



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**Oklahoma**

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## Nutrient Management Plans

### STATE OF OKLAHOMA

- 1) 2 Okl. St. §§ 2-20-1, 10; O.A.C. §§ 35:17-3-1, 2, 6, 11, 14, 20
- 2) 2 Okl. St. §§ 2-10-9.1, 9.3, 9.4, 9.5, 9.12; O.A.C. §§ 35:17-5-1, 2, 3(b), 5
- 3) 2 Okl. St. §§ 2-20-40, 41, 42, 44, 45, 47, 48; O.A.C. §§ 35:17-4-1, 2, 3, 4, 9, 12, 16

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Oklahoma Legislative Information Systems.*

#### 1) 2 Okl. St. §§ 2-20-1, 10; O.A.C. §§ 35:17-3-1, 2, 6, 11, 14, 20

##### § 20-1. Intent of Legislature

It is the intent of the Legislature that the law contained in the Oklahoma Swine Feeding Operations Act shall only apply to swine and operations which house swine.

##### § 20-10. Utilization of Best Management Practices

A.

1. All licensed managed feeding operations shall utilize Best Management Practices meeting 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 Swine Feeding Operations Act.

2. Swine feeding operations licensed pursuant to the provisions of the Oklahoma Swine Feeding Operations Act other than licensed managed feeding operations shall utilize Best Management Practices, or may substitute for best management practice equivalent measures contained in a site-specific Swine Waste Management Plan meeting the conditions and requirements established by subsection C of this section and by rules promulgated by the Board pursuant to the Oklahoma Swine Feeding Operations Act.

B. The criteria for Best Management Practices shall be promulgated by rule by the Board, based upon existing physical and economic conditions, opportunities and constraints and shall include, but not be limited to, the following:

1. There shall be no discharge of process wastewater to waters of the state except in accordance with the provisions of the Oklahoma Swine Feeding Operations Act;
2. Swine waste shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures except for a twenty-five-year, twenty-four-hour rainfall event;
3. No waters of the state shall come into direct contact with the swine confined on the swine feeding operation;
4. Swine waste handling, treatment, management and removal shall:
  - a. not create an environmental or a public health hazard,
  - b. not result in the contamination of public or private drinking water supplies,
  - c. conform with Oklahoma Water Quality Standards,
  - d. comply with the Odor Abatement Plan for licensed managed feeding operations and shall not otherwise create unnecessary and unreasonable odors. Odors are unnecessary and unreasonable if odors may be reduced by more efficient management practices at a reasonable expense,
  - e. not violate any state or federal laws relating to endangered or threatened species of plant, fish or wildlife, or to migratory birds,
  - f. conform to the Pest Management Plans for licensed managed feeding operations as required by rules promulgated by the State Board of Agriculture,
  - g. 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 Swine Feeding Operations Act and rules promulgated pursuant thereto, and
  - h. ensure that watersheds and groundwater are adequately protected;
5. If, for any reason, there is a discharge other than a spill of less than one hundred (100) gallons, the licensee is required to make immediate notification to the Department. The report of the discharge shall include:
  - a. a description and cause of the discharge, including a description of the flow path to the receiving water body,

- b. an estimation of the flow rate and volume discharged,
- c. the period of discharge, including exact dates and times, and if not already corrected, the anticipated time the discharge is expected to continue,
- d. steps taken to reduce, eliminate and prevent recurrence of the discharge, and
- e. test results for fecal coliform bacteria, five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), ammonia nitrogen, total Kjeldahl nitrogen (TKN), any pesticides which the operator has reason to believe could be in the discharge, or other parameters as required by the Department which the Department has reason to believe could be in the discharge;

6. Notwithstanding the provisions of paragraph 5 of this subsection, any spill that leaves the property owned or controlled by the licensee shall be reported to the Department regardless of total number of gallons spilled; and

7. The Department shall maintain records of all discharges and shall separately maintain records of all spills.

C. The Swine Waste Management Plan shall include at a minimum:

- 1. Swine waste removal procedures;
- 2. Records of inspections of retention structures, including, but not limited to, specific measurement of wastewater level;
- 3. All calculations in determining land application rates, acreage and crops for the land application rate of both solid and liquid swine wastes on land owned or controlled by the licensee;
- 4. Requirements including that:
  - a.
    - (1) land application of swine waste shall not exceed the nitrogen uptake of the crop coverage or planned crop planting with any land application of wastewater or manure. Where local water quality is threatened by phosphorous, in no case shall the applicant or licensee exceed the application rates in the most current Natural Resources Conservation Service publication titled Waste Utilization Standard, and

(2) timing and rate of applications shall be in response to crop needs, expected precipitation and soil conditions,

b. land application practices shall be managed so as to reduce or minimize:

(1) the discharge of process water or swine waste to waters of the state,

(2) contamination of waters of the state, and

(3) odor,

c. facilities including waste retention structures, waste storage sites, ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to ensure the ability to fully comply with the terms of the Oklahoma Swine Feeding Operations Act, and

d. adequate equipment and land application area shall be available for removal of waste and wastewater as required to maintain the proper operating volume of the retention structure; and

5. Other information deemed necessary by the Department to administer the provisions of the Oklahoma Swine Feeding Operations Act and rules promulgated pursuant thereto.

D. Records shall be maintained of all swine wastes applied on land owned or controlled by the licensee, and sold or given to other persons for disposal.

E. If the swine waste from a licensed managed feeding operation is sold or given to other persons for land application or disposal, the licensed managed feeding operation shall maintain a log of: date of removal from the swine feeding operation; names of such other persons; and amount, in wet tons, dry tons or cubic yards, of swine waste removed from the swine feeding operation.

F.

1. If the swine waste is to be land applied by other persons, a licensed managed feeding operation shall make available to such other person the most current sample analysis of the swine waste.

2. In addition, the licensed managed feeding operation shall notify, in writing, any person to whom the swine waste is sold or given of the land application disposal requirements for swine waste as specified by the Oklahoma Swine Feeding Operations Act and rules promulgated pursuant thereto.

3. Any person who obtains swine waste from a licensed managed feeding operation for land application shall keep the following records that shall be maintained for a period of three (3) years and provided to the Department upon request:

- a. a copy of the sample analysis of the swine waste provided by the licensed managed feeding operation,
- b. a copy of the written notification of requirements for swine waste land application requirements provided by the licensed managed feeding operation to the person obtaining the swine waste,
- c. current soil test results,
- d. swine waste application records, rates, and date of application, and
- e. any other record required by the Department.

4. Any person who obtains swine waste from a licensed managed feeding operation for land application shall certify to the Department that the person agrees to accept the swine waste, has knowledge of the law and rules regarding land application of swine waste, and agrees to follow the law and rules regarding the land application of swine waste.

G. Soils in areas in which swine waste is applied shall be analyzed, annually, for phosphates, nitrates and soil pH prior to the first application of the swine waste in the calendar year. A copy of the results of the analysis shall be submitted to the Department upon request by the Department. Such analysis shall be retained by the swine feeding operation as long as the facility is in operation.

H. Every swine feeding operation licensed pursuant to the provisions of the Oklahoma Swine Feeding Operations Act shall develop a plan approved by the Department for the disposal of carcasses associated with normal mortality.

1. Dead swine shall be disposed of in accordance with a carcass disposal plan developed by the applicant or licensee and approved by the Department.

2. The plan shall include provisions for the disposal of carcasses associated with normal mortality, with emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates and other provisions which will provide for a decrease in the possibility of the spread of disease and prevent the contamination of waters of the state. The plan shall comply with rules promulgated by the Department.

### **35:17-3-1 Purpose**

These rules are for regulating swine feeding operations, especially Licensed Managed Feeding Operations (LMFOs), pursuant to Section 20-1 et seq. of Title 2 of the Oklahoma Statutes and known as the Oklahoma Swine Feeding Operations Act. These rules provide that all swine feeding operations be conducted so as to protect the waters of the State of Oklahoma from contamination. The rules applicable to the licensing process are designed to provide harmony within agricultural production while providing protection to the waters of the State of Oklahoma and to establish procedures for obtaining a swine feeding operation license by establishing a consistent application process, insuring public participation opportunities, providing for uniform notice requirements, and establishing other relevant requirements.

### **35:17-3-2 Definitions**

In addition to terms defined in the Oklahoma Swine Feeding Operations Act, the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

“Act” means the Oklahoma Swine Feeding Operations Act beginning at Section 20-1 of Title 2 of the Oklahoma Statutes.

“ALJ” means Administrative Law Judge.

“ASTM” means the most current version of the American Society of Testing Materials standards.

“APA” means the Oklahoma Administrative Procedures Act, beginning at Section 301 of Title 75 of the Oklahoma Statutes.

“Application” means a set of documents filed with the Oklahoma Department of Agriculture, Food, and Forestry for the purpose of obtaining an Oklahoma swine feeding operation license from the State Board of Agriculture.

“Building permit” means an approval from the State Board of Agriculture to commence construction of a new or expanding LMFO.

“Discharge” means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching, or other means of release of wastes or wastewater except as otherwise provided in Section 20-6 of Title 2 of the Oklahoma Statutes. The term discharge shall not include a distribution of waste water into an irrigation system for the purpose of land application of waste to property, provided the waste does not leave the land application area.

“Hearing” means an individual proceeding conducted pursuant to the provisions of the Oklahoma Administrative Procedures Act.

“Licensing process” means the procedures where permission to engage in certain activities pursuant to the provisions of the Oklahoma Swine Feeding Operations Act is granted by the Board. Procedures include but are not limited to application, notice to affected property owners, Department review, publication of notice of application, hearings, and issuance of a building permit and license.

“LMFO” means a Licensed Managed Feeding Operation as defined by Section 20-3 of Title 2 of the Oklahoma Statutes.

“Party” means a person or agency named and participating or properly seeking and entitled by these rules to participate in hearings.

“Person” means any individual, association, partnership, firm, company, public trust, corporation, joint-stock company, limited liability company, limited liability partnership, trust, estate, state or federal government agency, municipality, other governmental entity, or any other legal entity or their agent, employee, representative, assignee, or successor.

“Spill” means the release from a swine feeding operation of any process wastewater or manure that does not reach waters of the state.

“USDA NRCS” means the United States Department of Agriculture Natural Resources Conservation Service. “25-year, 24-hour rainfall event” means the maximum twenty-four (24) hour precipitation event with a probable recurrence interval of once in twenty-five (25) years, as defined by the National Weather Service in Technical Paper Number 40, “Rainfall Frequency Atlas of the United States,” May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information.

### **35:17-3-6 License application for new facilities or expanding operations**

(a) In addition to the items required by the Oklahoma Swine Feeding Operations Act, the application for a swine feeding operation license of a new facility or an expanding operation shall contain, as a minimum, the following information:

- (1) Name and address of the owner of the facility.
- (2) Name and address of the swine feeding operation, including driving directions from the nearest municipality and legal description of the facility.
- (3) Name and address of the operator if other than the owner.
- (4) Capacity in swine animal units and number and type of swine housed or confined.



(5) If owner is a firm, partnership, corporation, or other legal entity, the name and address of each member with an ownership interest of ten percent (10%) or more.

(6) If owner is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation.

(7) Environmental history of the past three (3) years of any swine feeding operation or CAFO established or operated by the owner or any other operation with common ownership in Oklahoma or any other state, including all citations, administrative orders or penalties, civil injunctions or other civil actions, and criminal actions, past, current, and ongoing, taken by any person, agency, or court relating to noncompliance with any environmental law, rule, agency order, or court action in conjunction with the operation of a swine feeding operation.

