

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
BILL NO. 4118

By: Hardin of the House

and

Howard of the Senate

7 An Act relating to agriculture; amending 2 O.S. 2021,
8 Section 10-9.7, as amended by Section 1, Chapter 239,
9 O.S.L. 2022 (2 O.S. Supp. 2023, Section 10-9.7),
10 which relates to Nutrient Management Plans; providing
11 that compliance with a certain Nutrient Management
12 Plan shall be deemed compliant with Best Management
13 Practices; modifying requirements of a Nutrient
14 Management Plan; amending 2 O.S. 2021, Section 10-
15 9.11, which relates to violations of the Oklahoma
16 Registered Poultry Feeding Operations Act;
17 establishing the exclusive enforcement jurisdiction
18 of the Oklahoma Department of Agriculture, Food, and
19 Forestry for acts or omissions relating to the
20 Oklahoma Registered Poultry Feeding Operations Act;
21 creating a presumption that compliance with a current
22 Nutrient Management Plan insulates poultry growers,
23 operators, integrators, and waste applicators from
24 any private right of action or any collateral
enforcement; establishing that the Oklahoma
Registered Poultry Feeding Operations Act grants
statutory immunity from nuisance liability; and
declaring an emergency.

20 AMENDMENT NO. 1. Page 1, strike the title

1 Passed the Senate the 25th day of April, 2024.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2024.

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8 _____
9 Presiding Officer of the House
10 of Representatives

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2 BILL NO. 4118

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10 which relates to Nutrient Management Plans; providing
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Registered Poultry Feeding Operations Act grants
statutory immunity from nuisance liability; and
declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2021, Section 10-9.7, as
amended by Section 1, Chapter 239, O.S.L. 2022 (2 O.S. Supp. 2023,
Section 10-9.7), is amended to read as follows:

1 Section 10-9.7 A. All poultry feeding operations shall utilize
2 Best Management Practices and shall meet the conditions and
3 requirements established by subsection B of this section and by
4 rules promulgated by the State Board of Agriculture pursuant to the
5 Oklahoma Registered Poultry Feeding Operations Act. Compliance with
6 a Nutrient Management Plan developed under subsection B of this
7 section shall be deemed compliant with the Best Management Practices
8 prescribed in this subsection, as well as the requirements of
9 subsection C of this section.

10 B. ~~The criteria for~~ Best Management Practices shall be
11 promulgated by rules by the Board and shall include, but not be
12 limited to, the following when developing Nutrient Management Plans:

13 1. ~~There shall be no~~ Each Nutrient Management Plan shall
14 contain measures designed to prevent the discharge of poultry waste
15 to waters of the state;

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

19 3. ~~No~~ Each Nutrient Management Plan shall contain measures
20 designed to prevent waters of the state ~~shall come~~ from coming into
21 direct contact with the poultry confined on the poultry feeding
22 operation; and

23 4. ~~Poultry~~ Provisions designed to ensure that poultry waste
24 handling, treatment, management, and removal shall:

- 1 a. not create an environmental or a public health hazard,
- 2 b. not result in the contamination of waters of the
- 3 state, and
- 4 c. conform to such other handling, treatment, and
- 5 management and removal requirements deemed necessary
- 6 by the Oklahoma Department of Agriculture, Food, and
- 7 Forestry to implement the Oklahoma Registered Poultry
- 8 Feeding Operations Act and rules promulgated pursuant
- 9 thereto.

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

18 C. Every poultry feeding operation shall have a Nutrient
19 Management Plan which shall include at a minimum:

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

22 2. The calculations and assumptions used for determining land-
23 application rates if land application is applicable;

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

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

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

9 6. The procedures documented in the Nutrient Management Plan
10 shall ensure that the handling and utilization of poultry waste
11 complies with the following requirements:

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

16 b. poultry waste shall not be applied to land when the
17 ground is saturated or during rainfall events.

