

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1450

By: Newberry

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5
6 AS INTRODUCED

7 An Act relating to swine feeding operations; amending
8 2 O.S. 2011, Sections 20-6 and 20-21, which relates
9 to licensure, operational modifications, designation
10 of operations and restrictions on locations of
11 certain animal feeding operations; requiring license;
12 providing for restriction; and providing an effective
13 date.

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

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

17 Section 20-6. A. 1. Any swine feeding operation meeting the
18 criteria defining a concentrated swine feeding operation shall be
19 required to obtain a license to operate pursuant to the Oklahoma
20 Swine Feeding Operations Act and rules promulgated pursuant thereto.

21 2. No swine feeding operation which voluntarily obtains a
22 license pursuant to the Oklahoma Swine Feeding Operations Act shall
23 be considered to be a concentrated swine feeding operation unless
24 the operation meets the definition of concentrated swine feeding
operation.

1 3. Any new swine feeding operation established after November
2 1, 2011, with more than one hundred animal units shall be required
3 to be licensed pursuant to the provisions of the Oklahoma Swine
4 Feeding Operations Act and the rules promulgated pursuant to that
5 act.

6 4. Any other swine feeding operation, regardless of the number
7 of swine, shall only be required to be licensed pursuant to the
8 provisions of the Oklahoma Swine Feeding Operations Act and rules
9 promulgated pursuant thereto if the State Board of Agriculture
10 determines the operation to be a significant contributor of
11 pollution to waters of the state or the operation is located within
12 the corporate limits of any municipality.

13 B. 1. Two or more swine feeding operations under common
14 ownership are considered, for the purposes of licensure, to be a
15 single swine feeding operation if they adjoin each other or if they
16 use a common area or system for the disposal of wastes.

17 2. A licensed managed feeding operation shall be required to
18 seek a modification of its license for any increase in excess of
19 five percent (5%) of the original facility's licensed capacity.

20 C. An expanding operation shall be required to seek a
21 modification of its license prior to expansion.

22 D. 1. The Board may make a case-by-case designation of
23 concentrated swine feeding operations pursuant to this section. Any
24 swine feeding operation may be designated as a concentrated swine

1 feeding operation if it is determined to be a significant
2 contributor of pollution to the waters of the state. In making this
3 designation, the Board shall consider the following factors:

- 4 a. the size of the swine feeding operation and the amount
5 of wastes reaching waters of the state,
- 6 b. the location of the swine feeding operation relative
7 to waters of the state,
- 8 c. the means of conveyance of swine waste and wastewater
9 into waters of the state,
- 10 d. the method of disposal for swine waste and process
11 wastewater disposal,
- 12 e. the slope, vegetation, rainfall and other factors
13 affecting the likelihood or frequency of discharge of
14 swine wastes and process wastewaters into waters of
15 the state, and
- 16 f. other factors relative to the significance of the
17 pollution problem sought to be regulated.

18 2. In no case shall an application for a license be required
19 from a swine feeding operation pursuant to this subsection until
20 there has been an on-site inspection of the operation and a
21 determination by the Oklahoma Department of Agriculture, Food, and
22 Forestry that the operation is a concentrated swine feeding
23 operation. Should the Department determine that the operation is a
24 concentrated swine feeding operation, the Department shall notify

1 the operation of the determination and of an opportunity for the
2 owner or operator of the facility to request an administrative
3 hearing on the issue.

4 3. Process wastewater in the overflow may be discharged to
5 navigable waters whenever rainfall events, either chronic or
6 catastrophic, cause an overflow of process wastewater from a
7 retention structure properly designed, constructed and operated to
8 contain all process wastewaters plus the runoff from a twenty-five-
9 year, twenty-four-hour rainfall event for the location of the point
10 source. There shall be no effluent limitations on discharges from a
11 waste facility constructed and properly maintained to contain the
12 twenty-five-year, twenty-four-hour storm event; provided, the proper
13 design, construction and operation of the retention structure shall
14 include but not be limited to one (1) foot of free board.

15 E. No new concentrated swine feeding operation or expansion of
16 a concentrated swine feeding operation requiring a license pursuant
17 to the Oklahoma Swine Feeding Operations Act shall be constructed or
18 placed in operation unless final design plans, specifications and a
19 Pollution Prevention Plan developed pursuant to Section 20-9 of this
20 title have been approved by the Department.

21 F. No new licensed managed feeding operation or expanding
22 operation shall be constructed until a building permit for such
23 facility or expansion has been issued by the Department. No new
24 licensed managed feeding operation or expanding operation shall be

1 placed in operation until a license for the facility or a
2 modification for an existing license has been issued by the
3 Department.

4 G. When requesting a modification of a license, a licensed
5 managed feeding operation shall comply with all notice and hearing
6 requirements as specified by this section and rules promulgated by
7 the State Board of Agriculture. In its request for a modification
8 of a license, a licensed managed feeding operation shall provide all
9 information specified in subsection G of Section 20-7 of this title.

10 H. Any hearings regarding modification of a license shall focus
11 on the modifications being proposed by the licensed managed feeding
12 operation.

