

1 ENGROSSED HOUSE
2 BILL NO. 1514

By: Murdock of the House

and

Boggs of the Senate

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6
7 An Act relating to agriculture; amending 2 O.S. 2011,
8 Sections 20-41 and 20-46, which relate to the
9 Oklahoma Concentrated Animal Feeding Operations Act;
10 updating references; modifying definition of
11 interested party; authorizing the Oklahoma Department
12 of Agriculture, Food, and Forestry to request and
13 review additional information for certain
14 applications; requiring the Department make certain
15 determination within a certain timeframe; modifying
16 certain notification requirements; deleting certain
17 hearing requirements; requiring hearing be requested
18 within certain timeframe; prohibiting the Department
19 from taking action on certain application within
20 certain time period; requiring application to be
21 submitted under certain circumstances; requiring
22 certain information in request for a hearing;
23 requiring the Department to schedule a preliminary
24 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

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

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

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

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

6 3. "Animal unit" means a unit of measurement for any animal
7 feeding operation calculated by adding the following numbers: The
8 number of slaughter and feeder cattle multiplied by one (1), plus
9 the number of mature dairy cattle multiplied by one and four-tenths
10 (1.4), plus the number of sheep multiplied by one-tenth (0.1), plus
11 the number of horses multiplied by two (2);

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

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

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

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

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

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

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

13 11. "Concentrated animal feeding operation" means:

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

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

18 (a) 1,000 slaughter and feeder cattle,

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

21 (c) 500 horses,

22 (d) 10,000 sheep or lambs,

23 (e) 55,000 turkeys,
24

- (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;

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

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

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

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

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

24

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

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

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

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

- 13 a. is not readily mobile,
- 14 b. is connected to a public or permanent source of
15 electricity and a permanent waste disposal system or
16 public waste disposal system, and
- 17 c. is occupied as a residence;

18 21. "Pollution Prevention Plan" means a written plan to control
19 the discharge of pollutants which has been prepared in accordance
20 with industry-acceptable engineering and management practices by the
21 owner or operator of an animal feeding operation as required
22 pursuant to ~~Section 35 of this act~~ 20-47 of this title;

23 22. "Process wastewater" means any water utilized in the
24 facility that comes into contact with any manure, litter, bedding,

1 raw, intermediate, or final material or product used in or resulting
2 from the production of animals and any products directly or
3 indirectly used in the operation of a facility, such as spillage or
4 overflow from animal watering systems; washing, cleaning, or
5 flushing pens, barns, manure pits, direct contact, swimming, washing
6 or spray cooling of animals; and dust control and any precipitation
7 which comes into contact with animals or animal waste;

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

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

18 25. "Waters of the state" means all streams, lakes, ponds,
19 marshes, watercourses, waterways, wells, springs, irrigation
20 systems, drainage systems, storm sewers and all other bodies or
21 accumulations of water, surface and underground, natural or
22 artificial, public or private, which are contained within, flow
23 through or border upon this state or any portion thereof, and shall
24 include under all circumstances the waters of the United States

1 which are contained within the boundaries of, flow through or border
2 upon this state or any portion thereof. Provided, waste treatment
3 systems, including treatment ponds and lagoons, designed to meet
4 federal and state requirements other than cooling ponds as defined
5 in the Clean Water Act or rules promulgated pursuant thereto are not
6 waters of the state.

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

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

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

17 B. 1. After submission of a completed application as provided
18 by the Oklahoma Concentrated Animal Feeding Operations Act and rules
19 promulgated pursuant thereto, the Oklahoma Department of
20 Agriculture, Food, and Forestry shall have sixty (60) working days
21 to review the application for a new operation for physical and
22 technical suitability.

23 2. a. After review of the application, the Department may
24 request additional information from the applicant.

1 Upon receipt of the additional information, the
2 Department shall have an additional thirty (30)
3 working days to review the additional information.

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

11 C. 1. ~~After review and after the applicant has submitted any~~
12 ~~additional required information to the Department~~ has determined
13 that the application is complete, the Department shall require the
14 applicant to notify all affected property owners ~~of the proposed~~
15 ~~facility~~ that a completed application is on file with the
16 Department. Notice shall be sent by certified mail, return receipt
17 requested. The notice shall ~~identify~~ state that an application for
18 a new animal feeding operation has been submitted to the Department
19 and has been deemed to be complete, the location ~~where~~ of the
20 facility ~~is to be located,~~ that a hearing may be requested ~~pursuant~~
21 ~~to this subsection, and the date the application will be available~~
22 ~~for public review beginning no earlier than the day following the~~
23 ~~certified mailing of all the required notices, and any other~~
24 ~~information required by the Department.~~

