

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 1304

By: Murdock

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2011, Sections 20-3, as amended by Section 1, Chapter 123, O.S.L. 2013, 20-6 and 20-19 (2 O.S. Supp. 2016, Section 20-3), which relates to the Oklahoma Swine Feeding Operations Act; modifying definition; removing language regarding operations subject to the Oklahoma Swine Feeding Operations Act; providing exception to setback requirement; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 20-3, as amended by Section 1, Chapter 123, O.S.L. 2013 (2 O.S. Supp. 2016, Section 20-3), is amended to read as follows:

Section 20-3. A. Concentrated swine feeding operations are point sources subject to the license program established pursuant to the provisions of the Oklahoma Swine Feeding Operations Act.

B. As used in the Oklahoma Swine Feeding Operations Act:

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

- 1 a. one (1) mile of the designated perimeter of a swine
2 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. "Swine feeding operation" means a lot or facility where the
14 following conditions are met:

- 15 a. swine 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 3. "Swine animal unit" means a unit of measurement for any
23 swine feeding operation calculated by adding the following numbers:
24 The number of swine weighing over twenty-five (25) kilograms,

1 approximately fifty-five (55) pounds, multiplied by four-tenths
2 (0.4), plus the number of weaned swine weighing under twenty-five
3 (25) kilograms multiplied by one-tenth (0.1);

4 4. "Swine waste" means swine excrement, swine carcasses, feed
5 wastes, process wastewaters or any other waste associated with the
6 confinement of swine from a swine feeding operation;

7 5. "Swine Waste Management Plan" or "Nutrient Management Plan"
8 means a written plan that includes a combination of conservation and
9 management practices designed to protect the natural resources of
10 the state prepared by an owner or operator of a swine feeding
11 operation as required by the Department pursuant to the provisions
12 of Section 20-10 of this title;

13 6. "Swine waste management system" means a combination of
14 structures and nonstructural practices serving a swine feeding
15 operation that provides for the collection, treatment, disposal,
16 distribution, storage and land application of swine waste;

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

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

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

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

5 11. "Concentrated swine feeding operation" means:

- 6 a. a licensed managed feeding operation, or
7 b. a swine feeding operation which meets the following
8 criteria:

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

- 11 (a) 750 swine each weighing over 25 kilograms or
12 approximately 55 pounds,
13 (b) 3,000 weaned swine each weighing under 25
14 kilograms, or
15 (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
24

1 or otherwise come into direct contact with
2 the swine confined in the operation.

3 Provided, however, that no swine feeding operation
4 pursuant to this subparagraph is a concentrated swine
5 feeding operation if the swine feeding operation
6 discharges only in the event of a twenty-five-year,
7 twenty-four-hour storm event, ~~or~~

8 c. the Board determines that the operation is a
9 significant contributor of pollution to waters of the
10 state pursuant to Section 20-6 of this title, or

11 d. any new swine feeding operation established after
12 November 1, 2011, with more than one hundred (100)
13 animal units;

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

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

22 14. "Expanding operation" means:

23 a. a facility that either increases its swine animal unit
24 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 swine are kept, handled, housed, or otherwise
9 maintained and processed and includes but is not limited to
10 buildings, lots, pens, and swine waste management systems;

11 16. "Interested party" means an affected property owner found
12 to meet the burden of proof pursuant to the provisions of Section
13 20-8 of this title;

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

17 18. "Licensed managed feeding operations" means a swine feeding
18 operation primarily using a liquid swine waste management system,
19 where swine are primarily housed in a roof-covered structure and
20 which has more than the number of swine specified in any of the
21 following categories confined:

- 22 a. 2,500 swine each weighing over 55 pounds,
23 b. 10,000 weaned swine each weighing under 55 pounds, or
24

1 c. any combination of swine weighing over 55 pounds or
2 under 55 pounds which would equal one thousand (1,000)
3 swine animal units;

4 19. "Liquid swine waste management system" means any swine
5 waste management system which uses water as the primary carrier of
6 swine waste into a primary retention structure;

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

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

13 22. "Odor Abatement Plan" means schedules of activities,
14 prohibitions of practices, maintenance procedures and other
15 management practices to prevent or reduce odor as established by the
16 Department pursuant to Section 20-11 of the Oklahoma Swine Feeding
17 Operations Act;

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

- 21 a. is not readily mobile,
- 22 b. is connected to a public or permanent source of
- 23 electricity and a permanent waste disposal system or
- 24 public waste disposal system, and

1 c. is occupied as a residence;

2 24. "Pollution Prevention Plan" means a written plan to control
3 the discharge of pollutants which has been prepared in accordance
4 with industry-acceptable engineering and management practices by the
5 owner or operator of a swine feeding operation as required pursuant
6 to Section 20-9 of this title;

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

16 26. "Retention structures" means, but is not limited to, all
17 collection ditches, conduits and swales for the collection of runoff
18 water and process wastewater, and basins, ponds and lagoons or other
19 structures used to store swine wastes;

20 27. "Spill" means the release from a swine feeding operation of
21 any process wastewater or manure that does not reach waters of the
22 state;

23 28. "Waste facility" means any structure or combination of
24 structures utilized to control swine waste until it can be disposed

1 of in an authorized manner. The structures shall include but not be
2 limited to pits, burial sites, barns or roof-covered structures
3 housing swine, composters, waste storage sites, or retention
4 structures or appurtenances or additions thereto; and

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

18 SECTION 2. AMENDATORY 2 O.S. 2011, Section 20-6, is
19 amended to read as follows:

20 Section 20-6. A. 1. Any swine feeding operation meeting the
21 criteria defining a concentrated swine feeding operation shall be
22 required to obtain a license to operate pursuant to the Oklahoma
23 Swine Feeding Operations Act and rules promulgated pursuant thereto.
24

1 2. No swine feeding operation which voluntarily obtains a
2 license pursuant to the Oklahoma Swine Feeding Operations Act shall
3 be considered to be a concentrated swine feeding operation unless
4 the operation meets the definition of concentrated swine feeding
5 operation.

