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

~~6.~~ within fifteen (15) working days from the receipt of notice by the affected property owner and that a copy of the completed application is available for public review pursuant to paragraph 3 of subsection D of this section.

2. The State Board of Agriculture shall not act on the application until the expiration of the time period set forth in paragraph 1 of subsection G of this section. If a hearing is requested pursuant to paragraph 1 of subsection G of this section, the Board shall not take action on the application until the hearing process is complete.

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

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

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

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

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

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

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

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

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

F. If no hearing is requested within the time periods set forth in paragraph 1 of subsection G of this section, the application

shall be submitted to the State Board of Agriculture for consideration and action.

G. 1. An affected property owner may request a hearing prior to final approval of the application. All requests for a hearing shall be filed with the Department within fifteen (15) working days after the receipt of the notice by the affected property owner. In requesting a hearing an affected property owner shall state in the request:

a. the name and address of the affected property owner and proof of standing by showing a surface ownership interest in the affected property, and

b. specific allegations showing that the proposed facility or expanding operation may have a direct, substantial and immediate effect upon a legally protected interest of the affected property owner. The allegations shall address with specificity the information contained within the application for licensure. Furthermore, the allegations shall be limited to demonstrating how the application is deficient, how the deficiencies have a direct effect on a legal interest of the affected property owner, and how the application has failed to show that the application should be granted. The allegations shall

also address the physical and technical suitability of the proposed facility.

2. If any of the affected property owners request an administrative hearing pursuant to paragraph 1 of this subsection and all information listed in subparagraphs a and b of paragraph 1 of this subsection is found to be complete and adequate in the request for a hearing, the Department shall schedule a preliminary hearing at a reasonable time within sixty (60) calendar days. Should the affected property owner fail to provide any of the information required in the request for a hearing, the affected property owner shall have ten (10) working days during which any deficiencies may be cured after receipt of notice from the Department of the failure. All affected property owners shall be considered parties to the preliminary hearing scheduled by the Department.

H. 1. The preliminary hearing shall be held at the Oklahoma Department of Agriculture, Food, and Forestry before an administrative law judge.

2. There shall be a rebuttable presumption on the part of the applicant that the application in question is complete and in compliance with all applicable statutes and rules.

3. It shall be the burden of the affected property owner(s) to present an offer of proof showing by a preponderance of the evidence:

a. that the facility has a direct, substantial and immediate effect upon a legally protected interest, and

b. that the direct, substantial and immediate effect upon a legally protected interest arises directly from a deficiency in the application or from the physical and technical suitability of the proposed facility.

4. The administrative law judge, after all evidence is presented by any affected property owner that requested a hearing, shall afford the applicant an opportunity to respond to and rebut the allegations presented and to show how the affected property owner failed to meet the standards set forth in subparagraphs a and b of paragraph 3 of this subsection.

5. Upon completion of the preliminary hearing, the administrative law judge shall have twenty (20) working days in which to issue an order granting or denying any affected property owner a full administrative hearing. If an affected property owner is denied a full administrative hearing, the administrative law judge shall issue a written recommended order containing specific findings of fact and conclusions of law on which the decision is based.

6. If the administrative law judge finds an affected property owner that requested a hearing failed to meet the burden of proof set forth in paragraphs 2, 3, and 4 of this subsection, the

application shall be sent to the State Board of Agriculture along with a copy of the recommended order of the administrative law judge for consideration and action.

7. If the administrative law judge finds an affected property owner met the burden of proof set forth in paragraph 3 of this subsection, then a full administrative hearing shall be scheduled in accordance with the Administrative Procedures Act.

8. The administrative law judge may separately grant or deny a full administrative hearing for each affected property owner when more than one is party to the preliminary hearing.

I. 1. An affected property owner meeting the burden of proof pursuant to subsection H of this section shall be entitled to a full administrative hearing pursuant to the Administrative Procedures Act. Only those affected property owners found meeting the burden of proof pursuant to subsection H of this section are entitled to a full administrative hearing.

2. The scheduling conference for the hearing shall be held by the Department at a reasonable time within thirty (30) working days after the administrative law judge has issued a written order. All interested parties may be joined as parties to the hearing.

3. An affected property owner may at any time waive his or her rights to a hearing. If an affected property owner waives his or her rights to a hearing, a signed and notarized document shall be filed with the administrative law judge stating the affected

property owner waived his or her rights to a hearing, did so without force or coercion, understands he or she is also waiving his or her rights to any further hearing provided for under this section or the Administrative Procedures Act and that the waiver shall be with prejudice. The waiver of right to a hearing shall be admissible as evidence in any court of the State of Oklahoma as evidence the affected property owner waived his or her rights to any additional hearings to which he or she may otherwise have been entitled.

4. At the administrative hearing, the administrative law judge shall hear testimony and accept evidence pertaining to the physical and technical suitability of the proposed facility and deficiencies contained in the original application for the license. Based on these grounds, it shall be the burden of the interested party to show by clear and convincing evidence that the proposed facility will have a direct, substantial and immediate effect upon a legally protected interest of the interested party. Furthermore, there shall be a rebuttable presumption that the application is complete and in compliance with the relevant statutes and rules.

5. Any evidence presented at the administrative hearing shall be directly related to allegations and evidence previously presented by any affected property owner during the preliminary hearing. Evidence not meeting this criteria shall only be admitted by the administrative law judge upon a finding that:

a. the evidence was unavailable to the interested party prior to the preliminary hearing,

b. the interested party exercised due diligence to discover and present all relevant evidence at the preliminary hearing,

c. reasonable efforts to discover the information would not have led to its discovery prior to the preliminary hearing, or

d. the applicant willfully concealed evidence or information that would likely have assisted the interested party in presenting its case at the preliminary hearing.

6. At the administrative hearing, the interested party shall be afforded a reasonable opportunity to present evidence and argument in support of the allegations identified in the preliminary hearing, and the applicant shall be afforded a reasonable opportunity to present evidence and arguments to controvert those allegations.

7. The administrative hearing held pursuant to the provisions of this subsection shall comply with the Administrative Procedures Act and rules promulgated by the Board.

SECTION 3. This act shall become effective November 1, 2015.

55-1-6036 AMM 01/21/15