(8) List of all environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the owner.

(9) Copy of deed, contract to purchase, or option to purchase the proposed site of the facility, waste retention structures, and land application sites. If land application sites are not owned by the applicant, provide a notarized signed copy of spreading or effluent agreement.

(10) A map of all property owners within one (1) mile of the facility and waste retention structures and a corresponding mailing list. Applications for LMFOs with more than two thousand (2,000) swine animal units shall include a map of all property owners within two (2) miles of the facility and waste retention structures and a corresponding mailing list.

(11) A plat showing:

(A) Location of the facility, waste retention structures, and all land application sites.

(B) Location and distance of all occupied residences within one (1) mile of the facility and waste retention structures. The distances shall be measured from the nearest point of the waste retention structure to the nearest point of the occupied residence. Applications for LMFOs with more than two thousand (2,000) swine animal units shall include the location and distance of all occupied residences within two (2) miles of the facility and waste retention structures.

(C) Location and distance of all occupied residences within six-hundred (600) feet of any land application site. The distances shall be measured from the nearest point of the land application site to the nearest point of the occupied residence.

(D) Location and distance of all existing public or private drinking water wells within four-hundred (400) feet of any land application site. The distance shall be measured from the nearest point of the land application site to the nearest point of the drinking water well.

(E) All open roads surrounding the facility and all land application sites.

(12) All LMFOs shall submit an affidavit certifying compliance with applicable setbacks found in Sections 20-19 and 20-21 of Title 2 of the Oklahoma Statutes.

(13) If applicable, a copy of the written waiver by a property owner, municipality, or governing body releasing specified setback requirements as provided by the Act.

(14) To assist the Department, applications for LMFOs shall include an introductory narrative summary describing the facility and operation. The description shall include the following general information:

(A) Both narrative and legal location of the facility, including driving directions.

(B) The type of operation, including whether a BGF, nursery, finisher, or other type.

(C) The type and number of swine planned for the facility.

(D) The planned swine waste management system and structures.

(E) A general narrative description of planned swine growth and movement activities.

(F) Other general information the owner believes to be helpful to the Department in beginning review of the application.

(15) Characterization of the physical and environmental setup of the facility, including but not limited to the following:

(A) Description of topography using a current USGS 7.5 minute topographic map highlighting the location of waters of the state within three (3) miles of the facility, waste retention structures and all land application sites, an outline of the watershed drainage area, and arrows indicating general direction of surface water drainage from the facility, waste retention sites, and land application sites. Applications for LMFOs shall indicate all manmade terracing and other changes to the topography of the site.

(B) Soil map showing soil types at the facility, waste retention structure, and all land application sites. Applications for LMFOs shall provide a description of soil resources including soil survey information of the licensed area containing the following:

(i) A map delineating different soil types on a scaled aerial photograph.

(ii) Location of all soil sampling sites.

(iii) Soil description of all soils used for land application pursuant to USDA description.

(iv) An assessment of suitability of the soil for land application purposes. The assessment shall be certified by a Professional Engineer registered in the State of Oklahoma.

(C) 100 year flood plain map, if applicable. In no event shall a waste storage structure be located within the 100 year flood plain as established by the Federal Emergency Management Agency (FEMA).

(D) Applications for LMFOs shall provide a description of existing land uses and land use classification pursuant to local law or ordinance, if any, of the proposed license area and adjacent areas. The burden shall be upon the owner to comply with local and use law and ordinances.

(E) Applications for LMFOs shall provide a description of geologic information, including at a minimum:

(i) The geology of the proposed license area down to and including the first aquifer, but not more than one hundred (100) feet below the bottom of the waste retention structure.

(ii) Geological information based on published geological literature and subsurface investigation otherwise required for the license application, including lithology from water wells on site and seismicity information. Geologic information may be provided by an agency review of the project performed by the Oklahoma Geological Survey and provided to the Department with the license application.

(F) Applications for LMFOs shall include a description of water resources, including the following:

(i) Quality of surface water resources.

(I) Identification of all surface waters of the state within a three (3) mile distance of the waste retention structure as identified on a current USGS 7.5 minute topographic map.

(II) Location, name, and description of all surface water bodies identified in (I) including streams, lakes, discharges, and impoundments within the three (3) mile radius.

(III) Beneficial uses, limitations, and remarks of all listed streams in the drainage area of the facility as listed in Appendix A of Chapter 45 of Title 785 of the Oklahoma Administrative Code.

(ii) Quality of groundwater resources.

(I) An inventory of all existing and abandoned wells, springs, and known or reasonably discoverable test holes.

(II) Groundwater description shall include a measurement of seasonal static water levels, direction of flow, and delineation of recharge areas pursuant to the Oklahoma Water Resources Board or other agency's data.

(III) Baseline sampling for ground water accessible at the facility shall include electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(G) Applications for LMFOs shall include a description of the climatological factors that are representative of the proposed license area and adjacent areas as available from published sources, including average seasonal precipitation, average direction and velocity of prevailing winds, seasonal temperature changes, average evaporation rate, and other information requested by the Department.

(H) Applications for LMFOs shall include a map delineating existing vegetation types and a description of the plant communities within the proposed permit area and adjacent areas pursuant to information available from the Oklahoma Biological Survey.

(I) Applications for LMFOs shall include a description of fish and wildlife resources information for the license area and adjacent areas. The scope and level of detail to be provided may be expanded by the Department in consultation with State and Federal agencies with responsibility for fish and wildlife propagation. Site specific information necessary to address the respective species shall be required when the license area or adjacent

areas are likely to include endangered or threatened species of plants or animals or their critical habitat.

(J) Applications for LMFOs shall include an identification and description of cultural and historical resources listed on the National Register and known archeological features as found in the Oklahoma Archeological Survey and Oklahoma State Historic Preservation Society of those located within the proposed license area.

(16) Report from an independent soil testing laboratory containing the following:

(A) Site map showing the location of all soil borings in relation to the facility and waste retention structure.

(i) The test boring shall be in the immediate vicinity of the proposed waste retention structure.

(ii) Bore holes shall be left open for a minimum of 48 hours for the groundwater to recover.

(iii) All bore holes shall be plugged according to Oklahoma Water Resources Board requirements.

(B) Soil tests per ASTM standards on all soils to be used in construction of the liner, with the following procedures and results reported:

(i) Grain size particle distribution analysis according to ASTM standards.

(ii) A standard Proctor compaction test based on ASTM D 698 procedure.

(iii) Perform Atterberg limits test per ASTM standards (ASTM D 4318).

(iv) Permeability tests on remolded samples compacted at ninety-five percent (95%) of standard Proctor maximum dry density at optimum moisture content conducted in accordance with ASTM D 5084 for the measurement of Hydraulic Conductivity of Saturated Porous Materials using a Flexible Wall Permeameter.

(v) Laboratory tests of representative samples presented in summary tables and on boring logs.

(vi) Applications for LMFOs shall include the basis for estimating available volume of soil (ft<sup>3</sup>) to be used in the soil liner. Estimated values shall be verified in the field during construction.

(C) Provide a soil boring log showing lithology, the above test results, and the classification of soils based on the Unified Soil Classification system.

(D) USDA Natural Resources Conservation Service (NRCS) soil testing standards and procedures shall only be substituted if the retention structure is designed by USDA NRCS Engineers.

(E) Where required by the Oklahoma Water Resources Board, all applications for LMFOs shall include a copy of a properly prepared Multi-Purpose Completion Form as submitted to the Oklahoma Water Resources Board for all soils investigation.

(17) All applications for LMFOs shall provide documentation relating to and verifying that a minimum ten (10) foot separation exists between the bottom of each waste retention structure and the highest annual or seasonal level of groundwater elevation at the waste retention structure site based on all data available, including the perched water table and regional water table or aquifer. The perched water table shall include all local zones of saturation above the regional water table.

(A) Documentation of a ten (10) foot separation shall be established by submission of a soil log from a soil boring extending a minimum of ten (10) feet below the bottom of all waste retention structures to ascertain the presence of groundwater or bedrock.

(B) Documentation containing a statement from a Professional Engineer registered in the state of Oklahoma certifying existence of the ten (10) foot separation distance.

(18) Laboratory test reports showing the amount of Nitrogen as Nitrate and total Phosphorous contained in the following:

(A) Groundwater from all existing water wells located at the facility and land application sites.

(B) All surface water impoundments located at the facility and land application sites.

(C) Composite soil samples from each land application site. Applications for LMFOs shall, at a minimum, include analysis of soils for electrical conductivity, pH, nitrate-nitrogen, ammonium-nitrogen, organic matter, sodium, potassium, calcium, magnesium, available phosphorus, and total

nitrogen. Additional parameters may be required upon request of the Department. A map showing the location of each soil sample shall be provided. All soil sampling at LMFOs shall be performed pursuant to one of the following procedures:

(i) Soil sampling shall be conducted using Oklahoma State University Fact Sheet #PT 97-37 and F-2207, or current equivalents.

(ii) A total of thirteen (13) soil samples shall be collected from each forty (40) acre land application area, one sample from each corner of a six hundred and sixty (660) foot or ten (10) acre grid, with one sample from the center of each grid. One single composite soil sample may be prepared for analysis if the proposed land application area is dominated by one soil type. Where land application is achieved by center pivot irrigation, only those grid points within the application area shall be sampled.

(19) A Pollution Prevention Plan (PPP) which contains a Swine Waste Management Plan, a carcass disposal plan, an erosion control plan, and Best Management Practices (BMPs). Applications for LMFOs shall also include an Odor Abatement Plan (OAP), a Pest Management Plan (PMP), and any other plan required by the Department.

(20) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the swine feeding operation.

(21) All applications for LMFOs shall include a closure plan pursuant to OAR 35:17-3-25.

(22) A financial statement declaring the financial ability of an owner to operate a swine feeding operation with a liquid waste management system in order to comply with the surety requirements of the Act. The financial statement shall be confidential and shall not be opened to public inspection.

(23) A notarized certification signed by the person applying for a license, which states: "I certify under penalty of law this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(24) All documentation deemed necessary and requested by the Oklahoma Department of Agriculture, Food, and Forestry to assure the quality of waters of the state are not compromised, including waste retention structure liner specifications and design plans providing a minimum of a ten (10) foot separation between the bottom of each liquid waste retention structure and the highest annual or seasonal elevation of groundwater for LMFOs and any other information required by the Department directly related to the construction, installation, or future modification or operation of a swine feeding operation.

(b) All items listed in subpart (a) of this section shall be received by the Department before the application is considered complete. At the Department's discretion, no action will be taken on the application until all items have been received by the Department, including but not limited to presite inspections.

(c) All supporting documentation regarding methods used for preparing the license application for an LMFO, including calculation of waste retention structure capacity and land application rates, shall be based on published methods approved by the Department. Any other methods shall be used only upon approval by the Department prior to submission of the license application.

(d) A change in location of a waste retention structure for an LMFO after the initial application date shall result in a new application date assigned to that application and all requirements in effect at the new application date shall apply, including setbacks. A reconfiguration of barns or waste retention structures shall not be considered a change, but a new presite approval shall be obtained prior to the change. If the change in location is required by the Department, the initial application date continues to apply.

(e) Adjacent areas for purposes of the LMFO application review shall include all property within one (1) mile of the facility, or two (2) miles if the facility is an LMFO with a capacity of more than two thousand (2,000) animal units.

