An Act

ENROLLED HOUSE
BILL NO. 2917

By: Richardson of the House

and

Justice of the Senate

An Act relating to agriculture; amending 2 O.S. 2011, Sections 10-9.1 and 10-9.7, which relate to the Oklahoma Registered Poultry Feeding Operations Act; modifying definitions; requiring Nutrient Management Plan for poultry feeding operation; authorizing Oklahoma Department of Agriculture, Food, and Forestry to promulgate certain rules; and providing an effective date.

SUBJECT: Oklahoma Registered Poultry Feeding Operations Act

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 10-9.1, is amended to read as follows:

Section 10-9.1 A. Sections ~~1~~ 10-9.1 through ~~12~~ 10-9.12 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Registered Poultry Feeding Operations Act".

B. As used in Sections ~~1~~ 10-9.1 through ~~23~~ 10-9.23 of this ~~act~~ title:

1. ~~"Animal Waste Management Plan" or "AWMP" means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state as required by the State Department of Agriculture pursuant to the provisions of Section 7 of this act;~~

~~2.~~ "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices which prevent or reduce the pollution of waters of the state as established by the State Department of Agriculture pursuant to Section ~~7~~ 10-9.7 of this ~~act~~ title;

~~3.~~ 2. "Board" means the State Board of Agriculture;

~~4.~~ 3. "Certificate" means a written document issued to an individual by the Board pursuant to Section ~~17~~ 10-9.17 of this ~~act~~ title which indicates that the individual is authorized to land apply poultry waste by the Oklahoma Poultry Waste Applicators Certification Act;

~~5.~~ 4. "Certified poultry waste applicator" means a person who has been certified by the Board to land apply poultry waste and includes a commercial poultry waste applicator and a private poultry waste applicator;

~~6.~~ 5. "Commercial poultry waste applicator" means any person who engages in commercial land application of poultry waste. Any farmer while working for a neighbor in agricultural production, and not advertising, nor holding himself or herself out to be in the business of land applying poultry waste, shall not be classified as a commercial poultry waste applicator, but as a private poultry waste applicator;

~~7.~~ 6. "Contract growing arrangement" means any growout contract, marketing agreement, or other arrangement under which a contract poultry grower cares for or raises poultry;

~~8.~~ 7. "Contract poultry grower" means any person engaged in the business of caring for or raising poultry, under a contract growing arrangement;

~~9.~~ 8. "Common ownership" includes but is not limited to any person who has power or authority to manage, direct, restrict, regulate or oversee the operation or has financial control of two or more poultry feeding operations;

~~10.~~ 9. "Department" means the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry;

~~11.~~ 10. "Expanding operation" means a registered poultry feeding operation that seeks to increase its registered capacity in

excess of ten percent (10%) of the facility's original registered capacity;

~~12.~~ 11. "Facility" means any place, site or location or part thereof where poultry are kept, handled, housed or otherwise maintained including but not limited to buildings, lots, pens and poultry waste management systems;

~~13.~~ 12. "Integrator" means an entity which unites the elements associated with the poultry industry, including but not limited to hatching, feeding, processing and marketing. It includes, but is not limited to, situations when growing is contracted out to others and when the integrator operates its own growing facilities;

~~14.~~ 13. "Land application" means the spreading on, or incorporation into, the soil mantle primarily for beneficial purposes;

14. "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 as required by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to the provisions of Section 10-9.7 of this title and shall also include a certified nutrient management plan and animal waste management plan;

15. "Operator" means the person who performs the daily management functions associated with the poultry feeding operation;

16. "Person" means an individual, association, partnership, firm, company, public trust, corporation, joint stock company, trust estate, any other legal entity, or any agent, employee, representative assignor or successor thereof;

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

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

19. "Poultry" includes chickens, turkeys, ducks, geese and any other domesticated bird used for human food and/or animal feed;

20. "Poultry feeding operation" means a property or facility where the following conditions are met:

a. poultry have been, are or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period,

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

c. producing over ten (10) tons of poultry waste per year;

21. "Poultry waste" means poultry excrement, poultry carcasses, feed wastes or any other waste associated with the confinement of poultry from a poultry feeding operation;

22. "Poultry waste utilization business" means a business at which poultry waste is collected, recycled, processed or recovered into reusable products including, but not limited to, fertilizer and animal feed;

23. "Poultry waste management system" means a combination of structures and practices serving a poultry feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of poultry waste;

24. "Private poultry waste applicator" means any person who is not a commercial poultry waste applicator but engages in the land application of poultry waste for purposes including, but not limited to, producing any agricultural commodity on property owned or rented by the person or such person's employer, or if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

25. "Waste facility" means any structure or combination of structures utilized to control poultry waste until it can be utilized in an authorized manner; and

26. "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. Process wastewaters shall not be considered as waters of the state if contaminated at the site.