18 Poultry waste shall not be applied to land when the
19 ground is frozen except in conformance with the
20 Nutrient Management Plan,

21 c. poultry waste shall only be applied to suitable land
22 at appropriate times and rates. Discharge or runoff
23 of waste from the application site is ~~prohibited~~
24 evidence that the Nutrient Management Plan requires

1 revisions. Timing and rate of applications shall be
2 based on assimilation capacity of the soil profile,
3 assuming usual nutrient losses, expected
4 precipitation, and soil conditions, and

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

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

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

17 b. the poultry feeding operation shall make available to
18 the recipient any nutrient sample analysis of the
19 poultry waste from that year;

20 8. Any analysis required by the provisions of the Oklahoma
21 Registered Poultry Feeding Operations Act or rules promulgated
22 thereto shall be performed by a qualified environmental testing
23 laboratory certified by the Department of Environmental Quality and
24

1 approved by the Oklahoma Department of Agriculture, Food, and
2 Forestry; and

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

7 D. 1. The Nutrient Management Plan for new or expanding
8 poultry feeding operations submitted after July 1, 1998, shall be
9 prepared by the operator or designee of the operator.

10 2. After the plan is submitted to the Oklahoma Department of
11 Agriculture, Food, and Forestry for review and approval if the
12 Department determines that a submitted plan needs or requires any
13 corrections or modifications, the Department shall return the
14 Nutrient Management Plan to the operator for corrections.

15 3. For a renewal, if the Department determines the Nutrient
16 Management Plan needs or requires corrections or modifications, the
17 Department shall make appropriate corrections, approve the plan, and
18 notify the poultry feeding operation of the modifications.

19 E. 1. Except as otherwise provided in this subsection, a
20 Nutrient Management Plan for every poultry feeding operation shall
21 be renewed and an updated plan shall be submitted to the Oklahoma
22 Department of Agriculture, Food, and Forestry every six (6) years
23 from the date the initial or previous plan was submitted.

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1 2. The operator shall have the option to submit the renewed or
2 updated plan through the Department's website or a printable online
3 form designed by the Department.

4 3. A current operator may submit a one-page amendment to the
5 most recently submitted plan in lieu of a renewal plan through the
6 Department's website, if applicable. Poultry feeding operations
7 submitting an amendment pursuant to this subsection shall still be
8 subject to the soil and poultry waste testing requirements under
9 subsections F and G of this section. The amendment shall contain
10 the following statements:

11 a. no changes in the Department's promulgated standards
12 for land application of poultry waste have occurred
13 since the most recently submitted Nutrient Management
14 Plan,

15 b. there has been no change to the number of poultry
16 housed since the most recently submitted Nutrient
17 Management Plan,

18 c. there has been no expansion in the poultry feeding
19 operation since the most recently submitted Nutrient
20 Management Plan, and

21 d. the entirety of the poultry waste is:

22 (1) removed off-site as provided in the poultry
23 feeding operation's annual report, as required by
24 subsection J of this section, and will continue

1 to be removed off-site for the next six (6)
2 years, or

3 (2) land-applied and will continue to be land-applied
4 for the next six (6) years.

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

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

11 2. Poultry waste nutrient concentrations and moisture; and

12 3. Application rate based upon the Department's standards for
13 land application for poultry waste as promulgated by rules.

14 G. Every poultry feeding operation located in a nutrient-
15 limited watershed and nutrient-vulnerable groundwater shall perform
16 an annual soil test on each land-application area prior to the first
17 application of the calendar year. Poultry waste testing shall be
18 performed annually prior to the first application of the calendar
19 year. Soil and poultry waste testing shall be performed to
20 determine:

21 1. Soil pH and plant-available nutrients including at least
22 nitrogen, phosphorous, and potassium;

23 2. Poultry waste nutrient concentrations and moisture; and
24

1 3. Application rate based upon the Department's standards for
2 land application of poultry waste as promulgated by rules.

3 H. 1. Soil and poultry waste analysis data shall be retained
4 by the poultry feeding operation for a minimum of six (6) years.

