



University of Arkansas Division of Agriculture

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Application Restrictions Statutes & Regulations

Arkansas

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Application Restrictions

STATE OF ARKANSAS

1) Ark. Code Ann. §§ 15-20-1101—1112; 138 00 CARR 2201.1, .3, .4, 2202.1—.5

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Arkansas Bureau of Legislative Services.

1) Ark. Code Ann. §§ 15-20-1101—1112; 138 00 CARR 2201.1, .3, .4, 2202.1—.5

15-20-1101. Title.

This subchapter shall be known and may be cited as the "Arkansas Soil Nutrient Application and Poultry Litter Utilization Act".

15-20-1102. Legislative intent.

The General Assembly finds that:

- (1) In certain areas of Arkansas, applications of soil nutrients may have resulted or in the future may result in excessive soil nutrient concentration;
- (2) These applications are not the most effective use of nutrients and if continued could negatively impact the area;
- (3) Land application of poultry litter is a significant source of nutrients in these areas; and
- (4) Therefore, in certain areas, it is necessary to limit the application of nutrients and to regulate the utilization of poultry litter to protect the area while maintaining soil fertility.

15-20-1103. Definitions.

As used in this subchapter:

- (1) "Certified nutrient applicator" means any natural person that has shown to the Arkansas Natural Resources Commission that he or she has the minimal knowledge and technical competence necessary to properly apply nutrients;
- (2) "Commission" means the Arkansas Natural Resources Commission;

- (3) "Conservation district" means a conservation district created under the Conservation Districts Law, § 14-125-101 et seq.;
- (4) "Crop" means any vegetative cover;
- (5) "Executive director" means the Executive Director of the Arkansas Natural Resources Commission;
- (6) "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof;
- (7) "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry;
- (8)
- (A) "Nutrient" means a substance or recognized plant nutrient, element, or compound that is used or sold for its plant-nutritive content or its claimed nutritive value.
- (B) "Nutrient" includes substances in litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge, and combinations thereof;
- (9) "Nutrient application" means the process by which humans apply nutrients to soil or associated crops;
- (10) "Nutrient applicator" means any person that applies nutrients to soil or associated crops;
- (11) "Nutrient management plan" means a plan prepared to assist landowners and operators in the management of fertilizers, litter, sewage sludges, compost, and other nutrient sources for maximum soil fertility and protection of the waters within the state;
- (12) "Nutrient surplus area" means an area declared by § 15-20-1104 in which the soil concentration of one (1) or more nutrients is so high or the physical characteristics of the soil or area are such that continued application of the nutrient to the soil could negatively impact soil fertility and the waters within the state;
- (13) "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(14) "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds;

(15)

(A) "Poultry feeding operation" means any lot or facility where two thousand five hundred (2,500) or more poultry are housed or confined and fed or maintained on any one (1) day in the preceding twelve-month period.

(B) Multiple poultry houses within a reasonable proximity to one another under the control of one (1) owner shall be considered one (1) facility;

(16) "Poultry litter management plan" means the plan for utilization of litter by poultry feeding operations pursuant to § 15-20-1108;

(17) "Protective rate" means the agronomic rate or other rate as determined by the commission of a designated nutrient that provides for proper crop utilization and prevention of significant impact to waters within the state; and

(18) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state.

15-20-1104. Declared nutrient surplus areas.

(a) The General Assembly declares the following areas to be nutrient surplus areas for phosphorus and nitrogen:

(1) The Illinois River watershed, included within Benton, Crawford, and Washington counties;

(2) The Spavinaw Creek watershed, included within Benton County;

(3) The Honey Creek watershed, included within Benton County;

(4) The Little Sugar Creek watershed, included within Benton County;

(5) The upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties and Massard Creek within Sebastian County;

(6) The Poteau River watershed, included within Polk, Scott, and Sebastian counties;

(7) The Mountain Fork of the Little River watershed, included within Polk County; and

(8) The upper White River watershed above its confluence with Crooked Creek.

(b) The Arkansas Natural Resources Commission shall promulgate rules to further define the geographical boundaries of any area declared a nutrient surplus area.

15-20-1105. Regulatory considerations.