13 I. A decision to deny modification of a license shall have no
14 impact on the original license.

15 SECTION 2. AMENDATORY 2 O.S. 2011, Section 20-21, is
16 amended to read as follows:

17 Section 20-21. Except as otherwise provided by Section 20-19 of
18 this title and subsection I of this section, swine feeding
19 operations using liquid swine waste management systems and housing
20 swine in roof-covered structures shall not be located within the
21 following applicable distances from an occupied residence:

- 22 1. More than 4000 swine animal units.....2 miles;
- 23 2. 2001 to 4000 swine animal units.....1 1/4 miles;
- 24 3. 1001 to 2000 swine animal units.....3/4 mile;

1 4. 601 to 1000 swine animal units.....1/2 mile;

2 5. 300 to 600 swine animal units.....1/4 mile; and

3 6. Less than 300 swine animal units.....no setback.

4 B. Except as otherwise provided by Section 20-19 of this title
5 and subsection I of this section, new swine feeding operations
6 established on or after November 1, 2011, using liquid swine waste
7 management systems and housing swine in roof-covered structures
8 shall not be located within three (3) miles from the outside
9 boundary of any area or facility with an average annual registered
10 attendance of not less than two thousand (2,000) people and owned or
11 operated as a camp or recreational site by a nonprofit organization
12 established prior to application of the swine feeding operation.

13 C. Except as otherwise provided by Section 20-19 of this title
14 and subsection I of this section, new swine feeding operations
15 established on or after November 1, 2011, using liquid swine waste
16 management systems and housing swine in roof-covered structures
17 shall not be located within one (1) mile from the outside boundary
18 of any area or facility with an average annual registered attendance
19 of less than two thousand (2,000) people and owned or operated as a
20 camp or recreational site by a nonprofit organization established
21 prior to application of the swine feeding operation.

22 D. Except as otherwise provided by this section, no licensed
23 managed feeding operation which applies for a new or expanding
24 concentrated swine feeding operation license shall be located within

1 three (3) miles of the outside boundary of any area or facility
2 owned or operated as a camp or recreational site by a nonprofit
3 organization established prior to application of the concentrated
4 swine feeding operation.

5 E. 1. In determining whether any such area or facility is a
6 camp or recreational site, the State Board of Agriculture shall
7 consider:

- 8 a. whether a reasonable person, after considering the
9 totality of the circumstances, would determine that
10 the area or facility is predominately used for camping
11 or recreational purposes,
- 12 b. the type of permanent structures or fixtures of a
13 recreational nature located on the land,
- 14 c. the frequency with which the site is used for
15 recreational purposes,
- 16 d. the types of activities which are conducted or engaged
17 in on the site, and
- 18 e. any other factors the Board deems directly relevant to
19 the question of whether a site is recreational in
20 nature.

21 2. The setbacks contained in subsections B, C and D shall apply
22 only if the property was owned or leased by such organization prior
23 to the construction or establishment of the swine feeding operation.

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1 F. The setback requirements contained in subsections A, B, C or
2 D of this section shall not apply to any property owner who executes
3 a written waiver with the owner or operator of the swine feeding
4 operation, under such terms and conditions as are agreed to by the
5 parties. The written waiver shall be effective upon recording of
6 the waiver in the office of the county clerk in the county in which
7 the property is located. The filed waiver shall preclude
8 enforcement of the setback requirements of subsection A, B, C or D
9 of this section with regard to property described in the waiver and
10 owned by the person executing the waiver. A change in ownership of
11 the applicable property or change in ownership of the property on
12 which the swine feeding operation is located shall not affect the
13 validity of the waiver.

14 G. No licensed managed feeding operation established after June
15 10, 1998 which applies for a new or expanding license shall be
16 located:

17 1. Within three (3) miles of any designated scenic river area
18 as specified by the Scenic Rivers Act;

19 2. Within three (3) miles of the outside boundary of any
20 historic property or museum owned by the State of Oklahoma;

21 3. Within three (3) miles of a public drinking water well;

22 4. Within one (1) mile of a water body specified as Outstanding
23 Resource Waters that has recreational or ecological significance as
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1 outlined by the most current Water Quality Standards promulgated by
2 the Oklahoma Water Resources Board; or

3 5. Within three (3) miles of a national park designated by the
4 United States Department of the Interior National Park Service.

5 H. No swine feeding operation licensed on or after November 1,
6 2016, shall be located adjacent to or within three hundred (300)
7 feet of any neighborhood or occupied residence within the corporate
8 limits of any municipality.

9 I. All distances between occupied residences and swine feeding
10 operations shall be measured from the closest corner of the walls of
11 the occupied residence to the closest point of the nearest waste
12 facility, as determined by the Oklahoma Department of Agriculture,
13 Food, and Forestry. The property boundary line of the real property
14 is not used unless it coincides with the closest point of the waste
15 facility or occupied residence.

16 ~~I.~~ J. The provisions of this section shall not apply to any
17 swine feeding operation which has been licensed by or which had
18 submitted an application to the Department on or prior to March 9,
19 1998. In addition, the provisions of this section shall not apply
20 to any swine feeding operation with a capacity of 2000 swine animal
21 units or less which was established prior to June 1, 1998.

22 SECTION 3. This act shall become effective November 1, 2016.

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