5 2. All soil and poultry waste analysis data shall be dated
6 prior to land application.

7 I. 1. Poultry feeding operations shall develop a plan for the
8 disposal of carcasses associated with normal mortality.

9 2. In the event there is an outbreak of a major disease or
10 other emergency resulting in deaths significantly higher than normal
11 mortality rates, the Oklahoma Department of Agriculture, Food, and
12 Forestry may approve, in writing, an alternate method of disposal of
13 carcasses or the storage of poultry waste during the emergency
14 period.

15 J. Every poultry feeding operation shall file by September 1 of
16 each year an annual report with the Department regarding all poultry
17 waste removed from or land-applied by the facility for the period
18 from July 1 of the previous year through June 30 of that year. The
19 report shall contain the following information:

20 1. The date and amount of poultry waste removed from or land-
21 applied at the facility;

22 2. The type of poultry waste removed or land-applied, whether a
23 cake out, full clean out, in-house windrow or compost, poultry waste
24 stack shed, or other type;

1 3. The county and, if applicable, the name of the Nutrient
2 Limited Watershed where the poultry waste was produced; and

3 4. The location where the poultry waste is removed to:

4 a. if land-applied on-site, provide the following:

5 (1) the date of the land application,

6 (2) the total amount of poultry waste land-applied in
7 wet tons, dry tons, or cubic yards,

8 (3) the name, mailing address, and telephone number
9 of the poultry waste applicator, and

10 (4) the number of acres under the control of the
11 poultry feeding operation for land application of
12 poultry waste, or

13 b. if removed off-site, provide the following:

14 (1) the date of the removal off-site,

15 (2) the amount of poultry waste removed in wet tons,
16 dry tons, or cubic yards,

17 (3) the name, mailing address, and telephone number
18 of the person the poultry waste is sold or
19 transferred to,

20 (4) the name, mailing address, telephone number, and
21 poultry waste applicator license number of the
22 poultry waste applicator, if known, and

23 (5) the name, mailing address, and telephone number
24 of the hauler of the poultry waste.

1 SECTION 2. AMENDATORY 2 O.S. 2021, Section 10-9.11, is
2 amended to read as follows:

3 Section 10-9.11 A. 1. Any person violating the provisions of
4 the Oklahoma Registered Poultry Feeding Operations Act shall, upon
5 conviction, be guilty of a misdemeanor and may be punished by a fine
6 not to exceed Two Hundred Dollars (\$200.00).

7 2. The Attorney General or the district attorney of the
8 appropriate district court of Oklahoma may bring an action in a
9 court of competent criminal jurisdiction for the prosecution of a
10 violation by any person of a provision of the Oklahoma Registered
11 Poultry Feeding Operations Act or any rule promulgated thereunder.

12 B. 1. In addition to the criminal penalties specified by this
13 section, the Oklahoma Department of Agriculture, Food, and Forestry
14 may:

15 a. assess an administrative penalty of not more than Two
16 Hundred Dollars (\$200.00) per day of noncompliance, or

17 b. bring an action for injunctive relief granted by a
18 district court.

19 2. A district court may grant injunctive relief to prevent a
20 violation of, or to compel compliance with, any of the provisions of
21 the Oklahoma Registered Poultry Feeding Operations Act or any rule
22 promulgated thereunder or order, registrations, and certificates
23 issued pursuant to the Oklahoma Registered Poultry Feeding
24 Operations Act.

1 3. Nothing in this section shall preclude the Department from
2 seeking penalties in district court in the maximum amount allowed by
3 law. The assessment of penalties in an administrative enforcement
4 proceeding shall not prevent the subsequent assessment by a court of
5 the maximum criminal penalties for violations of the Oklahoma
6 Registered Poultry Feeding Operations Act.

7 4. Any person assessed an administrative penalty may be
8 required to pay, in addition to such penalty amount and interest
9 thereon, attorney fees and costs associated with the collection of
10 such penalties.

