

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/5/03 H3/13/03 H3/19/03*

# A Bill

Act 1061 of 2003  
HOUSE BILL 1654

5 By: Representatives Scroggin, Agee, Berry, Gillespie, Borhauer, Edwards, Judy  
6 By: Senators Baker, Horn, Whitaker  
7

## For An Act To Be Entitled

10 AN ACT TO REQUIRE PROPER APPLICATION OF NUTRIENTS  
11 AND UTILIZATION OF POULTRY LITTER IN NUTRIENT  
12 SURPLUS AREAS; AND FOR OTHER PURPOSES.  
13

### Subtitle

15 ARKANSAS SOIL NUTRIENT APPLICATION AND  
16 POULTRY LITTER UTILIZATION ACT.  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Effective January 1, 2004, Arkansas Code Title 15, Chapter  
22 20, is amended to add an additional subchapter to read as follows:

23 15-20-1101. Title.

24 This subchapter shall be known and may be cited as the "Arkansas Soil  
25 Nutrient Application and Poultry Litter Utilization Act."  
26

27 15-20-1102. Legislative intent.

28 The Arkansas General Assembly finds that:

29 (1) In certain areas of Arkansas applications of soil nutrients may  
30 have, or may in the future, result in excessive soil nutrient concentration;

31 (2) These applications are not the most effective use of nutrients and  
32 if continued could negatively impact the area;

33 (3) Land application of poultry litter is a significant source of  
34 nutrients in these areas; and

35 (4) Therefore, in certain areas, it is necessary to limit the  
36 application of nutrients and regulate the utilization of poultry litter to



1 protect the area while maintaining soil fertility.

2  
3 15-20-1103. Definitions.

4 As used in this subchapter:

5 (1) "Certified nutrient applicator" means any natural person that has  
6 shown to the commission that he or she has the minimal knowledge and  
7 technical competence necessary to properly apply nutrients;

8 (2) "Commission" means the Arkansas Soil and Water Conservation  
9 Commission;

10 (3) "Conservation district" means a conservation district created  
11 under the Conservation Districts Law, §§14-125-101, et seq.;

12 (4) "Crop" means any vegetative cover;

13 (5) "Director" means the Executive Director of the Arkansas Soil and  
14 Water Conservation Commission;

15 (6) "Litter" means byproducts associated with the confinement of  
16 livestock, including excrement, feed wastes, bedding materials, composted  
17 carcasses, and any combinations thereof;

18 (7) "Livestock" means animals kept or raised for use or pleasure,  
19 especially farm animals kept for use and profit, including horses, cattle,  
20 swine, and poultry;

21 (8)(A) "Nutrient" means a substance or recognized plant nutrient,  
22 element or compound that is used or sold for its plant nutritive content or  
23 its claimed nutritive value.

24 (B) "Nutrient" includes substances in litter, compost as  
25 fertilizer, commercially manufactured chemical and organic fertilizers,  
26 sewage sludge and combinations thereof;

27 (9) "Nutrient application" means the process by which humans apply  
28 nutrients to soil or associated crops;

29 (10) "Nutrient applicator" means any person who applies nutrients to  
30 soil or associated crops;

31 (11) "Nutrient management plan" means a plan prepared to assist  
32 landowners and operators in the management of fertilizers, litter, sewage  
33 sludges, compost and other nutrient sources for maximum soil fertility and  
34 protection of the waters within the state;

35 (12) "Nutrient surplus area" means an area, declared by § 15-20-1104,  
36 in which the soil concentration of one (1) or more nutrients is so high or

1 the physical characteristics of the soil or area is such that continued  
2 application of the nutrient to the soil could negatively impact soil  
3 fertility and the waters within the state;

4 (13) "Person" means any individual, partnership, company, association,  
5 fiduciary, corporation, or any organized group of persons whether  
6 incorporated or not;

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

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

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

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

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

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

25  
26 15-20-1104. Declared nutrient surplus areas.