### **35:17-3-11 Pollution Prevention Plan (PPP)**

(a) Prior to the submission of a CAFO license application or modification, each facility shall develop or update a Pollution Prevention Plan (PPP) according to the Oklahoma Swine Feeding Operations Act and rules promulgated pursuant to the Act.

(b) The PPP shall include provisions for documentation of structural controls, documentation of operating Best Management Practices (BMPs), a Swine Waste Management Plan, a carcass disposal plan for normal and emergency disposal of carcasses, and record keeping provisions.

(c) The following forms and records shall be maintained by the CAFO for each PPP:

(1) wastewater measurements;



- (2) precipitation measurements;
- (3) spill reporting forms;
- (4) discharge reporting forms;
- (5) inspection and maintenance records;
- (6) annual inspection records;
- (7) preventive maintenance records;
- (8) employee annual education records (for LMFO's);
- (9) records of manure or wastewater sold or transferred (if applicable);
- (10) records of land application of solid manure (if applicable);
- (11) records of land application of liquid manure (if applicable);
- (12) records of land application of compost from mortalities (if applicable)
- (13) mortality management records; and
- (14) other site specific information requested by the Department.

(d) The Plan shall identify an individual who is responsible for implementing, maintaining, and revising the PPP.

(e) The PPP for an LMFO shall also include an Odor Abatement Plan (OAP) and a Pest Management Plan (PMP).

(f) Equivalent measures contained in a site specific swine waste management plan prepared by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) may be substituted for the appropriate PPP requirements. An AWMP developed by USDA NRCS can be substituted for the documentation of land application rate calculations.

(g) With Department approval, the owner shall amend the PPP prior to any change in design, construction, operation, or maintenance, which has significant effect on the potential for the discharge of pollutants to the surface or groundwaters of the State.

(h) The owner shall implement appropriate changes to the Plan within ninety (90) calendar days of notification that the plan does not meet one or more specified minimum requirements unless otherwise provided by the Department. If notice of changes is not

received by the Department within the prescribed ninety (90) calendar days, the application shall be denied.

(i) In addition to the requirements of the Act, the PPP shall include:

(1) A list of materials that are used, stored, or disposed of at the facility which may cause pollution. A contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of releases shall include any corrective action taken to prevent recurrence.

(2) Testing of groundwater, Nitrogen as Nitrate, total Phosphorous, and fecal coliform bacteria levels shall be performed by an Oklahoma Department of Environmental Quality certified independent testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner. Owners of LMFOs shall sample groundwater annually for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(3) Soil tests from land application sites shall be performed by an Oklahoma Department of Environmental Quality certified testing laboratory or State operated laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner. Owners of LMFOs shall perform soil tests for electrical conductivity, pH, nitrate-nitrogen, ammonium-nitrogen, organic matter, sodium, potassium, calcium, magnesium, available phosphorus, and total nitrogen. Soil test results shall be maintained at the site for as long as the facility is in operation.

(4) Sufficient testing of wastewater in waste storage facilities shall be required at least every three (3) years and performed by a qualified independent testing laboratory. Testing may be required more frequently at an individual facility at the Department's request. All owners of LMFOs shall sample waste retention structure contents annually prior to the first land application of the calendar year. Owners of LMFOs shall sample waste retention structure contents for ammonium-nitrogen, nitrate-nitrogen, total phosphorus, electrical conductivity, pH, sodium, potassium, calcium, magnesium, total nitrogen, and total solids. Additional parameters may be required upon request of the Department.

(5) A description of management controls appropriate for the facility. The owner initiates these controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility and conform to criteria established by the Act and the Department.

(A) The location and a description of existing surface water controls. Structural controls shall be inspected at least quarterly each year for structural integrity and maintenance.

(B) Documentation of retention structure capacity shall be submitted to the Department and shall be based upon input parameters, the assumptions and actual calculations, showing volumes for all intermediate steps, used in determining the appropriate volume capacity. All waste retention structures for LMFOs shall be designed for the maximum number of swine that are or will be licensed at the facility. Retention structure capacity shall be based upon the following, at a minimum:

(i) The runoff volume from open lot surfaces.

(ii) The runoff volume from areas between open lot surfaces and the retention structure.

(iii) The rainfall multiplied by the area of the retention structure.

(iv) The volume of rainfall from any roofed area that is directed into the retention structure.

(v) All waste and process generated wastewater produced during a period of time not less than one-hundred-eighty (180) calendar days, including: volume of wet manure that enters a pond; plus volume of water used for manure or waste removal; plus volume of wash or cleanup water; plus other water, including drinking water that enters the retention structure.

(vi) Volume of a 25-year, 24-hour rainfall event.

(vii) One (1) foot of freeboard below spillway or outlet.

(viii) A water budget based on real monthly or daily data from a rain gauge located near the facility.

(C) A description of the design standards for the retention facility embankments. The following minimum design standards are required for construction or modification of a retention structure embankment:

(i) Soils used in the embankment shall be free of foreign material, including trash, brush, and fallen trees.

(ii) The embankment shall be constructed in lifts no more than six (6) inches thick after compaction and compacted to a minimum of 95% of the maximum dry density and +/- 2% of optimum moisture content as determined by ASTM D 698 standard proctor test.

(iii) Each lift of the embankment of the retention structures shall be checked to ensure proper compaction and moisture content; all readings shall be recorded and properly documented with minimum information required for documentation to include:

(I) project name,

(II) date,

(III) test method used,

(IV) site name,

(V) technician name,

(VI) location of reading, including sketch, if necessary,

(VII) percent compaction,

(VIII) wet density, pcf,

(IX) dry density, pcf,

(X) moisture content,

(XI) lift number, and

(XII) soils lab name, report number and proctor test results used to obtain field measurements.

(iv) If retention structures are constructed with an emergency spillway, a minimum of one (1) foot of freeboard shall be maintained between the top of the 25-year, 24-hour storm volume and the bottom of the emergency spillway.

(v) An erosion control plan shall be developed and approved by the Department detailing how the owner immediately stabilizes the embankment walls to prevent erosion and deterioration. The plan shall include a preventive maintenance section. Each plan shall be approved on a case by case basis and may include the use of vegetative cover, geomembrane liners, sod, or other Department approved methods for controlling erosion.

(vi) A permanent measuring device shall be maintained in the wastewater retention structure to show the volume required to contain a 25-year, 24-hour rainfall event. The device shall be

visible from the top of the levee and a separate mark shall be placed on the measuring device clearly identifying the 25-year, 24-hour rainfall event. Installation of the measuring device shall be performed in a manner to protect the integrity of liner at all times.

(vii) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP.

(viii) Documentation of method used to ensure liner of the waste retention structure is protected at or below the inlet.

(6) All owners of LMFOs shall install a leak detection system or monitoring wells in accordance with criteria approved by the Department.

(A) Samples of groundwater shall be collected by the Oklahoma Department of Agriculture, Food, and Forestry at least annually. The analysis of the water samples shall be performed by a qualified environmental laboratory approved by the Oklahoma Department of Environmental Quality or the relevant certification agency for the state in which the laboratory is located and approved by the Oklahoma Department of Agriculture, Food, and Forestry. All costs of analysis shall be the responsibility of the owner of the LMFO.

(i) The frequency of sampling may be reduced to once every three (3) years for those monitoring wells which have been sampled for at least three (3) consecutive years and have always been found to be dry.

(ii) If any subsequent sampling event indicates the monitoring well is no longer dry, that monitoring well shall be sampled pursuant to this subsection.

(B) All waste retention structures shall have sufficient numbers of groundwater monitoring wells upgradient and downgradient in the direction of groundwater flow. All monitoring well locations shall be approved by the Department on a case by case basis.

(C) No monitoring well shall be installed more than one hundred and fifty (150) feet from the crown of the outer berm.

(D) All new monitoring wells shall be drilled through the first aquifer encountered, but need not extend more than fifty (50) feet below the bottom of the waste retention structure. One downgradient monitoring well shall be drilled to the first aquifer encountered or the first

impermeable layer, but need not extend more than one hundred (100) feet below the bottom of the waste retention structure.

(E) All monitoring wells shall be drilled and completed by an Oklahoma Water Resources Board licensed monitoring well driller.

(F) If no groundwater is encountered during the drilling operation, the bore hole shall be left open for at least forty eight (48) hours but not over thirty (30) days for the aquifer to recharge the bore hole. Thereafter, the bore hole shall be either developed into a monitoring well or plugged according to Oklahoma Water Resources Board requirements.

(G) All new monitoring wells shall meet the following minimum requirements:

(i) A minimum of two (2) inch diameter PVC casing shall be used with a sealing cap on the bottom.

(ii) The casing shall consist of minimum SDR-21 rated casing with a minimum SDR-21 rated factory screen in the saturated zone, or the bottom ten (10) feet if no groundwater is encountered.

(iii) Perforated zone shall be gravel or sand packed originating at the bottom of the screen and extending to two (2) feet above the top of the screen, and otherwise as appropriate for the installation.

(iv) Bentonite shall be placed in the annular space of the well above the gravel or sand pack for an interval of at least two (2) feet to form an impermeable seal.

(v) A cement grout or a mixture of bentonite and cement shall be placed above the bentonite seal to prevent seepage from entering behind the pipe and causing hydrologic connection.

(vi) At least the top ten (10) feet of the annular space shall be filled with type A cement.

(vii) A concrete apron, minimum of four (4) inch thickness and two (2) feet from the casing shall be installed at the surface to prevent seepage of rain water into the bore hole. The apron shall be sloping away from the casing to avoid percolation of rain water.

(viii) A lockable protective cap shall be placed on top of the casing, which shall be a metal protective casing extending two (2) feet above the concrete apron and one (1) foot into the apron. The

well shall remain securely capped and locked at all times, except during sampling events.

(ix) Within thirty (30) days of installation, a copy of the Oklahoma Water Resources Board approved Multi-Purpose Completion Form shall be submitted to the Department.

(x) Existing monitoring wells shall be evaluated on a case by case basis by the Department to determine equivalency. Monitoring wells previously required and approved by the Department shall be considered equivalent.

(H) Groundwater monitoring wells shall be sampled at least annually for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(I) Owners of LMFOs may install a leak detection system instead of monitoring wells. The system shall be approved by the Department on a case by case basis.

(7) The following records, in addition to those required by the Act, shall be maintained at the site for a minimum of three (3) years:

(A) Weekly measure of water level in the retention facility;

(B) Quarterly inspection and maintenance reports;

(C) Copies of waste retention structure liner specifications and design plans and any other information required by the Department directly related to the construction, installation, or future modification or operation of the swine feeding operation;

(D) Copies of groundwater sample laboratory analyses;

(E) Waste retention structure(s) contents sample laboratory analyses;

(F) Dates of inspections of the retention structure and a log of the findings of the inspections;

(G) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP;

(H) If swine wastes are sold or given to other persons for disposal, the owner of the LMFO shall maintain a log of the following:

(i) Date of removal from the swine feeding operation,

(ii) Name of hauler, and

(iii) Amount in wet tons, dry tons, gallons, or cubic yards of waste removed from the swine feeding operation;

(I) A log of employee training and education shall be maintained at the site;

(J) A complete inspection of the site shall be performed at least annually by the owner. A report documenting the findings of the inspection shall be prepared and retained which includes the operative status of the check valves system on applicable wells;

(K) Records of incidents including spills, discharges, and other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded; and

(L) Records documenting significant observation made during the site inspection shall be retained as part of the PPP.