SECTION 2. AMENDATORY 2 O.S. 2011, Section 10-9.7, is amended to read as follows:

Section 10-9.7 A. All poultry feeding operations shall utilize Best Management Practices and shall meet the conditions and requirements established by subsection B of this section and by rules promulgated by the State Board of Agriculture pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

B. The criteria for Best Management Practices shall be promulgated by rules by the Board and shall include, but not be limited to, the following:

1. There shall be no discharge of poultry waste to waters of the state;

2. Stored poultry waste shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures;

3. No waters of the state shall come into direct contact with the poultry confined on the poultry feeding operation;

4. Poultry waste handling, treatment, management and removal shall:

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

b. not result in the contamination of waters of the state, and

c. conform to such other handling, treatment and management and removal requirements deemed necessary by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry to implement the Oklahoma Registered

Poultry Feeding Operations Act and rules promulgated pursuant thereto.

The rules promulgated by the Board pursuant to this section shall provide for exceptions to the storage requirements for poultry waste in emergency situations. Such exceptions shall include but not be limited to allowing a contract poultry grower to take such actions as are necessary to meet requirements imposed on a grower by an integrator. In such situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.

C. Every poultry feeding operation shall have ~~an Animal Waste~~ a Nutrient Management Plan which shall include at a minimum:

1. A description of poultry waste handling procedures and availability of equipment and type of equipment to be used;

2. The calculations and assumptions used for determining land application rates;

3. All nutrient analysis data, for soil and poultry waste testing;

4. Legal description of lands to be used by an operation for land application;

5. Land application rates of poultry waste shall be based on the available nitrogen and phosphorous content of the poultry waste and shall provide controls for runoff and erosion as appropriate for site conditions;

6. The procedures documented in the ~~Animal Waste~~ Nutrient Management Plan must ensure that the handling and utilization of poultry waste complies with the following requirements:

a. adequate poultry waste storage shall be provided consistent with rules promulgated by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry pursuant to subsection B of this section,

b. poultry waste shall not be applied to land when the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen except in conformance with the ~~Animal Waste~~ Nutrient Management Plan,

c. poultry waste shall only be applied to suitable land at appropriate times and rates. Discharge or runoff of waste from the application site is prohibited. Timing and rate of applications shall be based on assimilation capacity of the soil profile, assuming usual nutrient losses, expected precipitation, and soil conditions, and

d. poultry waste application shall be prohibited on land subject to excessive erosion;

7. Records shall be maintained of all poultry wastes applied on land owned or controlled by the operator, and sold or given to other persons:

a. if the poultry waste is sold or given to other persons for land application or other use, the poultry feeding operation shall maintain a log of: date of removal from the poultry feeding operation; name of recipient the poultry waste is sold or given to; and amount in wet tons, dry tons or cubic yards of poultry waste removed from the poultry feeding operation, and

b. the poultry feeding operation shall make available to the recipient any nutrient sample analysis from that year;

8. Any analysis required by the provisions of the Oklahoma Registered Poultry Feeding Operations Act or rules promulgated thereto shall be performed by a qualified environmental testing laboratory certified by the Department of Environmental Quality and approved by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry; and

9. Such other information deemed necessary by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry to administer the provisions of the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

D. The Oklahoma Department of Agriculture, Food, and Forestry may promulgate rules providing voluntary fees charged to registered poultry feeding operations for the development and writing of Nutrient Management Plans;

E. Every poultry feeding operation located in a non-nutrient-limited watershed and non-nutrient-vulnerable groundwaters shall perform soil testing on each land application and poultry waste testing at least once every three (3) years to determine:

1. Soil pH and plant available nutrients including, at a minimum, nitrogen, phosphorous and potassium;

2. Poultry waste nutrient concentrations and moisture; and

3. Application rate based upon current United States Department of Agriculture Natural Resources Conservation Service Waste Utilization Standards, unless the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry approves other standards.

~~E.~~ F. 1. Every poultry feeding operation located in a nutrient-limited watershed and nutrient-vulnerable groundwater shall perform an annual soil test on each land application area prior to the first application of the calendar year. Poultry waste testing shall be performed annually prior to the first application of the calendar year. Soil and poultry waste testing shall be performed to determine:

a. soil pH and plant available nutrients including at least nitrogen, phosphorous and potassium,

b. poultry waste nutrient concentrations and moisture, and

c. application rate based upon current United States Department of Agriculture Natural Resources Conservation Service Waste Utilization Standards, unless the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry approves other standards.

2. Soil and poultry waste analysis data shall be retained by the poultry feeding operation for as long as the site is in operation.

~~F.~~ G. 1. Poultry feeding operations shall develop a plan for the disposal of carcasses associated with normal mortality.

2. In the event there is an outbreak of a major disease or other emergency resulting in deaths significantly higher than normal mortality rates, the ~~State~~ Oklahoma Department of Agriculture, Food,

and Forestry may approve, in writing, an alternate method of disposal of carcasses or the storage of poultry waste during the emergency period.

SECTION 3. This act shall become effective November 1, 2012.

Passed the House of Representatives the 5th day of March, 2012.

Presiding Officer of the House of Representatives

Passed the Senate the 10th day of April, 2012.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 11th day of April, 2012, at 12:52 o'clock P M.

By: Jessica R. Rogers

Approved by the Governor of the State of Oklahoma the 17th day of April, 2012, at 11:27 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 17th day of April, 2012, at 3:24 o'clock P M.

By: Michelle R Day