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

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

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

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

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

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

1 County;

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

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

6 (8) The upper White River watershed above its confluence with  
7 the Buffalo River, included within Benton, Carroll, Washington, Madison,  
8 Franklin, Newton, Searcy, Marion, and Boone counties.

9 (b) The Arkansas Soil and Water Conservation Commission shall  
10 promulgate rules to further define the geographical boundaries of any area  
11 declared a nutrient surplus area.

12  
13 15-20-1105. Regulatory considerations.

14 In developing regulations to implement this subchapter the Arkansas  
15 Soil and Water Conservation Commission shall consider:

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

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

20 (3) Litter produced and applied in the area;

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

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

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

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

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

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35 15-20-1106. Designated nutrient application.

36 (a) It shall be a violation of this subchapter to apply designated

1 nutrients to soils or associated crops within a nutrient surplus area unless  
2 the nutrient application is done in compliance with a nutrient management  
3 plan approved by the Arkansas Soil and Water Conservation Commission or at a  
4 protective rate established by the commission.

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

9 (c)(1) Except as provided in subsection (e) of this section, only a  
10 certified nutrient applicator may apply a nutrient application within a  
11 nutrient surplus area.

12 (2) In areas outside nutrient surplus areas, nutrient applicators may  
13 not be required to be certified.

14 (d)(1) Except as provided in subsection (e) of this section, nutrient  
15 application within a nutrient surplus area shall be documented by the  
16 nutrient applicator in a method acceptable to the commission.

17 (2)(A) This documentation shall be maintained by the landowner  
18 and the nutrient applicator.

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

21 (e)(1) Designated nutrient application within a nutrient surplus area  
22 on residential lands of ~~five (5) acres~~ two and one half (2 1/2) acres or less  
23 shall be applied at a rate not to exceed the protective rate and in a manner  
24 acceptable to the commission and may be performed by the landowner or  
25 resident.

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

29  
30 15-20-1107. Nutrient management plan.

31 (a) In considering the approval of a nutrient management plan, the  
32 Arkansas Soil and Water Conservation Commission shall consider the plan's  
33 provision for:

34 (1) Soil nutrient testing;

35 (2) The level of nutrients contained in the nutrient source;

36 (3) Nutrient application rates, including the methodology

1 utilized in determining the rate;

2 (4) Crops being grown, soil type, geology, hydrology, and other  
3 physical characteristics of land on which the nutrient will be applied;

4 (5) The manner and timing of nutrient application;

5 (6) The method for keeping application records contained in the  
6 plan; and

7 (7) The qualifications of the person developing the plan.

8 (b) If the land application of a designated nutrient within a nutrient  
9 surplus area is a part of a process regulated under the Arkansas Water and  
10 Air Pollution Control Act, § 8-4-101 et seq. or other similar federal or  
11 state law and the permit contains conditions regulating the application of  
12 the designated nutrient acceptable to the commission, then the permit shall  
13 serve as the nutrient management plan.

14  
15 15-20-1108. Poultry litter management plan.

16 (a)(1) Poultry feeding operations within a surplus nutrient area shall  
17 develop and implement a poultry litter management plan acceptable to the  
18 Arkansas Soil and Water Conservation Commission.

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

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

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

24 (1) Periodic poultry litter nutrient content analysis component;

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

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

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

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

34 (3) Records component that requires the owner of the poultry  
35 feeding operation to maintain sufficient records at the site of the poultry  
36 feeding operation to determine poultry litter utilization and compliance with

1 the other portions of the poultry litter management plan.

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

5  
6 15-20-1109. Sale or transfer of litter.

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

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

15 15-20-1110. Litter utilization committee.

16 (a) In nutrient surplus areas, the Arkansas Soil and Water  
17 Conservation Commission shall activate a litter utilization committee to  
18 facilitate utilization or removal of excess litter.

19 (b) The Executive Director of the Arkansas Soil and Water Conservation  
20 Commission shall appoint a committee composed of poultry feeding operators,  
21 commission staff, and other persons knowledgeable in litter management.

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

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

26  
27 15-20-1111. Implementation.

