

An Act

ENROLLED SENATE
BILL NO. 1424

By: Howard and Bullard of the
Senate

and

Pfeiffer of the House

An Act relating to the Oklahoma Registered Poultry Feeding Operations Act; amending 2 O.S. 2021, Section 10-9.5, which relates to applications to register or expand poultry operations; establishing certain responsibility; amending 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), which relates to Nutrient Management Plans; providing that compliance with a certain Nutrient Management Plan shall be deemed compliant with Best Management Practices; modifying requirements of a Nutrient Management Plan; amending 2 O.S. 2021, Section 10-9.11, which relates to penalties for violations; increasing certain fines; creating misdemeanor offense; authorizing Oklahoma Department of Agriculture, Food, and Forestry to take certain actions; requiring certain administrative penalty to fund certain enforcement; modifying provisions related to the granting of certain relief; modifying provisions related to certain notice; authorizing extension of time periods for certain compliance; prohibiting use of certain notice as evidence of certain relationship; establishing the exclusive enforcement jurisdiction of the Oklahoma Department of Agriculture, Food, and Forestry for acts or omissions relating to the Oklahoma Registered Poultry Feeding Operations Act; creating a presumption that compliance with a current Nutrient Management Plan insulates poultry growers, 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;
authorizing civil actions for damages caused by
violation of a Nutrient Management Plan; and updating
statutory language and references.

SUBJECT: Oklahoma Registered Poultry Feeding Operations Act

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

SECTION 1. AMENDATORY 2 O.S. 2021, Section 10-9.5, is amended to read as follows:

Section 10-9.5. A. The State Board of Agriculture shall provide the necessary forms and applications for any person desiring or required to register a poultry feeding operation or expanding operation.

B. The application to register to operate a new or previously unregistered poultry feeding operation or expanding operation shall contain, at a minimum, the following information:

1. Name and address of the owner and operator of the facility;
2. Name and address of the poultry feeding operation;
3. Number and type of poultry housed or confined;
4. Name and address of the integrator whose poultry will be raised by the poultry feeding operation;
5. A diagram or map and legal description showing geographical location of the facility on which the perimeters of the facility are designated, location of waters of the state, including, but not limited to, drainage from the facility, poultry waste storage facilities, and land-application sites owned or leased by the applicant or which the applicant has contracted with for the application of poultry waste;
6. A copy of the Nutrient Management Plan, or proof of application for such plan, Best Management Practices or any other

plans authorized by the Oklahoma Department of Agriculture, Food, and Forestry;

7. A statement of ownership.

- a. If the applicant is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation shall be included in the application.
- b. If the applicant is a partnership or other legal entity, the name and address of each partner and stockholder with an ownership interest of ten percent (10%) or more shall be included in the statement.
- c. The information contained in the statement of ownership shall be public information and shall be available upon request from the Board;

8. The name and address of the person having day-to-day control of the operation, if such person is not the applicant and is acting as agent for the applicant;

9. An environmental history from the past three (3) years of any poultry feeding operation established and operated by the applicant or any other operation with common ownership in this state or any other state;

10. Environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the applicant; and

11. Any other information or records required by the Department for purposes of implementing the Oklahoma Registered Poultry Feeding Operations Act or rules promulgated pursuant thereto.

C. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation, or certification in, omits material data from, or tampers with any application for registration shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine ~~of~~ not more than Ten Thousand Dollars (\$10,000.00) for each such violation.

D. The owner of a poultry feeding operation shall be responsible for sending written notification to the Department upon changing integrators.

E. For a transfer of registration to a new owner, the new owner shall register the operation pursuant to the rules of the Department.

F. 1. All operators of poultry feeding operations and poultry waste applicators shall attend educational courses on poultry waste handling. All such operators and applicators shall attend educational training on poultry waste management as provided by Oklahoma State University through the ~~Oklahoma~~ Cooperative Extension Service. All current and new operators and applicators shall receive the initial nine (9) hours of training in the first year and two (2) hours of continuing education every year until the operator or applicator has received a total of nineteen (19) hours of training. Any operator or applicator may attend more hours than is required; however, those hours shall not be carried forward. Upon receiving the nineteen (19) required hours, the operator or applicator shall be required to receive two (2) hours of continuing education every three (3) years. The ~~Oklahoma~~ Cooperative Extension Service shall develop the educational training course to aid in certification. Curricula for the training course will include the ~~Oklahoma~~ Cooperative Extension Service ~~Waste Management Facts~~ waste management facts series and record books or their current equivalent. Courses for poultry waste management shall include the following topics:

- a. environmental process relevant to protecting water quality in poultry production,
- b. basic handling systems to manage poultry waste from all types of poultry operations,
- c. nutrient management, including sampling procedures, application rate determination, equipment calibration, and record-keeping systems,
- d. relevant laws and rules applicable to poultry waste management in ~~the State of Oklahoma~~ this state, and

e. any other related subject as determined by Oklahoma State University in consultation with the Department.

