

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 4118

By: Hardin

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6
7 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

22 3. ~~No~~ Each Nutrient Management Plan shall contain measures
23 designed to prevent waters of the state ~~shall come~~ from coming into
24

1 direct contact with the poultry confined on the poultry feeding
2 operation; and

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

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

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

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

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- 1 1. A description of poultry waste handling procedures and
2 availability of equipment and type of equipment to be used;
- 3 2. The calculations and assumptions used for determining land-
4 application rates if land application is applicable;
- 5 3. All nutrient analysis data for soil and poultry waste
6 testing;
- 7 4. Legal description and latitude and longitude of lands to be
8 used by an operation for land application;
- 9 5. Land-application rates of poultry waste shall be based on
10 the available nitrogen and phosphorous content of the poultry waste
11 and shall provide controls for runoff and erosion as appropriate for
12 site conditions;
- 13 6. The procedures documented in the Nutrient Management Plan
14 shall ensure that the handling and utilization of poultry waste
15 complies with the following requirements:
 - 16 a. adequate poultry waste storage shall be provided
17 consistent with rules promulgated by the Oklahoma
18 Department of Agriculture, Food, and Forestry pursuant
19 to subsection B of this section,
 - 20 b. poultry waste shall not be applied to land when the
21 ground is saturated or during rainfall events.
22 Poultry waste shall not be applied to land when the
23 ground is frozen except in conformance with the
24 Nutrient Management Plan,

- 1 c. poultry waste shall only be applied to suitable land
2 at appropriate times and rates. Discharge or runoff
3 of waste from the application site is ~~prohibited~~
4 evidence that the Nutrient Management Plan requires
5 revisions. Timing and rate of applications shall be
6 based on assimilation capacity of the soil profile,
7 assuming usual nutrient losses, expected
8 precipitation, and soil conditions, and
- 9 d. poultry waste application shall be prohibited on land
10 subject to excessive erosion~~†~~.

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

- 14 a. if the poultry waste is sold or given to other persons
15 for land application or other use, the poultry feeding
16 operation shall maintain a log of~~†~~ date of removal
17 from the poultry feeding operation~~†~~, name of recipient
18 the poultry waste is sold or given to~~†~~, and amount in
19 wet tons, dry tons or cubic yards of poultry waste
20 removed from the poultry feeding operation, and
- 21 b. the poultry feeding operation shall make available to
22 the recipient any nutrient sample analysis of the
23 poultry waste from that year~~†~~.

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

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

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

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

19 3. For a renewal, if the Department determines the Nutrient
20 Management Plan needs or requires corrections or modifications, the
21 Department shall make appropriate corrections, approve the plan, and
22 notify the poultry feeding operation of the modifications.

23 E. 1. Except as otherwise provided in this subsection, a
24 Nutrient Management Plan for every poultry feeding operation shall

1 be renewed and an updated plan shall be submitted to the Oklahoma
2 Department of Agriculture, Food, and Forestry every six (6) years
3 from the date the initial or previous plan was submitted.

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

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

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

18 b. there has been no change to the number of poultry
19 housed since the most recently submitted Nutrient
20 Management Plan,

21 c. there has been no expansion in the poultry feeding
22 operation since the most recently submitted Nutrient
23 Management Plan, and

24 d. the entirety of the poultry waste is:

- (1) removed off-site as provided in the poultry feeding operation's annual report, as required by subsection J of this section, and will continue to be removed off-site for the next six (6) years, or
- (2) land-applied and will continue to be land-applied for the next six (6) years.

F. Every poultry feeding operation located in a non-nutrient-limited watershed and non-nutrient-vulnerable groundwaters shall perform soil testing on each land-application area 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 the Department's standards for land application for poultry waste as promulgated by rules.

G. 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:

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

3 2. Poultry waste nutrient concentrations and moisture; and

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

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

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

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

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

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

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

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

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

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

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

8 (1) the date of the land application,

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

11 (3) the name, mailing address, and telephone number
12 of the poultry waste applicator, and

13 (4) the number of acres under the control of the
14 poultry feeding operation for land application of
15 poultry waste, or

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

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

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

20 (3) the name, mailing address, and telephone number
21 of the person the poultry waste is sold or
22 transferred to,

1 (4) the name, mailing address, telephone number, and
2 poultry waste applicator license number of the
3 poultry waste applicator, if known, and

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

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

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

12 2. The Attorney General or the district attorney of the
13 appropriate district court of Oklahoma may bring an action in a
14 court of competent criminal jurisdiction for the prosecution of a
15 violation by any person of a provision of the Oklahoma Registered
16 Poultry Feeding Operations Act or any rule promulgated thereunder.

