

1 ENGROSSED HOUSE  
2 BILL NO. 4118

By: Hardin of the House

and

Howard of the Senate

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6  
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.

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 ÷ name of recipient  
14           the poultry waste is sold or given to ÷ and 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  
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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  
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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.

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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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