2. At the completion of each course, the operator or applicator shall receive a certification verifying completion. The certificates shall be kept on site for five (5) years.

3. Failure to obtain the initial nine-hour training and any continuing education as provided in this subsection shall be deemed a violation of the Oklahoma Registered Poultry Feeding Operations Act for operators and the Oklahoma Poultry Waste Applicators Certification Act for applicators.

4. All operators or applicators shall meet the educational requirements of this section no later than December 31 of each year.

5. All operators and applicators are solely responsible for obtaining and maintaining all educational requirements established pursuant to the provisions of this subsection.

G. No integrator shall enter into any contract with an operator of a poultry feeding operation who is not in compliance with the education requirements of subsection F of this section.

SECTION 2. 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:

Section 10-9.7. A. All poultry feeding operations shall utilize Best Management Practices and shall meet the conditions and requirements established by subsection B of this section and by rules promulgated by the State Board of Agriculture pursuant to the Oklahoma Registered Poultry Feeding Operations Act. Compliance with a Nutrient Management Plan developed under subsections B and C of this section shall be deemed compliant with Best Management Practices.

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

1. ~~There shall be no~~ Measures designed to prevent the discharge of poultry waste to waters of the state;

2. ~~Stored~~ Measures requiring stored poultry waste shall be isolated from outside surface drainage by covers, ditches, dikes, berms, terraces, or other such structures;

3. ~~No~~ Measures designed to prevent waters of the state ~~shall come from coming~~ into direct contact with the poultry confined on the poultry feeding operation; and

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

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

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

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

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

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

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

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

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

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

- a. adequate poultry waste storage shall be provided consistent with rules promulgated by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to subsection B of this section,
- b. poultry waste shall not be applied to land when the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen except in conformance with the Nutrient Management Plan,
- c. poultry waste shall only be applied to suitable land at appropriate times and rates. Discharge or runoff of waste from the application site is ~~prohibited~~ evidence that the Nutrient Management Plan requires revisions. Timing and rate of applications shall be based on assimilation capacity of the soil profile, assuming usual nutrient losses, expected precipitation, and soil conditions, and
- d. poultry waste application shall be prohibited on land subject to excessive erosion;

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

- a. if the poultry waste is sold or given to other persons for land application or other use, the poultry feeding operation shall maintain a log of: date of removal from the poultry feeding operation, the name of recipient the poultry waste is sold or given to, the and amount in wet tons, dry tons or cubic yards of poultry waste removed from the poultry feeding operation, and
- b. the poultry feeding operation shall make available to the recipient any nutrient sample analysis of the poultry waste from that year;

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

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

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

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

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

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

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

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

- a. no changes in the Department's promulgated standards for land application of poultry waste have occurred since the most recently submitted Nutrient Management Plan,
- b. there has been no change to the number of poultry housed since the most recently submitted Nutrient Management Plan,
- c. there has been no expansion in the poultry feeding operation since the most recently submitted Nutrient Management Plan, and
- 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. Soil pH and plant-available nutrients including at least nitrogen, phosphorous, and potassium;
2. Poultry waste nutrient concentrations and moisture; and
3. Application rate based upon the Department's standards for land application of poultry waste as promulgated by rules.

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

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

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

2. In the event there is an outbreak of a major disease or other emergency resulting in deaths significantly higher than normal mortality rates, the Oklahoma Department of Agriculture, Food, and

Forestry may approve, in writing, an alternate method of disposal of carcasses or the storage of poultry waste during the emergency period.

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

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

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

3. The county and, if applicable, the name of the ~~Nutrient Limited Watershed~~ nutrient-limited watershed where the poultry waste was produced; and

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

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

(1) the date of the land application,

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

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

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

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

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

- (2) the amount of poultry waste removed in wet tons, dry tons, or cubic yards,
- (3) the name, mailing address, and telephone number of the person the poultry waste is sold or transferred to,
- (4) the name, mailing address, telephone number, and poultry waste applicator license number of the poultry waste applicator, if known, and
- (5) the name, mailing address, and telephone number of the hauler of the poultry waste.

SECTION 3. AMENDATORY 2 O.S. 2021, Section 10-9.11, is amended to read as follows:

Section 10-9.11. A. 1. Any person violating the provisions of the Oklahoma Registered Poultry Feeding Operations Act shall, upon conviction, be guilty of a misdemeanor and may be punished by a fine not to exceed ~~Two Hundred Dollars (\$200.00)~~ One Thousand Dollars (\$1,000.00).