17 B. 1. In addition to the criminal penalties specified by this
18 section, the Oklahoma Department of Agriculture, Food, and Forestry
19 may:

- 20 a. assess an administrative penalty of not more than Two
21 Hundred Dollars (\$200.00) per day of noncompliance, or
22 b. bring an action for injunctive relief granted by a
23 district court.

1 2. A district court may grant injunctive relief to prevent a
2 violation of, or to compel compliance with, any of the provisions of
3 the Oklahoma Registered Poultry Feeding Operations Act or any rule
4 promulgated thereunder or order, registrations, and certificates
5 issued pursuant to the Oklahoma Registered Poultry Feeding
6 Operations Act.

7 3. Nothing in this section shall preclude the Department from
8 seeking penalties in district court in the maximum amount allowed by
9 law. The assessment of penalties in an administrative enforcement
10 proceeding shall not prevent the subsequent assessment by a court of
11 the maximum criminal penalties for violations of the Oklahoma
12 Registered Poultry Feeding Operations Act.

13 4. Any person assessed an administrative penalty may be
14 required to pay, in addition to such penalty amount and interest
15 thereon, attorney fees and costs associated with the collection of
16 such penalties.

17 C. 1. Any action for injunctive relief to redress or restrain
18 a violation by any person of the Oklahoma Registered Poultry Feeding
19 Operations Act, or for any rule promulgated thereunder, or order
20 issued pursuant thereto, or recovery of any administrative penalty
21 assessed pursuant to the Oklahoma Registered Poultry Feeding
22 Operations Act may be brought by:

23 a. the district attorney of the appropriate district
24 court of the State of Oklahoma,

1 b. the Attorney General on behalf of the State of
2 Oklahoma, or

3 c. the Department on behalf of the State of Oklahoma.

4 2. The court shall have jurisdiction to determine the action,
5 and to grant the necessary or appropriate relief, including, but not
6 limited to, mandatory or prohibitive injunctive relief, ~~interim~~
7 ~~equitable relief, and punitive damages.~~

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

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

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

17 F. Any contract poultry grower determined after notice and
18 opportunity for a hearing by the Department as flagrantly
19 disregarding Best Management Practices shall result in the
20 Department notifying the integrator in writing.

21 G. The Department shall notify all integrators of any
22 violations assessed against an operator who is under a contract
23 growing arrangement with that integrator and, upon the written
24 request of the integrator, notify that integrator of all violations

1 assessed against an operator with whom the integrator contemplates
2 entering into a contract.

3 H. In addition to other penalties as may be imposed by law, any
4 person who knowingly makes any false statement, representation or
5 certification form, notice or report, or who knowingly renders
6 inaccurate any monitoring device or method required to be maintained
7 by any rule promulgated by the Board, shall, upon conviction, be
8 guilty of a misdemeanor and may be subject to a fine of not more
9 than Five Thousand Dollars (\$5,000.00) for each such violation.

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

23 1. This provision shall apply both directly and vicariously to
24 the integrator with whom a contract poultry grower contracts, as

1 well as to any poultry grower, operator, contractor of, or employee
2 for a certified poultry waste applicator or a poultry waste owner's
3 agent, so long as the land application is performed pursuant to and
4 in compliance with the current Nutrient Management Plan.

5 2. This provision shall apply retroactively to any pending
6 civil or criminal actions.

7 3. Compliance with a current nutrient management plan, as
8 determined by the Oklahoma Department of Agriculture, Food, and
9 Forestry, shall create a presumption that no violation of this
10 section has occurred and shall insulate the poultry grower,
11 integrator, and waste applicator from any private right of action
12 and shall constitute "express authority" for purposes of this title
13 and Section 4 of Title 50 of the Oklahoma Statutes.

14 4. Nothing in this subsection shall restrict the Oklahoma
15 Department of Agriculture, Food, and Forestry's exclusive authority
16 from enforcing the terms of Nutrient Management Plans or their
17 authority to enforce the Oklahoma Registered Poultry Feeding
18 Operations Act and the Oklahoma Certified Poultry Waste Applicators
19 Act.

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

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