(8) The following records, in addition to those required by the Act, shall be maintained at the site as long as the facility is in operation:

(A) Documentation of no significant impact, if applicable,

(B) Copy of Notice of Intent (NOI) or Notice of Termination (NOT), if applicable,

(C) Copy of EPACAFO General Permit, if applicable,

(D) Copies of soil samples/test/laboratory results from land application fields, and

(E) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the swine feeding operation.

### **35:17-3-14 Swine Waste Management Plans**

(a) A swine waste management plan or its equivalent shall be prepared, according to Departmental policy, for each facility prior to the submission of a CAFO license application. A swine waste management plan or its equivalent may include, but is not limited to, a Comprehensive Nutrient Management Plan per NRCS guidance, or a Nutrient Management Plan per EPA guidance.



(b) The swine waste management plan shall include:

(1) A plan with a proposed schedule for liquid and solid swine waste removal, including sludge.

(2) A date log indicating weekly inspection of wastewater level in the retention structure, including specific measurement of wastewater level. Facilities using pits, ponds, or other waste retention structures for storage and treatment of storm water, manure, and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention structure sufficient capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The owner shall immediately restore sufficient capacity to contain a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces capacity, weather permitting. The 25-year, 24-hour rainfall event capacity shall be in addition to the one (1) foot of freeboard required.

(3) All calculations and all factors and assumptions used in determining land application rates, acreage, and crops for both solid and liquid swine wastes. Land application rates shall take into account the plant available nutrient contribution of any land applied swine wastes. The following requirements shall apply to land application of swine waste on land owned or leased by the owner:

(A) Runoff from swine waste is prohibited where it results in a discharge to surface or groundwaters of the State. The owner shall provide controls for runoff and erosion as appropriate for site conditions.

(B) Swine wastes shall not be applied when the ground is frozen or saturated or during rainfall events.

(C) It shall be considered acceptable emergency procedures for a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the State.

(D) Land application practices shall be managed so as to reduce or minimize the following:

(i) Ponding or puddling of wastewater on the site.

(ii) Adverse conditions that invite pests including flies and rodents.

(E) Facilities including waste retention structures, waste storage sites, land application sites, ponds, pipes, ditches, pumps, and diversion and

irrigation equipment shall be maintained to insure the ability to fully comply with the terms of these rules and the Pollution Prevention Plan.

(F) Adequate equipment and land application area shall be available for removal of waste and wastewater as required to maintain the proper operating volume of the retention structure. A list of proposed or actual equipment shall be included.

(G) If swine wastes are sold or given to other persons for disposal, the owner of the LMFO shall maintain a log of the following:

(i) Date of removal from the operation.

(ii) Name of hauler.

(iii) Amount in wet tons, dry tons, gallons, or cubic yards of waste removed from the operation.

(H) Surface disposal of swine wastes in the 100-year flood plain, as established by the Federal Emergency Management Agency (FEMA), or near water courses is prohibited unless protected from inundation and damage that may occur during that flood event by adequate berms or other structures. The land application of swine wastes at agronomic rates shall not be considered surface disposal and is not prohibited.

(I) Runoff from swine waste storage piles shall be retained on site.

(J) Accumulation of water in swine waste storage areas shall be avoided.

(K) Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions. Timing and rate of land application of swine waste shall be based on published materials approved by the Department.

(L) Land application shall not occur in areas defined as do not apply areas in the waste application criteria of the USDA NRCS Waste Utilization Standard Conservation Practice Standard Code 633, Nutrient Management Conservation Practice Standard Code 590, or their current replacement.

(M) The swine waste management plan shall identify areas which due to topography, activities, or other factors have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to surface or groundwaters of the State, the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff. Land subject to excessive erosion shall be avoided.

(4) LMFO nutrient loading.

(A) Liquid manure and bottom sludge of a waste retention structure shall be applied to land in accordance with the swine waste management plan as approved by the Department.

(B) Liquid contents of the waste retention structure shall be applied at agronomic rates and shall not exceed the nitrogen uptake of the crop. Where local water quality is threatened by phosphorus, in no case shall the owner exceed the application rates of phosphorus in the most current USDA NRCS Waste Utilization Standard. Watersheds that are nutrient limited and groundwaters that are nutrient vulnerable shall be deemed to be threatened by phosphorus.

(C) Calculation of loading rates shall be based upon the existing nitrogen content of the receiving soil and the optimum nitrogen requirement of a particular crop.

(D) All soil and waste sampling shall occur on an annual basis.

**35:17-3-20 Best Management Practices (BMPs)**

(a) The owner shall document all Best Management Practices (BMPs) used to comply with the required effluent limitations. Equivalent measures contained in a site-specific swine waste management plan prepared by NRCS may be substituted for the BMPs.

(b) The criteria for BMPs shall be established in writing by the Department and shall include but not be limited to the following:

(1) There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the facility. Wastewater retention structures or land application of wastewater shall not be located within three hundred (300) feet of an existing public or private drinking water well.

(2) Swine waste handling, treatment, and management shall not knowingly or reasonably result in the destruction of endangered or threatened species or contribute to the taking of any federally endangered or threatened species of plant, fish or wildlife, nor shall disposal knowingly interfere with or cause harm to migratory birds. The owner shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird or endangered species kill or die-off on or near retention ponds or in fields where waste has been applied and which could reasonably have resulted from waste management at the facility.

(3) Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner designed to prevent pollutants from being discharged to surface or groundwaters of the State.

(4) The owner shall prevent the discharge of pesticide contaminated waters into surface or groundwaters of the State. All wastes from dipping vats, pest, and parasite control units and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner which prevents pollutants from entering the surface or groundwaters of the State.

(5) Fresh water entering into contaminated areas shall be managed to prevent contamination. Preventing the drainage of fresh surface waters into or onto waste contaminated areas shall be accomplished by one of the following:

(A) Terracing and the construction of other diversion structures to redirect fresh water drainage from entering waste contaminated areas.

(B) Rainwaters falling directly on waste contaminated areas of the facility shall be collected and dispersed as a waste.

(6) Actions as deemed necessary shall be taken to retain all swine waste on the premises until proper waste utilization is accomplished.

(c) The owner shall describe how each BMP shall be implemented and complied with at the facility.

## **2) 2 Okl. St. §§ 2-10-9.1, 9.3, 9.4, 9.5, 9.12; O.A.C. §§ 35:17-5-1, 2, 3(b), 5**

### **§ 10-9.1. Short Title—Definitions**

A. Sections 10-9.1 through 10-9.12 of this title shall be known and may be cited as the “Oklahoma Registered Poultry Feeding Operations Act”.

B. As used in Sections 10-9.1 through 10-9.23 of this title:

1. “Best Management Practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices which prevent or reduce the pollution of waters of the state as established by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to Section 10-9.7 of this title;

2. “Board” means the State Board of Agriculture;

3. “Certificate” means a written document issued to an individual by the Board pursuant to Section 10-9.17 of this title which indicates that the individual is

authorized to land-apply poultry waste by the Oklahoma Poultry Waste Applicators Certification Act;

4. “Certified poultry waste applicator” means a person who has been certified by the Board to land-apply poultry waste and includes a commercial poultry waste applicator and a private poultry waste applicator;

5. “Commercial poultry waste applicator” means any person who engages in commercial land-application of poultry waste. Any farmer while working for a neighbor in agricultural production, and not advertising, nor holding himself or herself out to be in the business of land-applying poultry waste, shall not be classified as a commercial poultry waste applicator, but as a private poultry waste applicator;

6. “Contract growing arrangement” means any growout contract, marketing agreement, or other arrangement under which a contract poultry grower cares for or raises poultry;

7. “Contract poultry grower” means any person engaged in the business of caring for or raising poultry, under a contract growing arrangement;

8. “Common ownership” includes but is not limited to any person who has power or authority to manage, direct, restrict, regulate or oversee the operation or has financial control of two or more poultry feeding operations;

9. “Department” means the Oklahoma Department of Agriculture, Food, and Forestry;

10. “Expanding operation” means a registered poultry feeding operation that seeks to increase its registered capacity in excess of ten percent (10%) of the facility’s original registered capacity;

11. “Facility” means any place, site or location or part thereof where poultry are kept, handled, housed or otherwise maintained including but not limited to buildings, lots, pens, and poultry waste management systems;

12. “Integrator” means an entity which unites the elements associated with the poultry industry, including but not limited to hatching, feeding, processing, and marketing. It includes, but is not limited to, situations when growing is contracted out to others and when the integrator operates its own growing facilities;

13. “Land-application” means the spreading on, or incorporation into, the soil mantle primarily for beneficial purposes;

14. “Nutrient Management Plan” means a written plan that includes a combination of conservation and management practices designed to protect the

natural resources of the state as required by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to the provisions of Section 10-9.7 of this title and shall also include a certified nutrient management plan and animal waste management plan;

15. "Operator" means the person who performs the daily management functions associated with the poultry feeding operation;

16. "Person" means an individual, association, partnership, firm, company, public trust, corporation, joint stock company, trust estate, any other legal entity, or any agent, employee, representative assignor or successor thereof;

17. "Nutrient-limited watershed" means a watershed of a water body which is designated as "nutrient-limited" in the most recent Oklahoma Water Quality Standards;

18. "Nutrient-vulnerable groundwater" means groundwater which is designated "nutrient-vulnerable" in the most recent Oklahoma Water Quality Standards;

19. "Poultry" includes chickens, turkeys, ducks, geese, and any other domesticated bird used for human food and/or animal feed;

20. "Poultry feeding operation" means a property or facility where the following conditions are met:

a. poultry have been, are or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period,

b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the property or facility, and

c. producing over ten (10) tons of poultry waste per year;

21. "Poultry waste" means poultry excrement, poultry carcasses, feed wastes, bedding materials, or any other waste associated with the confinement of poultry from a poultry feeding operation;

22. "Poultry waste management system" means a combination of structures and practices serving a poultry feeding operation that provides for the collection, treatment, disposal, distribution, storage, and land-application of poultry waste;

23. "Private poultry waste applicator" means any person who is not a commercial poultry waste applicator but engages in the land application of poultry waste for purposes including, but not limited to, producing any agricultural commodity on property owned or rented by the person or such person's employer, or if applied

without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

24. "Waste facility" means any structure or combination of structures utilized to control poultry waste until it can be utilized in an authorized manner; and

25. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Process wastewaters shall not be considered as waters of the state if contaminated at the site.

### **§ 10-9.3. Registration Requirement**

A.

1. It shall be unlawful for any person to construct or operate a new poultry feeding operation without having first registered with the State Board of Agriculture.

2. The owner or operator of a poultry operation not classified as a poultry feeding operation may register if such owner or operator elects to come under the provisions of the Oklahoma Registered Poultry Feeding Operations Act and the rules of the Board.

B. Any poultry feeding operation that has a valid license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall not be required to register pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

### **§ 10-9.4. Registration of Poultry Feeding Operation**

A. Every poultry feeding operation shall be required to register annually to operate pursuant to the Oklahoma Registered Poultry Feeding Operations Act and rules promulgated pursuant thereto.

B.

1. Two or more poultry operations under common ownership are considered, for the purposes of registration, to be a single poultry feeding operation if they adjoin each other or if they use a common waste facility.

2. Once the cumulative amount of poultry waste produced by all facilities owned or managed by a person meets or exceeds the amount specified by paragraph 20

of Section 10-9.1 of this title, all poultry feeding operations owned by the person shall be required to become registered.