In developing regulations to implement this subchapter, the Arkansas Natural Resources Commission shall consider:

(1) The current and projected level of nutrients in the soil within the area;

(2) The current or potential impacts of surplus nutrients within the area;

(3) Litter produced and applied in the area;

(4) Commercial fertilizer, compost, and other sources of nutrients applied within the area;

(5) The current or projected nutrient needs within the area, including the nutrient level necessary to maintain soil fertility, current and future cropping patterns, and those crops' demands for nutrients;

(6) The soil type, geology, hydrology, and other physical characteristics of the area;

(7) The types of water bodies and the uses of the waters within the area; and

(8) Any other relevant information necessary to effect the purposes of this subchapter.

15-20-1106. Designated nutrient application.

(a) It shall be a violation of this subchapter to apply designated nutrients to soils or associated crops within a nutrient surplus area unless the nutrient application is done in compliance with a nutrient management plan approved by the Arkansas Natural Resources Commission or at a protective rate established by the commission.

(b) After a soil test with nutrient application recommendations is obtained for lands within a nutrient surplus area:

(1) Application of commercial fertilizer may continue in compliance with the protective rate after January 1, 2007; and

(2) The protective rate as indicated by the soil test shall constitute a permit to apply nutrients consistent with the protective rate.

(c) Designated nutrient application within a nutrient surplus area shall be applied under time, place, and manner restrictions determined necessary by the commission to protect the soil fertility, crop vitality, and the waters within the state.

(d) Except as provided in subsection (e) of this section:

(1)

(A) Only a certified nutrient applicator may apply a nutrient application within a nutrient surplus area.

(B) In areas outside nutrient surplus areas, nutrient applicators may not be required to be certified; and

(2)

(A) Nutrient application within a nutrient surplus area shall be documented by the nutrient applicator in a method acceptable to the commission.

(B) This documentation shall be maintained by the landowner and the nutrient applicator.

(C) The information collected in furtherance of this subchapter shall not be public record.

(e)

(1) Designated nutrient application within a nutrient surplus area on residential lands of two and one-half (2 1/2) acres or less shall be applied at a rate not to exceed the protective rate and in a manner acceptable to the commission and may be performed by the landowner or resident.

(2) In such instances, the landowner or resident shall not be required to be a certified nutrient applicator but shall maintain the required documentation.

(f) Application of poultry litter to soils or associated crops within a nutrient surplus area shall be done in accordance with a nutrient management plan or poultry litter management plan after January 1, 2007.

15-20-1107. Nutrient management plan.

- (a)
- (1) Nutrient management plans shall be approved by the board of directors of the conservation district where a majority of the land to which the nutrient management plan applies is located.
 - (2) The person requesting a nutrient management plan may appeal the nutrient management plan's disapproval or any of the nutrient management plan's provisions to the Executive Director of the Arkansas Natural Resources Commission.
- (b) In considering the approval of a nutrient management plan, a conservation district board of directors and the Arkansas Natural Resources Commission shall consider the nutrient management plan's provision for:
- (1) Soil nutrient testing;
 - (2) The level of nutrients contained in the nutrient source;
 - (3) Nutrient application rates, including the methodology utilized in determining the rate;
 - (4) Crops being grown, soil type, geology, hydrology, and other physical characteristics of land on which the nutrient will be applied;
 - (5) The manner and timing of nutrient application;
 - (6) The method for keeping application records contained in the nutrient management plan; and
 - (7) The qualifications of the person developing the nutrient management plan.
- (c) If the land application of a designated nutrient within a nutrient surplus area is a part of a process regulated under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or other similar federal or state law and the permit contains conditions regulating the nutrient application of the designated nutrient acceptable to the commission, then the permit shall serve as the nutrient management plan.
- (d) An approved nutrient management plan shall constitute a permit to apply nutrients consistent with the nutrient management plan.

15-20-1108. Poultry litter management plan.

- (a)

(1) Poultry litter management plans shall be approved by the board of directors of the conservation district where a majority of the land to which the poultry litter management plan applies is located.

(2) The person requesting a poultry litter management plan may appeal the poultry litter management plan's disapproval or any of the poultry litter management plan's provisions to the Executive Director of the Arkansas Natural Resources Commission.

(b)

(1) Poultry feeding operations within a surplus nutrient area shall develop and implement a poultry litter management plan acceptable to the Arkansas Natural Resources Commission.

(2) The person that develops the poultry litter management plan shall have obtained certification from the commission in planning.

(3) If the commission determines it to be beneficial, the poultry litter management plan may be a part of a nutrient management plan.