2. Any owner or operator who fails to take such action as may be reasonable and necessary to avoid pollution of any stream, lake, river, or creek, except as otherwise provided by law, or who violates any rule adopted by the State Board of Agriculture to prevent water pollution from poultry feeding operations pursuant to this act shall, upon conviction, be guilty of a misdemeanor punishable for each violation by a fine not less than Five Hundred Dollars (\$500.00) nor more than Ten Thousand Dollars (\$10,000.00), imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

3. The Attorney General or the district attorney of the appropriate district court of ~~Oklahoma~~ this state may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of the Oklahoma Registered Poultry Feeding Operations Act or any rule promulgated thereunder.

B. 1. In addition to the criminal penalties specified by this section, the Oklahoma Department of Agriculture, Food, and Forestry may take one or more of the following actions:

- a. assess an administrative penalty ~~of not more than Two Hundred Dollars (\$200.00) per day of noncompliance, or~~ pursuant to Section 2-18 of this title for each day of noncompliance related to administrative violations including but not limited to late filing of paperwork or incomplete paperwork,
- b. assess an administrative penalty of Ten Thousand Dollars (\$10,000.00) for each day of noncompliance with provisions of the user's nutrient management plan that has led to pollution of any stream, lake, river, or creek, or
- c. bring an action for injunctive relief granted by a district court.

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

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

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

5. Any administrative penalty required to be paid pursuant to the provisions of this subsection shall be used to fund enforcement of the Oklahoma Registered Poultry Feeding Operations Act.

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

- a. the district attorney of the appropriate district court of ~~the State of Oklahoma~~ this state,
- b. the Attorney General on behalf of ~~the State of Oklahoma~~ this state, or
- c. the Department on behalf of ~~the State of Oklahoma~~ this state.

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

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

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

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

F. 1. Any contract poultry grower determined after notice and opportunity for a hearing by the Department as flagrantly disregarding Best Management Practices shall result in the Department notifying the integrator in writing. Notice provided to the integrator shall detail any remediation, education, or other measures the grower is required to take to prevent the furtherance of the violation and to prevent future violations. Upon receipt of such notice, the integrator shall respond, as prescribed by the

Department, that a producer has received the notice and will work with the grower to ensure compliance is achieved within thirty (30) days. If the grower fails to achieve compliance of the terms of the notice within thirty (30) days, the integrator shall submit correspondence to the Department detailing additional measures to assist the grower to achieve compliance. If the Department does not approve these additional measures or if they are approved and are not achieved within the timeline approved by the Department, the integrator shall issue a notice of suspension-of-delivery of birds to the grower within thirty (30) days, or give ninety (90) days' notice of termination of the integrator-producer relationship to the producer within thirty (30) days.

2. The Department may extend the time periods for compliance pursuant to this subsection upon the request of an integrator. An integrator who fails to comply with the provisions of this subsection shall be assessed an administrative penalty pursuant to Section 2-18 of this title.

3. Nothing provided in response to or in association with a notice given pursuant to this subsection may be used as evidence to establish an employer-employee relationship between a grower and the integrator with whom the grower contracts.

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

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

I. Land application of poultry litter in compliance with a current Nutrient Management Plan shall not be the basis for criminal

or civil liability in this state, whether relating to that single plan, or aggregated with the application of poultry waste pursuant to other Nutrient Management Plans. An administrative violation shall not be the basis for a criminal or civil action, nor shall any alleged violation be the basis for any private right of action, nor any action other than enforcement of the terms of the Nutrient Management Plan and other sections of this title by the Oklahoma Department of Agriculture, Food, and Forestry. A current plan means a plan approved by the Oklahoma Department of Agriculture, Food, and Forestry that has not been revoked or rescinded by the state or suspended by a more recent plan.

1. The provisions of this subsection shall apply both directly and vicariously to the integrator with whom a contract poultry grower contracts, and to any poultry grower, operator, contractor of, or employee for a certified poultry waste applicator or a poultry waste owner's agent, as long as the land application is performed pursuant to and in compliance with the current Nutrient Management Plan.

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

3. Nothing in this subsection shall be construed to restrict the Oklahoma Department of Agriculture, Food, and Forestry's exclusive authority from enforcing the terms of Nutrient Management Plans or the Department's authority to enforce the Oklahoma Registered Poultry Feeding Operations Act and the Oklahoma Poultry Waste Applicators Certification Act.

4. Nothing in this subsection shall be construed to prohibit a civil action as otherwise provided by law for any damages caused by a violation of a Nutrient Management Plan. A civil action shall only be filed upon the completion of an enforcement action by the State Board of Agriculture.

Passed the Senate the 29th day of May, 2024.

Brent Howard
Presiding Officer of the Senate

Passed the House of Representatives the 30th day of May, 2024.

[Signature]
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 30

day of May, 20 24, at 7:05 o'clock P. M.

By: Luis G. Guebara

Approved by the Governor of the State of Oklahoma this 31

day of May, 20 24, at 10:15 o'clock A. M.

[Signature]
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 31st

day of May, 20 24, at 3:00 o'clock P. M.

By: [Signature]