28 (a)(1) The Arkansas Soil and Water Conservation Commission may develop  
29 all regulations necessary to implement this subchapter.

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

32 (b) The commission may delegate portions of the program for  
33 implementation to the director, conservation districts, or both.

34 (c)(1) The commission may defer the requirements of §§ 15-20-1106  
35 through 15-20-1108 for up to two (2) years after declaration as a nutrient  
36 surplus area to allow the development of nutrient management plans and

1 poultry litter management plans and implementation of alternative use plans  
2 in order that persons affected may come into compliance with the subchapter.

3 (2) The commission may further defer the requirements of these  
4 sections if it determines that there is no alternative use for litter or  
5 there are no readily available, affordable alternative nutrient supplies for  
6 which litter has been used.

7  
8 15-20-1112. Enforcement.

9 (a)(1) Agents of the Arkansas Soil and Water Conservation Commission  
10 may enter on private property to determine compliance with the subchapter.

11 (2)(A) If the entry is to a facility where poultry is regularly  
12 kept, entry shall not occur without prior owner notification.

13 (B) Documentation of bio-security measures taken and bio-  
14 security certification received by the inspection agent, including a bio-  
15 security log book, shall be available to the owner upon request.

16 (C) Notify the landowner at least twenty-four (24) hours before  
17 entry.

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

22 (b) The process for the imposition of administrative penalties shall  
23 be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-  
24 201 et seq.

25 (c) The commission and the director may issue subpoenas as provided in  
26 § 15-22-208.

27  
28 15-20-1113. Administrative penalties.

29 (a) The Arkansas Soil and Water Conservation Commission may impose  
30 administrative penalties not to exceed twenty-five hundred dollars (\$2,500)  
31 per violation against any person that violates the requirements of this  
32 subchapter.

33 (b)(1) Penalties collected shall be deposited in the Arkansas Water  
34 Development Fund and used in furtherance of the nutrient management program,  
35 including provisions of this subchapter.

36 (2) Penalties collected shall be cash funds when received by the



1 Treasurer of the State and shall not be deposited or deemed to be a part of  
2 the State Treasury for the purposes of Arkansas Constitution, Article 5, §  
3 29; Arkansas Constitution, Article 16, §12; Arkansas Constitution, Amendment  
4 20; or any other constitutional or statutory provision.

5 (c) If a person against whom an administrative penalty has been  
6 imposed by the commission, as authorized in this section, fails to pay the  
7 penalty to the commission, the commission may file an action to collect the  
8 administrative penalty in the circuit court of the county in which the  
9 poultry feeding operation is located.

10  
11 15-20-1114. No conflict with Arkansas Water and Air Pollution  
12 Control Act.

13 (a)(1) This subchapter shall not supersede the requirement that liquid  
14 animal waste management systems comply with the Arkansas Water and Air  
15 Pollution Control Act, § 8-4-101, et seq., or regulations adopted under the  
16 act.

17 (2) This subchapter shall not supersede the requirements of the  
18 Arkansas Water and Air Pollution Control Act, § 8-4-101, et seq., for waste  
19 disposal systems utilizing land application as a part of the waste disposal  
20 process.

21 (b) Except as provided in subsection (a), nutrient and litter  
22 management activities conducted in compliance with this subchapter shall not  
23 be subject to regulation under the Arkansas Water and Air Pollution Control  
24 Act, § 8-4-101 et seq. or regulations adopted under the act.

25 (c)(1) The commission may determine that certain nutrient and litter  
26 management activities regulated under the provisions of this subchapter are  
27 not in compliance with the subchapter and thus constitute placing sewage,  
28 industrial waste, or other wastes in a location where it is likely to cause  
29 pollution to the waters within the state.

30 (2) The nutrient and litter management activities so determined  
31 shall be subject to regulation under the Arkansas Water and Air Pollution  
32 Control Act, § 8-4-101, et seq., and regulations adopted under the act.

33  
34 */s/ Scroggin, et al*

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36 **APPROVED: 4/3/2003**