(c) At a minimum, the poultry litter management plan shall contain a:

(1) Periodic poultry litter nutrient content analysis component;

(2) Poultry litter utilization component providing for the proper utilization of the litter produced, including provisions ensuring that:

(A) Land application within a nutrient surplus area is in accordance with a nutrient management plan or at a rate not to exceed the protective rate;

(B) Land application outside a nutrient surplus area is in a method and at a rate acceptable to the commission; and

(C) Litter not land-applied is converted to a nonnutrient use or other use acceptable to the commission; and

(3) Records component that requires the owner of the poultry feeding operation to maintain sufficient records at the site of the poultry feeding operation to determine poultry litter utilization and compliance with the other portions of the poultry litter management plan.

(d) The commission may accept a plan or permit prepared to comply with federal law as a poultry litter management plan if the plan or permit substantially meets the requirements of this section.

(e) An approved poultry litter management plan shall constitute a permit to apply nutrients consistent with the poultry litter management plan.

15-20-1109. Sale or transfer of litter.

(a) Upon sale or transfer of poultry litter from a poultry feeding operation within a nutrient surplus area to any user, the poultry feeding operation shall not be responsible for the ultimate utilization of the poultry litter.

(b) Any person receiving poultry litter from a poultry feeding operation within a nutrient surplus area shall utilize the poultry litter in compliance with the poultry litter management plan or other method of utilization that complies with the requirements of this subchapter.

15-20-1110. Litter utilization committee.

(a) In nutrient surplus areas, the Arkansas Natural Resources Commission shall activate a litter utilization committee to facilitate utilization or removal of excess litter.

(b) The Executive Director of the Arkansas Natural Resources Commission shall appoint a committee composed of poultry feeding operators, commission staff, and other persons knowledgeable in litter management.

(c)

(1) The committee shall consider methods of removal, valuation of the litter, and avenues of distribution of litter.

(2) Alternative uses shall include adequate compensation to poultry feeding operations for the value of the litter.

15-20-1111. Implementation.

(a)

(1) The Arkansas Natural Resources Commission may develop all regulations necessary to implement this subchapter.

(2) Regulations shall be adopted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) The commission may delegate portions of the program for implementation to the Executive Director of the Arkansas Natural Resources Commission or conservation districts, or both.

(c)

(1) The commission may defer the requirements of §§ 15-20-1106 -- 15-20-1108 for up to two (2) years after declaration as a nutrient surplus area to allow the development of nutrient management plans and poultry litter management plans and implementation of alternative use plans in order that persons affected may come into compliance with this subchapter.

(2) The commission may further defer the requirements of §§ 15-20-1106 -- 15-20-1108 if it determines that there is no alternative use for litter or there are no readily available, affordable alternative nutrient supplies for which litter has been used.

15-20-1112. Enforcement.

(a)

(1) Agents of the Arkansas Natural Resources Commission or a conservation district may enter on private property to determine compliance with this subchapter.

(2)

(A) Entry shall not occur without prior notification of the owner.

(B) Notice shall be given to the owner, operator, or agent in charge of the property at least seventy-two (72) hours before entry.

(3) Documentation of biosecurity measures taken and biosecurity certification received by an inspection agent of the Arkansas Natural Resources Commission or by a conservation district officer, including a biosecurity log book, shall be available to the owner upon request.

(4) Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this subchapter shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

(b) The process for the imposition of administrative penalties under § 15-20-1113 shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

Section 2201.1 Purpose

A. The Arkansas Natural Resources Commission developed this Title to encourage prudent practices regarding the application and management of soil Nutrients and Poultry Litter to protect and enhance the State's surface water quality while allowing for optimum

soil fertility and proper plant growth. The primary goal of this Title is to maintain the benefits derived from the wise use of Poultry Litter, commercial fertilizers, and other soil Nutrients while avoiding unwanted effects from excess Nutrient Applications on the waters within the State. In furtherance of this goal, these Rules provide requirements applicable to Nutrient Surplus Areas, Nutrient Management Plans, and Poultry Litter Management Plans. These rules are designed to protect the waters within the State from adverse effects of excess nutrients while allowing for maximum soil fertility and proper plant growth.

B. The rules in this Title have no effect until January 1, 2006.

Section 2201.3 Powers of the Commission

A. The Arkansas Natural Resources Commission is authorized to develop all regulations necessary to implement the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, taking into consideration the following factors:

1. The current and projected level of Nutrients in the soil within the area;
2. The current or potential impacts of surplus Nutrients within the area;
3. Litter produced and applied in the area;
4. Commercial fertilizer, compost and other sources of Nutrients applied within the area;
5. The current or projected Nutrient needs within the area, including the Nutrient level necessary to maintain soil fertility, current and future cropping patterns, and those crops' demand for Nutrients;
6. The soil type, geology, hydrology and other physical characteristics of the area; and
7. The types of water bodies and the uses of the waters within the area.