3. After the effective date of this act, any poultry feeding operation shall be required to reregister for any increase in excess of ten percent (10%) of the facility's original registered capacity.

#### **§ 10-9.5. Application to Register or Expand Poultry Operation—Educational Credits**

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 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, 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.

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.

#### **§ 10-9.12. Promulgation of Rules for Administration of Act**

A. The State Board of Agriculture shall promulgate rules for the administration, implementation, and enforcement of the Oklahoma Registered Poultry Feeding Operations Act.

B. For the performance of its duties and responsibilities, the Board is authorized to employ such personnel and agents as may be required within the funds available.

#### **35:17-5-1 Purpose**

These rules shall serve to control nonpoint source runoff and discharges from poultry waste application of poultry feeding operations. The rules allow for the monitoring of poultry waste application to land or removal from these operations and assist in ensuring beneficial use of poultry waste while preventing adverse effects to the waters of the state of Oklahoma. These rules are promulgated pursuant to and are read in conjunction with the Oklahoma Registered Poultry Feeding Operations Act found at Section 10-9.1 et seq. at Title 2 of the Oklahoma Statutes. The provisions of the Oklahoma Registered Poultry Feeding Operations Act are incorporated by reference.

### **35:17-5-2 Definitions**

In addition to the terms contained and defined in the Oklahoma Registered Poultry Feeding Operations Act, the following words or terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise:

“Discharge” means any release by pumping, pouring, emptying, or dumping of poultry waste directly or through a manmade conveyance into waters of the State.

“Nutrient Management Plan” means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state as required by the Oklahoma Department of Agriculture, Food and Forestry pursuant to the provisions of Section 10-9.7 of Title 2 of the Oklahoma Statutes and shall also include a certified nutrient management plan and animal waste management plan.

“Runoff” means any release by leaking, escaping, seeping, or leaching of poultry waste into waters of the State.

“USDA NRCS” means the United States Department of Agriculture Natural Resources Conservation Service.

“Waste facility” means any structure or combination of structures utilized to control poultry waste until it can be utilized in an authorized manner. These structures shall include all treatment and storage structures but not be limited to pits, burial sites, barns, or roof covered structures which house poultry, composters, poultry waste storage sites, or retention structures, and all appurtenances or additions.

### **35:17-5-3 Registration, Nutrient Management Plan (NMP) required**

[ . . . ]

(b) Nutrient Management Plan.

(1) Every poultry feeding operation shall obtain or apply for an approved NMP addressing both nitrogen and phosphorus.

- (2) All new operators of poultry feeding operations shall obtain or apply for an NMP prior to construction of the facility.
- (3) The NMP shall be prepared by USDA NRCS or an entity approved by the State Department of Agriculture.
- (4) Plans shall be reviewed and updated at least every six (6) years from the date the NMP was obtained. Plans shall also be reviewed and updated in the following circumstances:
  - (A) When a change in the waste utilization standards occurs and upon notification by the State Department of Agriculture.
  - (B) Upon recommendation of the State Department of Agriculture.
- (5) Plans shall be updated prior to the expansion of a facility.
- (6) Implementation of the NMP shall occur within ninety (90) days of receipt of the NMP unless otherwise determined by the State Department of Agriculture. In no event shall the poultry feeding operation land apply poultry waste in excess of the current USDA NRCS Waste Utilization Standards, unless the State Department of Agriculture approves other standards.
- (7) Registered poultry feeding operations may voluntarily submit to the Oklahoma Department of Agriculture, Food, and Forestry an annual assessment of one hundred dollars (\$ 100.00) for the purpose of securing the ODAFF service of drafting NMP for their registered poultry feeding operation(s). ODAFF shall revise plans for poultry operations that pay the voluntary assessment every six years and/or when the poultry operation adds or subtracts poultry litter land application fields or when their carcass disposal method changes. ODAFF will assign a priority of drafting new or revised NMP to operations that pay ODAFF the annual voluntary assessment over operations that do not pay the voluntary assessment. ODAFF may assign additional priority to operations based on the receipt date of the voluntary annual assessments.

### **35:17-5-5 Nutrient Management Plan**

- (a) The NMP shall contain, at a minimum, the following:
  - (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.
  - (3) All nutrient analysis data, including soil and poultry waste testing.

(4) Legal description of lands to be used by an operation for land application.

(5) Soils map with description and type or series.

(6) Land application rates of poultry waste shall be based on the available nitrogen and phosphorus content of the poultry waste and soil test results.

(7) The procedures documented in the NMP shall ensure that the handling and utilization of poultry waste complies with the following requirements:

(A) Adequate poultry waste storage shall be provided. Poultry waste shall not be stored without adequate protection from rainfall and runoff. All new poultry feeding operations shall make provisions for storage of poultry waste prior to operating. Exceptions to storage requirements for poultry waste in emergency situations shall be granted on a case by case basis. 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. However, in all situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.

(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 or snow covered except in conformance with the NMP.

(C) Poultry waste shall only be applied to suitable land at appropriate times and rates as specified by the NMP. Runoff of poultry waste from the application site is prohibited.

(D) All practices necessary to minimize movement of poultry waste to watercourses shall be utilized and documented in the NMP.

(E) Edge of field, grassed strips shall separate water courses from runoff which may be carrying eroded soil and poultry waste.

(F) Poultry waste application shall be prohibited on land subject to excessive erosion.

(G) Land application rates of poultry waste shall provide controls for runoff as appropriate for site conditions.

(b) The NMP shall also include a method for the disposal of carcasses. The NMP shall include provisions for disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other

emergency results in deaths significantly higher than normal mortality rates. Accepted methods of carcass disposal include:

(1) Rendering

(A) Disposal of all carcasses shall occur within a reasonable period of time as approved by the State Department of Agriculture.

(B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.

(2) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and specific measures and practices are identified which will be utilized to protect the ground and surface waters of the State.

(3) Composting by methods as approved in the NMP.

(4) Incineration shall only be used as a method of carcass disposal if the poultry feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division, if required.

(c) Storage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to waters of the State or cause a water quality violation to waters of the State.

(d) The operator shall notify the State Department of Agriculture within twenty-four (24) hours of a discharge.

**3) 2 Okl. St. §§ 2-20-40, 41, 42, 44, 45, 47, 48; O.A.C. §§ 35:17-4-1, 2, 3, 4, 9, 12, 16**

**§ 20-40. Short Title—Purpose**

A. Sections 28 through 50 of this act shall be known and may be cited as the “Oklahoma Concentrated Animal Feeding Operations Act”

B. The purpose of the Oklahoma Concentrated Animal Feeding Operations Act is to provide for environmentally responsible construction and expansion of animal feeding operations and to protect the safety, welfare and quality of life of persons who live in the vicinity of an animal feeding operation.

**§ 20-41. Definitions**

A. Concentrated animal feeding operations are point sources subject to the license program established pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

B. As used in the Oklahoma Concentrated Animal Feeding Operations Act:

1. “Affected property owner” means a surface landowner within one (1) mile of the designated perimeter of an animal feeding operation;

2. “Animal feeding operation” means a lot or facility where the following conditions are met:

a. animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period, and

b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

The term “animal feeding operation” shall not include a racetrack licensed by the Oklahoma Horse Racing Commission to hold pari-mutuel race meetings pursuant to the Oklahoma Horse Racing Act if the facility discharges to a publicly owned treatment works, or an aquatic animal production facility;

3. “Animal unit” means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by one (1), plus the number of mature dairy cattle multiplied by one and four-tenths (1.4), plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2);

4. “Animal waste” means animal excrement, animal carcasses, feed wastes, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation;

5. “Animal Waste Management Plan” or “Nutrient Management Plan” means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state prepared by an owner or operator of an animal feeding operation as required by the Department pursuant to the provisions of Section 20-48 of this title;

6. “Animal waste management system” means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste;

7. “Artificially constructed” means constructed by humans;

8. “Best Management Practices” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state as established by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to Section 20-48 of this title;

9. “Board” means the State Board of Agriculture;

10. “Common ownership” includes but is not limited to any corporation, partnership or individual where the same owner has power or authority to manage, direct, restrict, regulate or oversee the operation or has financial control of the facility;

11. “Concentrated animal feeding operation” means:

a. an animal feeding operation which meets the following criteria:

(1) more than the number of animals specified in any of the following categories are confined:

(a) 1,000 slaughter and feeder cattle,

(b) 700 mature dairy cattle, whether milk or dry cows,

(c) 500 horses,

(d) 10,000 sheep or lambs,

(e) 55,000 turkeys,

(f) 100,000 laying hens or broilers, if the facility has continuous overflow watering,

(g) 30,000 laying hens or broilers, if the facility has a liquid manure system,

(h) 5,000 ducks, or

(i) 1,000 animal units, and

(2) pollutants are discharged into waters of the state.

Provided, no animal feeding operation pursuant to this subparagraph shall be construed to be a concentrated animal feeding operation if the animal feeding operation discharges only



in the event of a twenty-five-year, twenty-four-hour storm event,  
or

b. an animal feeding operation which meets the following criteria:

(1) more than the number of animals specified in any of the following categories are confined:

(a) 300 slaughter or feeder cattle,

(b) 200 mature dairy cattle, whether milk or dry cows,

(c) 150 horses,

(d) 3,000 sheep or lambs,

(e) 16,500 turkeys,

(f) 30,000 laying hens or broilers, if the facility has continuous overflow watering,

(g) 9,000 laying hens or broilers, if the facility has a liquid manure system,

(h) 1,500 ducks, or

(i) 300 animal units, and

(2) either one of the following conditions are met:

(a) pollutants are discharged into waters of the state through an artificially constructed ditch, flushing system or other similar artificially constructed device, or

(b) pollutants are discharged directly into navigable waters which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation pursuant to this subparagraph is a concentrated animal feeding operation if the animal feeding operation discharges only in the event of a twenty-five-year, twenty-four-hour storm event, or

c. the Board determines that the operation is a significant contributor of pollution to waters of the state pursuant to Section 20-44 of this title;

12. “Department” means the Oklahoma Department of Agriculture, Food, and Forestry;

13. “Designated perimeter” means the perimeter of any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. The structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing animals, composters, waste storage sites, or retention structures or appurtenances or additions thereto;

14. “Facility” means any place, site or location or part thereof where animals are kept, handled, housed, or otherwise maintained and processed and includes but is not limited to buildings, lots, pens, and animal waste management systems;

15. “Interested party” means an affected property owner found to meet the burden of proof pursuant to the provisions of Section 20-46 of this title;

16. “Land application” means the spreading on, or incorporation of, animal waste into the soil mantle primarily for beneficial purposes;

17. “Liquid animal waste management system” means any animal waste management system which uses water as the primary carrier of the waste into a primary retention structure;

18. “Nutrient-limited watershed” means a watershed of a water body which is designated as “nutrient-limited” in the most recent Oklahoma Water Quality Standards;

19. “Nutrient-vulnerable groundwater” means groundwater which is designated “nutrient-vulnerable” in the most recent Oklahoma Water Quality Standards;

20. “Occupied residence” means a habitable structure designed and constructed for full-time occupancy in all weather conditions which:

a. is not readily mobile,

b. is connected to a public or permanent source of electricity and a permanent waste disposal system or public waste disposal system, and

c. is occupied as a residence;

21. “Pollution Prevention Plan” means a written plan to control the discharge of pollutants which has been prepared in accordance with industry-acceptable engineering and management practices by the owner or operator of an animal feeding operation as required pursuant to Section 20-47 of this title;

22. "Process wastewater" means any water utilized in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of animals and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact, swimming, washing or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste;

23. "Retention structures" includes but is not limited to all collection ditches, conduits and swales for the collection of runoff water and process wastewater, and basins, ponds and lagoons or other structures used to store animal wastes;

24. "Waste facility" means any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. The structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing animals, composters, waste storage sites, or retention structures or appurtenances or additions thereto; and

25. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds and lagoons, designed to meet federal and state requirements other than cooling ponds as defined in the Clean Water Act or rules promulgated pursuant thereto are not waters of the state.