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

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

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

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

11 ~~3. If any of the affected property owners request an~~
12 ~~administrative hearing and all information listed in paragraph 2 of~~
13 ~~this subsection is found to be complete and adequate in the request~~
14 ~~for hearing, the scheduling conference for the hearing shall be held~~
15 ~~by the Department at a reasonable time within sixty (60) calendar~~
16 ~~days after the close of the public review period. Should the~~
17 ~~interested party have failed to provide any of the information~~
18 ~~listed in paragraph 2 of this subsection, the interested party shall~~
19 ~~have thirty (30) calendar days with which to cure any deficiencies~~
20 ~~after notice by the Department of such failure and receipt thereof~~
21 ~~in writing by the interested party. All interested parties may be~~
22 ~~joined as parties to the hearing.~~

23 ~~4. In addition to any other information deemed necessary by the~~
24 ~~Department, at the hearing the Department shall hear testimony and~~

1 ~~accept evidence pertaining to the physical and technical suitability~~
2 ~~of the proposed facility.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 F. If no hearing is requested within the time periods set forth
19 in paragraph 1 of subsection G of this section, the application
20 shall be submitted to the State Board of Agriculture for
21 consideration and action.

22 G. 1. An affected property owner may request a hearing prior
23 to final approval of the application. All requests for a hearing
24 shall be filed with the Department within fifteen (15) working days

1 after the receipt of the notice by the affected property owner. In
2 requesting a hearing an affected property owner shall state in the
3 request:

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

7 b. specific allegations showing that the proposed
8 facility or expanding operation may have a direct,
9 substantial and immediate effect upon a legally
10 protected interest of the affected property owner.

11 The allegations shall address with specificity the
12 information contained within the application for
13 licensure. Furthermore, the allegations shall be
14 limited to demonstrating how the application is
15 deficient, how the deficiencies have a direct effect
16 on a legal interest of the affected property owner,
17 and how the application has failed to show that the
18 application should be granted. The allegations shall
19 also address the physical and technical suitability of
20 the proposed facility.

21 2. If any of the affected property owners request an
22 administrative hearing pursuant to paragraph 1 of this subsection
23 and all information listed in subparagraphs a and b of paragraph 1
24 of this subsection is found to be complete and adequate in the

1 request for a hearing, the Department shall schedule a preliminary
2 hearing at a reasonable time within sixty (60) calendar days.
3 Should the affected property owner fail to provide any of the
4 information required in the request for a hearing, the affected
5 property owner shall have ten (10) working days during which any
6 deficiencies may be cured after receipt of notice from the
7 Department of the failure. All affected property owners shall be
8 considered parties to the preliminary hearing scheduled by the
9 Department.

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

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

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

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

22 b. that the direct, substantial and immediate effect upon
23 a legally protected interest arises directly from a
24

1 deficiency in the application or from the physical and
2 technical suitability of the proposed facility.

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

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

17 6. If the administrative law judge finds an affected property
18 owner that requested a hearing failed to meet the burden of proof
19 set forth in paragraphs 2, 3, and 4 of this subsection, the
20 application shall be sent to the State Board of Agriculture along
21 with a copy of the recommended order of the administrative law judge
22 for consideration and action.

23 7. If the administrative law judge finds an affected property
24 owner met the burden of proof set forth in paragraph 3 of this

1 subsection, then a full administrative hearing shall be scheduled in
2 accordance with the Administrative Procedures Act.

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

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

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

16 3. An affected property owner may at any time waive his or her
17 rights to a hearing. If an affected property owner waives his or
18 her rights to a hearing, a signed and notarized document shall be
19 filed with the administrative law judge stating the affected
20 property owner waived his or her rights to a hearing, did so without
21 force or coercion, understands he or she is also waiving his or her
22 rights to any further hearing provided for under this section or the
23 Administrative Procedures Act and that the waiver shall be with
24 prejudice. The waiver of right to a hearing shall be admissible as

1 evidence in any court of the State of Oklahoma as evidence the
2 affected property owner waived his or her rights to any additional
3 hearings to which he or she may otherwise have been entitled.

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

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

- 19 a. the evidence was unavailable to the interested party
20 prior to the preliminary hearing,
21 b. the interested party exercised due diligence to
22 discover and present all relevant evidence at the
23 preliminary hearing,

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

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

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

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

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

1 Passed the House of Representatives the 23rd day of February,
2015.

4 _____
Presiding Officer of the House
of Representatives

6 Passed the Senate the ___ day of _____, 2015.

8 _____
Presiding Officer of the Senate