11 C. 1. Any action for injunctive relief to redress or restrain
12 a violation by any person of the Oklahoma Registered Poultry Feeding
13 Operations Act, or for any rule promulgated thereunder, or order
14 issued pursuant thereto, or recovery of any administrative penalty
15 assessed pursuant to the Oklahoma Registered Poultry Feeding
16 Operations Act may be brought by:

- 17 a. the district attorney of the appropriate district
- 18 court of the State of Oklahoma,
- 19 b. the Attorney General on behalf of the State of
- 20 Oklahoma, or
- 21 c. the Department on behalf of the State of Oklahoma.

22 2. The court shall have jurisdiction to determine the action,
23 and to grant the necessary or appropriate relief, including, but not
24

1 limited to, mandatory or prohibitive injunctive relief, ~~interim~~
2 ~~equitable relief, and punitive damages.~~

3 3. It shall be the duty of the Attorney General and district
4 attorney if requested by the Commissioner of Agriculture to bring
5 such actions.

6 D. Except as otherwise provided by law, administrative and
7 civil penalties shall be paid into the State Department of
8 Agriculture Regulation Revolving Fund.

9 E. For the purposes of the Oklahoma Registered Poultry Feeding
10 Operations Act, each day upon which a violation is committed or is
11 permitted to continue shall be deemed a separate offense.

12 F. Any contract poultry grower determined after notice and
13 opportunity for a hearing by the Department as flagrantly
14 disregarding Best Management Practices shall result in the
15 Department notifying the integrator in writing.

16 G. The Department shall notify all integrators of any
17 violations assessed against an operator who is under a contract
18 growing arrangement with that integrator and, upon the written
19 request of the integrator, notify that integrator of all violations
20 assessed against an operator with whom the integrator contemplates
21 entering into a contract.

22 H. In addition to other penalties as may be imposed by law, any
23 person who knowingly makes any false statement, representation or
24 certification form, notice or report, or who knowingly renders

1 inaccurate any monitoring device or method required to be maintained
2 by any rule promulgated by the Board, shall, upon conviction, be
3 guilty of a misdemeanor and may be subject to a fine of not more
4 than Five Thousand Dollars (\$5,000.00) for each such violation.

5 I. Land application of poultry litter in compliance with a
6 current Nutrient Management Plan shall not be the basis for criminal
7 or civil liability in Oklahoma, whether relating to that single
8 plan, or aggregated with the application of poultry waste pursuant
9 to other Nutrient Management Plans, nor shall an administrative
10 violation be the basis for a criminal or civil action, nor shall any
11 alleged violation be the basis for any private right of action, nor
12 any action other than enforcement of the terms of the Nutrient
13 Management Plan and other sections of this title by the Oklahoma
14 Department of Agriculture, Food, and Forestry. A current plan means
15 a plan approved by the Oklahoma Department of Agriculture, Food, and
16 Forestry and not yet revoked or rescinded by the state or suspended
17 by a more recent plan.

18 1. This provision shall apply both directly and vicariously to
19 the integrator with whom a contract poultry grower contracts, as
20 well as to any poultry grower, operator, contractor of, or employee
21 for a certified poultry waste applicator or a poultry waste owner's
22 agent, so long as the land application is performed pursuant to and
23 in compliance with the current Nutrient Management Plan.

24

1 2. Compliance with a current Nutrient Management Plan, as
2 determined by the Oklahoma Department of Agriculture, Food, and
3 Forestry, shall create a presumption that no violation of this
4 section has occurred and shall insulate the poultry grower,
5 integrator, and waste applicator from any private right of action
6 and shall constitute "express authority" for purposes of this title
7 and Section 4 of Title 50 of the Oklahoma Statutes.

8 3. Nothing in this subsection shall restrict the Oklahoma
9 Department of Agriculture, Food, and Forestry's exclusive authority
10 from enforcing the terms of Nutrient Management Plans or their
11 authority to enforce the Oklahoma Registered Poultry Feeding
12 Operations Act and the Oklahoma Certified Poultry Waste Applicators
13 Act.

14 SECTION 3. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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