#### **§ 20-42. Authority of State Board of Agriculture—Rules—Personnel**

The State Board of Agriculture is authorized to promulgate rules for the administration, implementation, and enforcement of the Oklahoma Concentrated Animal Feeding Operations Act. For the performance of its duties and responsibilities, the Board is authorized to employ such personnel and agents as may be required with the funds available.

#### **§ 20-44. Licensure of Concentrated Animal Feeding Operations**

A.

1. Any animal feeding operation meeting the criteria defining a concentrated animal feeding operation shall be required to obtain a license to operate pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

2. No animal feeding operation which voluntarily obtains a license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall be considered to be a concentrated animal feeding operation unless the operation meets the definition of concentrated animal feeding operation.

3. Any animal feeding operation other than a concentrated animal feeding operation, regardless of the number of animals, shall only be required to be licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto if the State Board of Agriculture determines the operation to be a significant contributor of pollution to waters of the state pursuant to subsection C of this section.

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

C.

1. The State Board of Agriculture may make a case-by-case designation of concentrated animal feeding operations pursuant to this section. Any animal feeding operation may be designated as a concentrated animal feeding operation if it is determined to be a significant contributor of pollution to the waters of the state. In making this designation, the Board shall consider the following factors:

a. the size of the animal feeding operation and the amount of wastes reaching waters of the state,

b. the location of the animal feeding operation relative to waters of the state,

c. the means of conveyance of animal waste and wastewater into waters of the state,

d. the method of disposal for animal waste and process wastewater disposal,

e. the slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the state, and

f. other such factors relative to the significance of the pollution problem sought to be regulated.

2. In no case shall an application for a license be required from an animal feeding operation pursuant to this subsection until there has been an on-site inspection of

the operation and a determination by the Oklahoma Department of Agriculture, Food, and Forestry that the operation is a concentrated animal feeding operation. Should the Department determine that the operation is a concentrated animal feeding operation, the Department shall notify the operation of the determination and of an opportunity for the owner or operator of the facility to request an administrative hearing on the issue.

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

D. No new concentrated animal feeding operation or expansion of a concentrated animal feeding operation requiring a license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall be constructed or placed in operation unless final design plans, specifications and a Pollution Prevention Plan developed pursuant to Section 35 of this act have been approved by the Department.

**§ 20-45. Forms and Applications for Licenses—Availability—Contents—Renewals and Transfers—Penalties for Violations**

A. The State Board of Agriculture shall cause to be prepared and available, for any person desiring or required to apply for a license to operate a new or previously unlicensed animal feeding operation, the necessary forms and applications.

B. The application for a license to operate a new or previously unlicensed animal feeding operation shall contain, as a minimum, the following information:

1. Name and address of the owner and operator of the facility;
2. Name and address of the animal feeding operation;
3. Capacity in animal units, and number and type of animals housed or confined;
4. 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, animal waste storage facilities and land application sites owned or leased by the applicant;
5. A copy of the Pollution Prevention Plan containing an Animal Waste Management Plan, Best Management Practices, or such other plan authorized by

the Oklahoma Concentrated Animal Feeding Operations Act and approved by the Department;

6. A copy of the written waiver by an adjacent property owner to the facility releasing specified setback requirements as provided by Section 44 of the Oklahoma Concentrated Animal Feeding Operations Act; and

7. Any other information deemed necessary by the Oklahoma Department of Agriculture, Food, and Forestry to administer the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

C.

1. An application for renewal of a license to operate an animal feeding operation shall be considered to be properly filed when the Department has received a completed renewal application and payment of fees from the applicant.

2. If the application for renewal is denied, written notification of the denial and an opportunity for an administrative hearing on the denial shall be given to the applicant by the Department. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for issuance of the renewal license and the opportunity for the applicant to request an administrative hearing.

D. For transfer of a license to a new owner or operator, the following conditions shall be met:

1. The new owner or operator shall submit to the Department a transfer application, attaching any change of conditions resulting from the transfer of ownership or operation;

2. After receipt of the information required, the Department shall review the information, and within sixty (60) days, issue approval or denial of the transfer. Transfer of a license shall be denied only if:

a. the new owner or operator cannot comply with the requirements of transfer,

b. the Department finds a material or substantial change in conditions since the issuance of the original license to operate the animal feeding operation,

c. failure of the new owner or operator to meet any other conditions or requirements for compliance established by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, or

d. the new owner or operator has failed to meet the requirements of Section 48 of the Oklahoma Concentrated Animal Feeding Operations Act; and

3. If a transfer is denied, written notification of the denial and an opportunity for an administrative hearing on the denial shall be given to the applicant for a transfer license by the Department. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for a transfer license, and the opportunity for the applicant to request an administrative hearing.

E. Any suspension or revocation or nonrenewal of a license issued pursuant to the Oklahoma Concentrated Animal Feeding Operations Act by the Board shall be made in accordance with Section 48 of this act.

F. In addition to other information required for issuance of a new or transfer license, an application for a new or transfer license for a concentrated animal feeding operation shall contain the following information:

1.

a. A statement of ownership.

(1) If the applicant is a firm or partnership, the name and address of each member thereof shall be included in the application.

(2) 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.

(3) 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.

b. The information contained in the statement of ownership shall be public information and shall be available upon request from the Board;

2. The name and address of the management, if the management is not the applicant and is acting as agent for the applicant;

3.

a. An environmental history from the past three (3) years of any concentrated animal or swine feeding operation established and operated

by the applicant or any other operation with common ownership in this state or any other state. The environmental history shall include but not be limited to all citations, administrative orders or penalties, civil injunctions or other civil actions, criminal actions, past, current and ongoing, taken by any person, agency or court relating to noncompliance with any environmental law, rule, agency order, or court action relating to the operation of an animal or swine feeding operation.

b. A copy of all records relating to the environmental history required by this paragraph shall accompany the application.

c. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of the final order or judgment shall not be considered a final order or judgment for the purposes of this subsection;

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

5. Any other information or records required by the Department for purposes of implementing the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated pursuant thereto.

G.

1. 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 a license, or notice relating to the determination of affected property owners, shall, upon conviction thereof, 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. In addition, the Department shall deny licensure to the applicant or may require submission of a new application.

2. The responsibility for ensuring that all affected property owners are notified pursuant to the provisions of this section shall be upon the applicant.

#### **§ 20-47. Pollution Prevention Plan**

A. An animal feeding operation licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act shall develop a Pollution Prevention Plan or may substitute equivalent measures contained in a site-specific Animal Waste Management Plan prepared pursuant to Section 36 of this act. Design and construction criteria developed by the United States Department of Agriculture Natural Resources Conservation Service, may be substituted for the documentation of design capacity and construction requirements.



B.

1. The Pollution Prevention Plan shall be signed by the owner or as otherwise authorized by the Oklahoma Department of Agriculture, Food, and Forestry and a copy shall be retained on site.

2. The animal feeding operation shall amend the Pollution Prevention Plan and obtain approval of the Department prior to any change in design, construction, operation or maintenance which has significant effect on the potential for the discharge of pollutants to the waters of the state.

C. If, after reviewing the Pollution Prevention Plan, the Department determines that the Plan does not meet one or more of the minimum requirements, the animal feeding operation shall make and implement appropriate changes to the Plan as required by the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

D. The Pollution Prevention Plan shall provide and require presite approval by Departmental personnel prior to construction. During construction, the Department shall monitor the construction process as deemed necessary by the Department in an attempt to verify the construction of the facility is done according to plans and acceptable engineering standards to reduce or eliminate the potential of pollution.

E. In addition to other requirements specified by this section, the Pollution Prevention Plan shall include but not be limited to:

1. A description of potential sources, activities and materials which may reasonably be expected to or could potentially add pollutants to runoff from the facility;

2. A map, indicating an outline of the drainage area of the facility, and each existing structural control measure designed to reduce pollutants in wastewater and precipitation runoff in all surface waters of the state;

3. A spill contingency plan for potential pollutants;

4. All existing sampling data of groundwater, nitrate and coliform bacteria levels, soil tests from land application sites and animal waste nutrient sampling;

5. A description of management controls appropriate for the facility. The management controls shall include, but not be limited to:

a. the location and a description of existing structural and nonstructural controls,

b. documentation of retention structure capacity and the assumptions and calculations used in determining the appropriate volume capacity, and

c. a description of the design standards for the retention facility embankments;

6. A description of the design standards for any retention facilities;

7. Training requirements for employees;

8. Documentation relating to any hydrologic connection between the contained wastewater and waters of the state which complies with Section 37 of this act; and

9. Requirements that all irrigation systems into which any animal waste will be injected shall be equipped as specified by Section 38 of this act.

F. The following records shall be maintained at the site as long as the facility is in operation:

1. Water level in the retention structure;

2. Daily precipitation records from on-site rain gauge;

3. Incident reports such as spills and other discharges;

4. Inspection and maintenance reports;

5. Findings from annual inspections of the entire facility;

6. Log of preventive maintenance and employee training that was completed;

7. Log of removal of animal waste sold or given to other persons for disposal;

8. Other specific information deemed necessary by the Department to implement the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto;

9. Copy of general permit issued by the United States Environmental Protection Agency if applicable, a copy of the completed Pollution Prevention Plan, and other specific records deemed necessary by the Department to implement the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto; and

10. The notarized statement signed by the applicant accepting full responsibility for properly closing all waste retention structures pursuant to subsection H of this section.

G. Any analyses required by the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or rules promulgated pursuant thereto shall be performed by a qualified independent testing laboratory certified by the Oklahoma Department of Environmental Quality and approved by the Department.

H. The applicant shall sign a notarized statement accepting full responsibility for properly closing all waste retention structures if the facility ceases to function or is ordered to close by action of the Department. When a license is transferred, the new owner or lessee shall submit a signed notarized statement accepting full responsibility for properly closing all waste retention structures if the facility ceases to function or is ordered to close by action of the Department.