6 ~~3. Any new swine feeding operation established after November~~
7 ~~1, 2011, with more than one hundred animal units shall be required~~
8 ~~to be licensed pursuant to the provisions of the Oklahoma Swine~~
9 ~~Feeding Operations Act and the rules promulgated pursuant to that~~
10 ~~act.~~

11 ~~4.~~ Any other swine feeding operation, regardless of the number
12 of swine, shall only be required to be licensed pursuant to the
13 provisions of the Oklahoma Swine Feeding Operations Act and rules
14 promulgated pursuant thereto if the State Board of Agriculture
15 determines the operation to be a significant contributor of
16 pollution to waters of the state.

17 B. 1. Two or more swine feeding operations under common
18 ownership are considered, for the purposes of licensure, to be a
19 single swine feeding operation if they adjoin each other or if they
20 use a common area or system for the disposal of wastes.

21 2. A licensed managed feeding operation shall be required to
22 seek a modification of its license for any increase in excess of
23 five percent (5%) of the original facility's licensed capacity.

1 C. An expanding operation shall be required to seek a
2 modification of its license prior to expansion.

3 D. 1. The Board may make a case-by-case designation of
4 concentrated swine feeding operations pursuant to this section. Any
5 swine feeding operation may be designated as a concentrated swine
6 feeding operation if it is determined to be a significant
7 contributor of pollution to the waters of the state. In making this
8 designation, the Board shall consider the following factors:

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

23 2. In no case shall an application for a license be required
24 from a swine feeding operation pursuant to this subsection until

1 there has been an on-site inspection of the operation and a
2 determination by the Oklahoma Department of Agriculture, Food, and
3 Forestry that the operation is a concentrated swine feeding
4 operation. Should the Department determine that the operation is a
5 concentrated swine feeding operation, the Department shall notify
6 the operation of the determination and of an opportunity for the
7 owner or operator of the facility to request an administrative
8 hearing on the issue.

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

20 E. No new concentrated swine feeding operation or expansion of
21 a concentrated swine feeding operation requiring a license pursuant
22 to the Oklahoma Swine Feeding Operations Act shall be constructed or
23 placed in operation unless final design plans, specifications and a
24

1 Pollution Prevention Plan developed pursuant to Section 20-9 of this
2 title have been approved by the Department.

3 F. No new licensed managed feeding operation or expanding
4 operation shall be constructed until a building permit for such
5 facility or expansion has been issued by the Department. No new
6 licensed managed feeding operation or expanding operation shall be
7 placed in operation until a license for the facility or a
8 modification for an existing license has been issued by the
9 Department.

10 G. When requesting a modification of a license, a licensed
11 managed feeding operation shall comply with all notice and hearing
12 requirements as specified by this section and rules promulgated by
13 the State Board of Agriculture. In its request for a modification
14 of a license, a licensed managed feeding operation shall provide all
15 information specified in subsection G of Section 20-7 of this title.

16 H. Any hearings regarding modification of a license shall focus
17 on the modifications being proposed by the licensed managed feeding
18 operation.

19 I. A decision to deny modification of a license shall have no
20 impact on the original license.

21 SECTION 3. AMENDATORY 2 O.S. 2011, Section 20-19, is
22 amended to read as follows:

23 Section 20-19. A. Except as authorized by this subsection, no
24 liquid swine waste shall be land applied within five hundred (500)

1 feet of the nearest corner of an occupied residence not owned or
2 leased by the owner of the swine feeding operation.

3 B. Except as otherwise provided by Section 20-20 of ~~the~~
4 ~~Oklahoma Swine Feeding Operations Act~~ this title, no concentrated
5 swine feeding operation shall be established within one (1) mile of
6 ten or more residences that are occupied residences at the time of
7 the establishment of the concentrated swine feeding operation.

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

20 D. No liquid swine waste shall be land applied within three
21 hundred (300) feet of an existing public or private drinking water
22 well.

1 E. Except as provided by Section 20-20 of ~~the Oklahoma Swine~~
2 ~~Feeding Operations Act~~ this title, no concentrated swine feeding
3 operation shall be established if located:

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

5 2. On land within three (3) miles of the incorporated limits of
6 any municipality, unless the municipality's governing body executes
7 a written waiver of the setback for the particular swine feeding
8 operation. A change in ownership of the property on which the
9 animal feeding operation is located shall not affect the validity of
10 the waiver; or

11 3. Within three (3) miles of the high water mark of a surface
12 public water supply if the concentrated swine feeding operation is
13 located within the drainage basin for the public water supply.

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

20 SECTION 4. This act shall become effective November 1, 2017.

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