B. When developing regulations necessary to implement this program, the Commission may also consider the culture of the affected areas including the traditions, the way people have lived, worked their land, and earned their livelihood.

C. The Commission may delegate portions of the program developed hereunder for implementation to the Executive Director, to Conservation Districts designated by the Commission, or both.

D. The Commission may, in its discretion, defer mandatory compliance with portions of the program related to regulation of Nutrient Application, Nutrient Management Plans, and Poultry Litter Management Plans, for up to two (2) years if the Commission deems it

necessary to allow development of Nutrient Management Plans and Poultry Litter Management Plans.

Section 2201.4 Definitions

As used in this Title, the following terms shall have the definitions below unless otherwise specifically stated herein.

A. "Administrative Consent Order" means a legal agreement signed by the Director and a violator of this title through which the violator agrees to pay a fine, take a required corrective action, refrain from an activity, or a combination of the listed actions. It describes the actions to be taken by all signatories and may be enforced in court.

B. "Arkansas Phosphorus Index" means the risk-based assessment tool referenced in Nutrient Management Plans developed to govern the terms and conditions under which Nutrients may be land-applied. See P. B. DeLaune, P. A. Moore, Jr., D. K. Carman, T. C. Daniel, and A. N. Sharpley; Development and validation of a Phosphorus Index for pastures fertilized with animal manure [CD-ROM]; International Symposium Addressing Animal Production and Environmental Issues; 2001.

C. "Certified Nutrient Applicator" may refer to either a Certified Commercial Applicator or a Certified Private Applicator and means a person who has been certified by the Commission as competent to apply Nutrients to land pursuant to Emergency Rules Governing the Arkansas Nutrient Management Applicator Certification Program, Title XXI.

D. "Certified Nutrient Planner" means a person who has been certified by the Commission as competent to develop Nutrient Management Plans pursuant to Emergency Rules Governing the Arkansas Nutrient Management Planner Certification Program, Title XX.

E. "Commission" means the Arkansas Natural Resources Commission.

F. "Compost" means a process which biologically stabilizes livestock and poultry mortalities, making them suitable for disposal by Land Application. The process uses a simple mixture of dry Poultry manure (Litter), carcasses, and a bulking agent or aeration medium such as hay or straw. Only enough water is added to keep the material moist and the mixture should never be saturated. Compost does not include composted plant material with no animal carcasses or manure added that is used as a soil amendment and not principally for its Nutrient value.

G. "Conservation District" means a Conservation District created under the Conservation Districts Law, Ark. Code Ann. §§ 14-125-101 et seq.

H. "Crop" means any managed vegetative cover.

I. "Director" means the Executive Director of the Arkansas Natural Resources Commission.

J. "Land Application" means the spreading on or incorporation of Litter into the soil mantle primarily for beneficial purposes.

K. "Litter" means byproducts associated with the confinement of Livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any other combinations thereof.

L. "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and Poultry.

M. "Nutrient" means a substance or recognized plant Nutrient, element or compound that is used or sold for its plant nutritive content or its claimed nutritive value including, without limitation, substances in Litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge and combinations thereof.

N. "Nutrient Application" means the process by which Persons apply Nutrients to soil or associated Crops.

O. "Nutrient Applicator" means any Person who applies Nutrients to soil or associated Crops.

P. "Nutrient Management Plan" means a documented record of how Nutrients will be managed on a Nutrient Management Unit and is prepared in accordance with United States Department of Agriculture Natural Resources Conservation Service conservation practice standards for Arkansas to guide and assist landowners and Operators in the use of fertilizers, Litter, sewage sludges, compost and other Nutrient sources for soil fertility and protection of the Waters Within the State.

Q. "Nutrient Management Unit" means the field, group of fields, or other land units, that collectively include all land area on which Nutrients will or may be applied and managed pursuant to a Nutrient Management Plan.

R. "Nutrient Surplus Area" means a defined geographic area, declared by Ark. Code Ann. § 15-20-1104 and described more specifically in Subtitle II of these Rules, which has been determined to be an area in which the soil concentration of one or more Nutrients is so high or the physical characteristics of the soil or area is such that continued application of the Nutrient to the soil could negatively impact soil fertility and the Waters Within the State.