#### **§ 20-48. Best Management Practices**

A. Animal feeding operations licensed pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act shall utilize Best Management Practices, or may substitute for best management practice equivalent measures contained in a site-specific Animal Waste Management Plan meeting the conditions and requirements established by subsection C of this section and by rules promulgated by the Board pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

B. The criteria for Best Management Practices shall be promulgated by rule by the Board, based upon existing physical and economic conditions, opportunities and constraints and shall include, but not be limited to, the following:

1. There shall be no discharge of process wastewater to waters of the state except in accordance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act;
2. Animal waste shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures except for a twenty-five-year, twenty-four-hour rainfall event;
3. No waters of the state shall come into direct contact with the animals confined on the animal feeding operation;
4. Animal waste handling, treatment, management and removal shall:
  - a. not create an environmental or a public health hazard,
  - b. not result in the contamination of public or private drinking water supplies,
  - c. conform with Oklahoma Water Quality Standards,

d. not violate any state or federal laws relating to endangered or threatened species of plant, fish or wildlife or to migratory birds,

e. 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 Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto, and

f. ensure that watersheds and groundwater are adequately protected;

5. If, for any reason, there is a discharge other than a spill of less than one hundred (100) gallons, the licensee is required to make immediate notification to the Department. The report of the discharge shall include:

a. a description and cause of the discharge, including a description of the flow path to the receiving water body,

b. an estimation of the flow rate and volume discharged,

c. the period of discharge, including exact dates and times, and if not already corrected, the anticipated time the discharge is expected to continue,

d. steps taken to reduce, eliminate and prevent recurrence of the discharge, and

e. test results for fecal coliform bacteria, five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), ammonia nitrogen, total Kjeldahl nitrogen (TKN), any pesticides which the operator has reason to believe could be in the discharge, or other parameters as required by the Department which the Department has reason to believe could be in the discharge;

6. Notwithstanding the provisions of paragraph 5 of this subsection, any spill that leaves the property owned or controlled by the licensee shall be reported to the Department regardless of total number of gallons spilled; and

7. The Department shall maintain records of all discharges and shall separately maintain records of all spills.

C. The Animal Waste Management Plan shall include at a minimum:

1. Animal waste removal procedures;

2. Records of inspections of retention structures, including, but not limited to, specific measurement of wastewater level;
3. All calculations in determining land application rates, acreage and crops for the land application rate of both solid and liquid animal wastes on land owned or controlled by the licensee;
4. Requirements including that:
  - a.
    - (1) land application of animal waste shall not exceed the nitrogen uptake of the crop coverage or planned crop planting with any land application of wastewater or manure. Where local water quality is threatened by phosphorous, in no case shall the applicant or licensee exceed the application rates in the most current Natural Resources Conservation Service publication titled Waste Utilization Standard, and
    - (2) timing and rate of applications shall be in response to crop needs, expected precipitation and soil conditions,
  - b. land application practices shall be managed so as to reduce or minimize:
    - (1) the discharge of process water or animal waste to waters of the state,
    - (2) contamination of waters of the state, and
    - (3) odor,
  - c. facilities including waste retention structures, waste storage sites, ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to ensure ability to fully comply with the terms of the Oklahoma Concentrated Animal Feeding Operations Act, and
  - d. adequate equipment and land application area shall be available for removal of such waste and wastewater as required to maintain the proper operating volume of the retention structure; and
5. Such other information deemed necessary by the Department to administer the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto.

D. Records shall be maintained of all animal wastes applied on land owned or controlled by the licensee, and sold or given to other persons for disposal.

E. Soils in areas in which animal waste is applied shall be analyzed, annually, for phosphates, nitrates and soil pH prior to the first application of the animal waste in the calendar year. A copy of the results of the analysis shall be submitted to the Department upon request by the Department. Such analysis shall be retained by the animal feeding operation as long as the facility is in operation.

F. Every animal feeding operation licensed pursuant to the provisions of Oklahoma Concentrated Animal Feeding Operations Act shall develop a plan approved by the Department for the disposal of carcasses associated with normal mortality.

1. Dead animals shall be disposed of in accordance with a carcass disposal plan developed by the applicant or licensee and approved by the Department.

2. The plan shall include provisions for the disposal of carcasses associated with normal mortality, with emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates and other provisions which will provide for a decrease in the possibility of the spread of disease and prevent the contamination of waters of the state. The plan shall comply with rules promulgated by the Department.

### **35:17-4-1 Purpose**

These rules are for regulating animal feeding operations pursuant to Section 20-40 et seq. of Title 2 of the Oklahoma Statutes and known as the Oklahoma Concentrated Animal Feeding Operations Act. These rules provide that all animal feeding operations be conducted so as to protect the waters of the State of Oklahoma from contamination. The rules applicable to the licensing process are designed to provide harmony within agricultural production while providing protection to the waters of the State of Oklahoma and to establish procedures for obtaining a Concentrated Animal Feeding Operations (CAFO) license by establishing a consistent application process, insuring public participation opportunities, providing for uniform notice requirements, and establishing other relevant requirements.

### **35:17-4-2 Definitions**

In addition to terms defined in the Oklahoma Concentrated Animal Feeding Operations Act, the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

“Act” means the Oklahoma Concentrated Animal Feeding Operations Act beginning at Section 20-40 of Title 2 of the Oklahoma Statutes.

“ALJ” means Administrative Law Judge.

“APA” means the Oklahoma Administrative Procedures Act, beginning at Section 301 of Title 75 of the Oklahoma Statutes.

“Application” means a set of documents filed with the Oklahoma Department of Agriculture, Food, and Forestry for the purpose of obtaining an Oklahoma CAFO License from the State Board of Agriculture.

“ASTM” means the most current version of the American Society of Testing Materials standards.

“CAFO” means Concentrated Animal Feeding Operation as defined in Section 20-41 of Title 2 of the Oklahoma Statutes.

“Discharge” means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching, or other means of release of wastes or wastewater except as otherwise provided in Section 20-44 of Title 2 of the Oklahoma Statutes. The term discharge shall not include a distribution of waste water into an irrigation system for the purpose of land application of waste to property, provided the waste does not leave the land application area.

“Hearing” means an individual proceeding conducted pursuant to the provisions of the Oklahoma Administrative Procedures Act.

“Licensing process” means the procedures where permission to engage in certain activities pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act is granted by the Board. Procedures include but are not limited to application, notice to affected property owners, Department review, publication of notice of application, hearings, and issuance of a building permit and license.

“Party” means a person or agency named and participating or properly seeking and entitled by these rules to participate in hearings.

“Person” means any individual, association, partnership, firm, company, public trust, corporation, joint-stock company, limited liability company, limited liability partnership, trust, estate, state or federal government agency, municipality, other governmental entity, or any other legal entity or their agent, employee, representative, assignee, or successor.

“USDA NRCS” means the United States Department of Agriculture Natural Resources Conservation Service. “25-year, 24-hour rainfall event” means the maximum twenty-four (24) hour precipitation event with a probable recurrence interval of once in twenty-five (25) years, as defined by the National Weather Service in Technical Paper Number 40, “Rainfall Frequency Atlas of the United States,” May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information.

### **35:17-4-3 License required**

In addition to CAFOs, any person who has filed a Notice of Intent (NOI) to be covered under the National Pollution Discharge Elimination Systems (NPDES) General Permit on Concentrated Animal Feeding Operations issued by the Environmental Protection Agency (EPA) on February 8, 1993 or its replacement or possessing an NPDES Permit shall be required to obtain an Oklahoma CAFO License. Any animal feeding operation may be required to obtain an Oklahoma CAFO License if it is specifically identified as a significant contributor of pollution by either the Director of EPA Region 6 or the State Board of Agriculture.

### **35:17-4-4 License application for new facilities or operations**

(a) In addition to the items required by the Oklahoma Concentrated Animal Feeding Operations Act, the application for a CAFO license of a new facility or an operation shall contain, as a minimum, the following information:

- (1) Name and address of the owner of the facility.
- (2) Name and address of the animal feeding operation, including driving directions from the nearest municipality and legal description of the facility.
- (3) Name and address of the operator if other than the owner.
- (4) Capacity in animal units and number and type of animals housed or confined.
- (5) If owner is a firm, partnership, corporation, or other legal entity, the name and address of each member with an ownership interest of ten percent (10%) or more.
- (6) If owner is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation.
- (7) Environmental history of the past three (3) years of any CAFO operation established or operated by the owner or any other operation with common ownership in Oklahoma or any other state, including all citations, administrative orders or penalties, civil injunctions or other civil actions, and criminal actions, past, current, and ongoing, taken by any person, agency, or court relating to noncompliance with any environmental law, rule, agency order, or court action in conjunction with the operation of an animal feeding operation.
- (8) List of all environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the owner.
- (9) Copy of deed, contract to purchase, or option to purchase the proposed site of the facility, waste retention structures, and land application sites. If land



application sites are not owned by the applicant, provide a notarized signed copy of spreading or effluent agreement.

(10) A map of all property owners within one (1) mile of the facility and waste retention structures and a corresponding mailing list.

(11) A plat showing:

(A) Location of the facility, waste retention structures, and all land application sites.

(B) Location and distance of all occupied residences within one (1) mile of the facility and waste retention structures. The distances shall be measured from the nearest point of the waste retention structure to the nearest point of the occupied residence.

(C) Location and distance of all occupied residences within six-hundred (600) feet of any land application site. The distances shall be measured from the nearest point of the land application site to the nearest point of the occupied residence.

(D) Location and distance of all existing public or private drinking water wells within four-hundred (400) feet of any land application site. The distance shall be measured from the nearest point of the land application site to the nearest point of the drinking water well.

(E) All open roads surrounding the facility and all land application sites.

(12) If applicable, a copy of the written waiver by a property owner, municipality, or governing body releasing specified setback requirements as provided by the Act.

(13) Characterization of the physical and environmental setup of the facility, including but not limited to the following:

(A) Description of topography using a current USGS 7.5 minute topographic map highlighting the location of waters of the state within three (3) miles of the facility, waste retention structures and all land application sites, an outline of the watershed drainage area, and arrows indicating general direction of surface water drainage from the facility, waste retention sites, and land application sites.

(B) Soil map showing soil types at the facility, waste retention structure, and all land application sites.

(C) 100 year flood plain map, if applicable. In no event shall a waste storage structure be located within the 100 year flood plain as established by the Federal Emergency Management Agency (FEMA).

(14) Report from an independent soil testing laboratory containing the following:

(A) Site map showing the location of all soil borings in relation to the facility and waste retention structure.

(i) The test boring shall be in the immediate vicinity of the proposed waste retention structure.

(ii) Bore holes shall be left open for a minimum of 48 hours for the groundwater to recover.

(iii) All bore holes shall be plugged according to Oklahoma Water Resources Board requirements.

(B) Soil tests per ASTM standards on all soils to be used in construction of the liner, with the following procedures and results reported:

(i) Grain size particle distribution analysis according to ASTM standards.

(ii) A standard Proctor compaction test based on ASTM D 698 procedure.

(iii) Perform Atterberg limits test per ASTM standards (ASTM D 4318).

(iv) Permeability tests on remolded samples compacted at ninety-five percent (95%) of standard Proctor maximum dry density at optimum moisture content conducted in accordance with ASTM D-5084 for the measurement of Hydraulic Conductivity of Saturated Porous Materials using a Flexible Wall Permeameter.

(v) Laboratory tests of representative samples presented in summary tables and on boring logs.

(C) Provide a soil boring log showing lithology, the above test results, and the classification of soils based on the Unified Soil Classification system.

(D) USDA Natural Resources Conservation Service (NRCS) soil testing standards and procedures shall only be substituted if the retention structure is designed by USDA NRCS Engineers.

(15) Laboratory test reports showing the amount of Nitrogen as Nitrate and total Phosphorous contained in the following:

(A) Groundwater from all existing water wells located at the facility and land application sites.

(B) All surface water impoundments located at the facility and land application sites.

(C) Composite soil samples from each land application site.

(16) A Pollution Prevention Plan (PPP) which contains an Animal Waste Management Plan (AWMP), a carcass disposal plan, an erosion control plan, and Best Management Practices (BMPs).

(17) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the CAFO operation.

(18) A financial statement declaring the financial ability of an owner to operate an animal feeding operation with a liquid waste management system in order to comply with the surety requirements of the Act. The financial statement shall be confidential and shall not be opened to public inspection.