S. "Operator" means the Person(s) with control over the day-to-day operation of, or decision-making authority over, the facility, process, or physical location to which the term is applied.

T. "Person" means any legal entity including, without limitation, any individual, partnership, company, association, fiduciary, corporation, limited liability company, cooperative, or any organized group of persons whether incorporated or not.

U. "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds.

V. "Poultry Feeding Operation" means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

W. "Poultry Litter Management Plan" means the documented plan for use, disposal, and storage of Litter by Poultry Feeding Operations as further described in Subtitle IV of these Rules.

X. "Protective Rate" or "Arkansas Protective Rate" means the application rate approved by the Commission for designated Nutrients that provides for proper Crop utilization and prevention of significant impact to Waters Within the State.

Y. "Warning Letter" means a written description signed by the Director of a violation of this Title and the necessary corrective action. A Warning Letter cannot be used to assess civil penalties, is not appealable to the Commission, and is not final agency action.

Z. "Waters Within the State" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this State or any portion of this State.

Section 2202.1 Declared Nutrient Surplus Areas

Act 1061 of 2003 (codified at Ark. Code Ann. § 15-20-1104) declared the following areas to be Nutrient Surplus Areas:

1. The Illinois River watershed, included within Benton, Washington, and Crawford counties;

2. The Spavinaw Creek watershed, included within Benton County;
3. The Honey Creek watershed, included within Benton County;
4. The Little Sugar Creek watershed, included within Benton County;
5. The upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County;
6. The Poteau River watershed, included within Scott, Sebastian, and Polk counties;
7. The Mountain Fork of the Little River watershed, included within Polk County; and
8. The upper White River watershed above its confluence with Crooked Creek.

Section 2202.2 Geographic Boundaries of Nutrient Surplus Areas

A. The Commission further defines the geographic boundaries of the designated Nutrient Surplus Areas listed in Section 2202.1 by utilizing the National Datasets for Natural Resource Analysis. Hydrologic Units have been classified based on data compiled by United States Geological Survey, Natural Resources Conservation Service and others. Each hydrologic unit is identified by a unique hydrologic unit code (HUC). Detailed maps and digital coverage of the boundaries are available at the Commission office or District office. Hydrologic unit codes for the Nutrient Surplus Areas are as follows:

1. Illinois River watershed: HUC 11110103
2. Spavinaw Creek watershed: HUC 11070209
3. Honey Creek watershed: HUC 11070206
4. Little Sugar Creek watershed: HUC 11070208
5. Upper Arkansas River watershed (which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County): HUC 11110104
6. Poteau River watershed: HUC 11110105
7. Mountain Fork of the Little River watershed: HUC 11140108

8. Upper White River watershed above its confluence with the Buffalo River: HUC 11010001 and HUC 11010003 (excluding coverage under HUC 1101000308, 1101000309, 1101000310, and 110100031108).

B. See Appendix A for general coverage map.

Section 2202.3 Requirements Applicable to Nutrient Surplus Areas

A. Until January 1, 2007, except as provided in Subsection G of this Section, it shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is performed in compliance with a Nutrient Management Plan prepared by a Certified Nutrient Planner or at the Protective Rate set forth in Section 2202.5.

1. After January 1, 2007, any Person applying Nutrients from Poultry Litter to soils or associated Crops within a Nutrient Surplus Area must apply in compliance with a Nutrient Management Plan or Poultry Litter Management Plan.

2. After a soil test with nutrient application recommendations is obtained for lands within a nutrient surplus area, application of commercial fertilizer may continue in compliance with the protective rate after January 1, 2007.

3. After a soil test with nutrient application recommendations is obtained for lands within a Nutrient Surplus Area, the Protective Rate as indicated by the soil test shall constitute a permit to apply Nutrients consistent with the Protective Rate.

B. Except as provided in Subsection G of this Section, it shall be unlawful for any owner or Operator of land within a Nutrient Surplus Area to allow the application of Nutrients to soils or associated Crops on that land unless the Nutrient Application is performed in compliance with a Nutrient Management Plan prepared by a Certified Nutrient Planner or at the Protective Rate set forth in Section 2202.5.

C. It shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is done in compliance with the time, place, and manner restrictions determined necessary by the Commission and set forth in Section 2202.4.

D. It shall be unlawful for any Poultry Feeding Operation to operate within a Nutrient Surplus Area unless the Poultry Feeding Operation develops and implements a Poultry Litter Management Plan or applies Nutrients at the Protective Rate.

E. Except as provided in Subsection G of this Section, it shall be unlawful for any Person other than a Certified Nutrient Applicator to make a Nutrient Application within a Nutrient Surplus Area unless the person making application is a volunteer or an employee under the direction or control of a Certified Nutrient Applicator.

F. Except as provided in Subsection G of this Section, Nutrient Application within a Nutrient Surplus Area shall be documented in records maintained by the Nutrient Applicator and the owner or Operator of the land where Nutrient Application is made, in sufficient detail to demonstrate that the Nutrient Application was conducted in compliance with these Rules. Such records shall be maintained for a minimum of five years or for such longer period of time as may be required by an approved Nutrient Management Plan, and shall be available for inspection by the Commission or Conservation District employees upon request. Records maintained by commercial fertilizer distributors or applicators may be relied upon to meet this requirement.

G.

1. Nutrient Application within a Nutrient Surplus Area on residential lands of two and one-half (2.5) acres or less ("Residential Nutrient Application") shall be applied at a rate not to exceed the Protective Rate set forth in Section 2202.5 and in compliance with the time, place, and manner restrictions set forth in Section 2202.4, or in compliance with an approved Nutrient Management Plan.

2. A Nutrient Management Plan is not required for Residential Nutrient Application as defined in this Subsection, but may be voluntarily obtained.

3. The landowner or resident making a Residential Nutrient Application, as defined in this Subsection, is not required to be a Certified Nutrient Applicator, but is required to maintain documentation of each Nutrient Application for a minimum of five years sufficient to demonstrate compliance with the Time, Place, and Manner Restrictions in Section 2202.4 and either the Protective Rate requirements in Section 2202.5 or an approved Nutrient Management Plan.

H. Upon written request, the Executive Director may waive any provision of these rules consistent with the purposes of this Title as set forth in Section 2201.1.

I. Persons applying poultry litter to land within the Spavinaw-Eucha Watershed, including Benton County, as defined by *The City of Tulsa et al. v. Tyson Foods, Inc. et al*, No. 01 CV 0900EA(C), (Northern District of Okla. July 16, 2003) must follow any term of that suit in conflict with these rules.

Section 2202.4 Time, Place, and Manner Restrictions

A. The time, place, and manner restrictions in this Section apply to all Nutrient Applications within a Nutrient Surplus Area.

B. Nutrients shall be evenly distributed over application sites. Application shall be made only at the rates and in the manner specified in a Nutrient Management Plan rather than at the Protective Rate when the Owner has obtained a Nutrient Management Plan. If the

Owner or Operator does not have a Nutrient Management Plan, then Nutrient Application shall not exceed the Protective Rate.

C. Nutrient Application shall not be undertaken when soil is saturated, frozen, or covered with ice or snow.

D. Nutrients shall not be applied in any manner that will allow excessive Nutrients to enter Waters Within the State or to run onto adjacent property.

E. Nutrient application directly to water intended to increase fish production shall not be permitted unless the Executive Director determines that nutrients may be applied without adversely affecting water quality.

Section 2202.5 Protective Rate

A. All Nutrient Applications within a Nutrient Surplus Area must comply with the Protective Rate set forth in this Section unless a different rate is specified in an approved Nutrient Management Plan.

B. The Protective Rate is the rate of a designated Nutrient that provides for proper crop use and prevents significant impact to waters within the state. A soil test is required before applying commercial fertilizers containing phosphorus at the Protective Rate. Poultry litter may be applied without a soil test at a maximum rate of 1.5 tons per acre. Commercial fertilizer containing nitrogen but not phosphorus may also be applied without a soil test. Specific rates are set out in Appendix B of these rules.

C. An owner or Operator who is unable to obtain soil test results within a reasonable period of time due to laboratory backlog may use the written Nutrient Application recommendation of a qualified person until January 1, 2009. Qualified persons include conservation district water quality technicians, United States Department of Agriculture employees knowledgeable in soil science, Certified Commercial Applicators, Certified Nutrient Planners, and American Society of Agronomy Certified Crop Advisors.

1. An owner or Operator who makes application in accordance with the written recommendation of a qualified person and maintains records of the written recommendation will be deemed to have complied with the requirements of this Title.

2. An owner or Operator who makes application in accordance with the written recommendation of a qualified person and maintains records of the written recommendation will not be assessed a penalty by the Commission for over application of nutrients or for failure to apply at the protective rate or in accordance with a nutrient management plan.