(19) A notarized certification signed by the person applying for a license, which states: "I certify under penalty of law this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(20) All documentation deemed necessary and requested by the Oklahoma Department of Agriculture, Food, and Forestry to assure the quality of waters of the state are not compromised, including waste retention structure liner specifications and design plans and any other information required by the Department directly related to the construction, installation, or future modification or operation of a CAFO.

(b) All items listed in subpart (a) of this section shall be received by the Department before the application is considered complete. At the Department's discretion, no action will be taken on the application until all items have been received by the Department, including but not limited to presite inspections.

### **35:17-4-9 Pollution Prevention Plan (PPP)**

(a) Prior to the submission of a CAFO license application or modification, each facility shall develop or update a Pollution Prevention Plan (PPP) according to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant to the Act.

(b) The PPP shall include provisions for documentation of structural controls, documentation of operating Best Management Practices (BMPs), an Animal Waste Management Plan (AWMP), a carcass disposal plan for normal and emergency disposal of carcasses, and record keeping provisions.

(c) The following forms and records shall be maintained by the CAFO for each PPP:

- (1) wastewater measurements;
- (2) precipitation measurements;
- (3) spill reporting forms;
- (4) discharge reporting forms;
- (5) inspection and maintenance records;
- (6) annual inspection records;
- (7) preventive maintenance records;
- (8) records of manure or wastewater sold or transferred (if applicable);
- (9) records of land application of solid manure (if applicable);
- (10) records of land application of liquid manure (if applicable);
- (11) records of land application of compost from mortalities (if applicable)
- (12) mortality management records; and
- (13) other site specific information requested by the Department

(d) The Plan shall identify an individual who is responsible for implementing, maintaining, and revising the PPP.

(e) Equivalent measures contained in a site specific AWMP prepared by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) may be

substituted for the appropriate PPP requirements. An AWMP developed by USDA NRCS can be substituted for the documentation of land application rate calculations.

(f) With Department approval, the owner shall amend the PPP prior to any change in design, construction, operation, or maintenance, which has significant effect on the potential for the discharge of pollutants to the surface or groundwaters of the State.

(g) The owner shall implement appropriate changes to the Plan within ninety (90) calendar days of notification that the plan does not meet one or more specified minimum requirements unless otherwise provided by the Department. If notice of changes is not received by the Department within the prescribed ninety (90) calendar days, the application shall be denied.

(h) In addition to the requirements of the Act, the PPP shall include:

(1) A list of materials that are used, stored, or disposed of at the facility which may cause pollution. A contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of releases shall include any corrective action taken to prevent recurrence.

(2) Testing of groundwater, Nitrogen as Nitrate, total Phosphorous, and fecal coliform bacteria levels shall be performed by an Oklahoma Department of Environmental Quality certified independent testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner.

(3) Soil tests from land application sites shall be performed by an Oklahoma Department of Environmental Quality certified testing laboratory or State operated laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner.

(4) Sufficient testing of wastewater in waste storage facilities shall be required at least every three (3) years and performed by a qualified independent testing laboratory. Testing may be required more frequently at an individual facility at the Department's request. Additional parameters may be required upon request of the Department.

(5) A description of management controls appropriate for the facility. The owner initiates these controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility and conform to criteria established by the Act and the Department.

(A) The location and a description of existing surface water controls. Structural controls shall be inspected at least quarterly each year for structural integrity and maintenance. Dates of inspections of the retention

structure and a log of the findings of the inspections shall be maintained at the site.

(B) Documentation of retention structure capacity shall be submitted to the Department and shall be based upon input parameters, the assumptions and actual calculations, showing volumes for all intermediate steps, used in determining the appropriate volume capacity. Retention structure capacity shall be based upon the following, at a minimum:

(i) The runoff volume from open lot surfaces.

(ii) The runoff volume from areas between open lot surfaces and the retention structure.

(iii) The rainfall multiplied by the area of the retention structure.

(iv) The volume of rainfall from any roofed area that is directed into the retention structure.

(v) All waste and process generated wastewater produced during a period of time not less than twenty-one (21) calendar days, including: volume of wet manure that enters a pond; plus volume of water used for manure or waste removal; plus volume of wash or cleanup water; plus other water, including drinking water that enters the retention structure. The minimum twenty-one (21) day storage capacity is an absolute minimum. The minimum storage capacity may be increased depending on the number of acres available for land application, crops and crop water demands, climate conditions, operations and management.

(vi) Volume of a 25-year, 24-hour rainfall event.

(vii) One (1) foot of freeboard below spillway or outlet.

(viii) A water budget based on real monthly or daily data from a rain gauge located near the facility.

(C) A description of the design standards for the retention facility embankments. The following minimum design standards are required for construction or modification of a retention structure embankment:

(i) Soils used in the embankment shall be free of foreign material, including trash, brush, and fallen trees.

(ii) The embankment shall be constructed in lifts no more than six (6) inches thick after compaction and compacted to a minimum of

95% of the maximum dry density and +/- 2% of optimum moisture content as determined by ASTM D 698 standard proctor test.

(iii) Each lift of the embankment of the retention structures shall be checked to ensure proper compaction and moisture content; all readings shall be recorded and properly documented with minimum information required for documentation to include:

(I) project name,

(II) date,

(III) test method used,

(IV) site name,

(V) technician name,

(VI) location of reading, including sketch, if necessary,

(VII) percent compaction,

(VIII) wet density, pcf,

(IX) dry density, pcf,

(X) moisture content,

(XI) lift number, and

(XII) soils lab name, report number and proctor test results used to obtain field measurements.

(iv) If retention structures are constructed with an emergency spillway, a minimum of one (1) foot of freeboard shall be maintained between the top of the 25-year, 24-hour storm volume and the bottom of the emergency spillway.

(v) An erosion control plan shall be developed and approved by the Department detailing how the owner immediately stabilizes the embankment walls to prevent erosion and deterioration. The plan shall include a preventive maintenance section. Each plan shall be approved on a case by case basis and may include the use of vegetative cover, geomembrane liners, sod, or other Department approved methods for controlling erosion.

(vi) A permanent measuring device shall be maintained in the wastewater retention structure to show the volume required to contain a 25-year, 24-hour rainfall event. The device shall be visible from the top of the levee and a separate mark shall be placed on the measuring device clearly identifying the 25-year, 24-hour rainfall event. Installation of the measuring device shall be performed in a manner to protect the integrity of liner at all times.

(vii) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP.

(viii) Documentation of method used to ensure liner of the waste retention structure is protected at or below the inlet.

(6) The following records, in addition to those required by the Act, shall be maintained at the site for a minimum of three (3) years.

(A) Weekly measure of water level in the retention facility;

(B) Quarterly inspection and maintenance reports;

(C) Other specific information required by the Department.

(7) The following records, in addition to those required by the Act, shall be maintained at the site as long as the facility is in operation:

(A) Documentation of no significant impact, if applicable.

(B) Copy of Notice of Intent (NOI) or Notice of Termination (NOT), if applicable.

(C) Other records as required by the Department.

### **35:17-4-12 Animal Waste Management Plans (AWMPs)**

(a) An AWMP or its equivalent shall be prepared, according to Departmental policy, for each facility prior to the submission of a CAFO license application. An AWMP or its equivalent may include, but is not limited to, a Comprehensive Nutrient Management Plan per NRCS guidance, or a Nutrient Management Plan per EPA guidance.

(b) The AWMP shall include:

(1) A plan with a proposed schedule for liquid and solid animal waste removal, including sludge.



(2) A date log indicating weekly inspection of wastewater level in the retention structure, including specific measurement of wastewater level. Facilities using pits, ponds, or other waste retention structures for storage and treatment of storm water, manure, and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention structure sufficient capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The owner shall immediately restore sufficient capacity to contain a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces capacity, weather permitting. The 25-year, 24-hour rainfall event capacity shall be in addition to the one (1) foot of freeboard required.

(3) All calculations and all factors and assumptions used in determining land application rates, acreage, and crops for both solid and liquid animal wastes. Land application rates shall take into account the plant available nutrient contribution of any land applied animal wastes. The following requirements shall apply to land application of animal waste on land owned or leased by the owner:

(A) Runoff from animal waste is prohibited where it results in a discharge to surface or groundwaters of the State. The owner shall provide controls for runoff and erosion as appropriate for site conditions.

(B) Animal wastes shall not be applied when the ground is frozen or saturated or during rainfall events.

(C) It shall be considered acceptable emergency procedures for a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the State.

(D) Land application practices shall be managed so as to reduce or minimize the following:

(i) Ponding or puddling of wastewater on the site.

(ii) Adverse conditions that invite pests including flies and rodents.

(E) Facilities including waste retention structures, waste storage sites, land application sites, ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to insure the ability to fully comply with the terms of these rules and the Pollution Prevention Plan.

(F) Adequate equipment and land application area shall be available for removal of waste and wastewater as required to maintain the proper

operating volume of the retention structure. A list of proposed or actual equipment shall be included.

(G) Surface disposal of animal wastes in the 100-year flood plain, as established by the Federal Emergency Management Agency (FEMA), or near water courses is prohibited unless protected from inundation and damage that may occur during that flood event by adequate berms or other structures. The land application of animal wastes at agronomic rates shall not be considered surface disposal and is not prohibited.

(H) Runoff from animal waste storage piles shall be retained on site.

(I) Accumulation of water in animal waste storage areas shall be avoided.

(J) Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions. Timing and rate of land application of animal waste shall be based on published materials approved by the Department.

(K) Land application shall not occur in areas defined as do not apply areas in the waste application criteria of the USDA NRCS Waste Utilization Standard Conservation Practice Standard 633 and Nutrient Management Conservation Practice Standard Code 590, or their current replacement.

(L) The AWMP shall identify areas which due to topography, activities, or other factors have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to surface or groundwaters of the State, the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff. Land subject to excessive erosion shall be avoided.

### **35:17-4-16 Best Management Practices (BMPs)**

(a) The owner shall document all Best Management Practices (BMPs) used to comply with the required effluent limitations. Equivalent measures contained in a site-specific AWMP prepared by NRCS may be substituted for the BMPs.

(b) The criteria for BMPs shall be established in writing by the Department and shall include but not be limited to the following:

(1) There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the facility. Wastewater retention structures or land application of wastewater shall not be located within three hundred (300) feet of an existing public or private drinking water well.

(2) Animal waste handling, treatment, and management shall not knowingly or reasonably result in the destruction of endangered or threatened species or contribute to the taking of any federally endangered or threatened species of plant, fish or wildlife, nor shall disposal knowingly interfere with or cause harm to migratory birds. The owner shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird or endangered species kill or die-off on or near retention ponds or in fields where waste has been applied and which could reasonably have resulted from waste management at the facility.

(3) Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner designed to prevent pollutants from being discharged to surface or groundwaters of the State.

(4) The owner shall prevent the discharge of pesticide contaminated waters into surface or groundwaters of the State. All wastes from dipping vats, pest, and parasite control units and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner which prevents pollutants from entering the surface or groundwaters of the State.

(5) Fresh water entering into contaminated areas shall be managed to prevent contamination. Preventing the drainage of fresh surface waters into or onto waste contaminated areas shall be accomplished by one of the following:

(A) Terracing and the construction of other diversion structures to redirect fresh water drainage from entering waste contaminated areas.

(B) Rainwaters falling directly on waste contaminated areas of the facility shall be collected and dispersed as a waste.

(6) Actions as deemed necessary shall be taken to retain all animal waste on the premises until proper waste utilization is accomplished.

(c) The owner shall describe how each BMP shall be implemented and complied with at the facility.