

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.

Act 1871 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/22/05 H3/24/05

A Bill

HOUSE BILL 2528

5 By: Representatives Norton, Jackson, Ragland, Clemons

6 By: Senator Laverty
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO REQUIRE THAT PERSONNEL OF ARKANSAS SOIL
11 AND WATER CONSERVATION COMMISSION GIVE SEVENTY-
12 TWO-HOUR NOTICE BEFORE ENTERING PRIVATE PROPERTY;
13 AND FOR OTHER PURPOSES.
14

15 **Subtitle**

16 AN ACT TO PROTECT PRIVACY WITH REGARD TO
17 NUTRIENT MANAGEMENT PROGRAM ENFORCEMENT.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 15-20-905 is amended to read as follows:
23 15-20-905. Enforcement.

24 (a)(1) *Agents of the Arkansas Soil and Water Conservation Commission*
25 *shall have the power to enter on private property to determine compliance*
26 *with this subchapter.*

27 ~~(2)(A) If the entry is to a facility where poultry is regularly~~
28 ~~kept, entry~~ Entry *shall not occur without prior notification of the owner,*
29 *operator, or agent in charge of the property.*

30 (B) *Notice shall be given to the owner, operator, or agent*
31 *in charge of the property at least* ~~twenty-four (24)~~ *seventy-two (72) hours*
32 *before entry.*

33 (3) *Documentation of biosecurity measures taken and biosecurity*
34 *certification received by the* *an inspection agent of the Arkansas Soil and*
35 *Water Conservation Commission or by a conservation district officer,*



1 including a biosecurity log book, shall be available to the owner upon
2 request.

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

7 (b)(1) The Arkansas Soil and Water Conservation Commission may impose
8 administrative penalties not to exceed five hundred dollars (\$500) per
9 violation against the owner of a poultry feeding operation that fails to
10 comply with the requirements of this subchapter.

11 (2) The imposition of administrative penalties shall be
12 conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201
13 et seq.

14 ~~(3) The Arkansas Soil and Water Conservation Commission or the~~
15 ~~Executive Director of the Arkansas Soil and Water Conservation Commission may~~
16 ~~issue subpoenas as provided in § 15-22-208.~~

17 ~~(4)~~(3) If the person against whom an administrative penalty has
18 been imposed by the Arkansas Soil and Water Conservation Commission under
19 this section fails to pay the penalty to the Arkansas Soil and Water
20 Conservation Commission, the Arkansas Soil and Water Conservation Commission
21 may file an action to collect the administrative penalty in the circuit court
22 of the county in which the poultry feeding operation is located.

23

24 *SECTION 2. Arkansas Code § 15-20-1106 is amended to read as follows:*
25 *15-20-1106. Designated nutrient application. [Effective January 1,*
26 *2004.]*

27 (a) *It shall be a violation of this subchapter to apply designated*
28 *nutrients to soils or associated crops within a nutrient surplus area unless*
29 *the nutrient application is done in compliance with a nutrient management*
30 *plan approved by the Arkansas Soil and Water Conservation Commission or at a*
31 *protective rate established by the commission.*

32 (b) After a soil test with nutrient application recommendations is
33 obtained for lands within a nutrient surplus area, application of commercial
34 fertilizer may continue in compliance with the protective rate after January
35 1, 2007.

36 (c) After a soil test with nutrient application recommendations is

1 obtained for lands within a nutrient surplus area, the protective rate as
2 indicated by the soil test shall constitute a permit to apply nutrients
3 consistent with the protective rate.

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

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

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

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

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

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

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

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

28
29 SECTION 3. Arkansas Code § 15-20-1107 is amended to read as follows:

30 15-20-1107. Nutrient management plan. [Effective January 1, 2004.]

31 (a)(1) Nutrient management plans shall be approved by the board of
32 directors of the conservation district where a majority of the land to which
33 the plan applies is located.

34 (2) The person requesting a nutrient management plan may appeal
35 its disapproval or any of its provisions to the Executive Director of the
36 Arkansas Soil and Water Conservation Commission.

1 ~~(a)~~(b) In considering the approval of a nutrient management plan, a
2 conservation district board of directors and the Arkansas Soil and Water
3 Conservation Commission shall consider the plan's provision for:

- 4 (1) Soil nutrient testing;
5 (2) The level of nutrients contained in the nutrient source;
6 (3) Nutrient application rates, including the methodology
7 utilized in determining the rate;
8 (4) Crops being grown, soil type, geology, hydrology, and other
9 physical characteristics of land on which the nutrient will be applied;
10 (5) The manner and timing of nutrient application;
11 (6) The method for keeping application records contained in the
12 plan; and
13 (7) The qualifications of the person developing the plan.

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

20 (d) An approved plan shall constitute a permit to apply nutrients
21 consistent with the plan.

22
23 SECTION 4. Arkansas Code § 15-20-1108 is amended to read as follows:
24 15-20-1108. Poultry litter management plan. [Effective January 1,
25 2004.]

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

29 (2) The person requesting a poultry litter management plan may
30 appeal its disapproval or any of its provisions to the Executive Director of
31 the Arkansas Soil and Water Conservation Commission.

32 ~~(a)~~(1)~~(b)~~(1) Poultry feeding operations within a surplus nutrient area
33 shall develop and implement a poultry litter management plan acceptable to
34 the Arkansas Soil and Water Conservation Commission.

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

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

3 ~~(b)~~(c) At a minimum, the poultry litter management plan shall contain
4 a:

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

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

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

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

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

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

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

23 (e) An approved plan shall constitute a permit to apply nutrients
24 consistent with the plan.

25
26 SECTION 5. Arkansas Code § 15-20-1112 is amended to read as follows:

27 15-20-1112. Enforcement. [Effective January 1, 2004.]

28 (a)(1) Agents of the Arkansas Soil and Water Conservation Commission
29 or a conservation district may enter on private property to determine
30 compliance with this subchapter.

31 (2)(A) ~~If the entry is to a facility where poultry is regularly~~
32 ~~kept, entry~~ Entry shall not occur without prior notification of the owner.

33 (B) Notice shall be given to the owner, operator, or agent
34 in charge of the property at least ~~twenty-four (24)~~ seventy-two (72) hours
35 before entry.

36 (3) Documentation of biosecurity measures taken and biosecurity

1 certification received by ~~the~~ an inspection agent of the Arkansas Soil and
2 Water Conservation Commission or by a conservation district officer,
3 including a biosecurity log book, shall be available to the owner upon
4 request.

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

9 (b) The process for the imposition of administrative penalties under §
10 15-20-1205 shall be conducted pursuant to the Arkansas Administrative
11 Procedure Act, § 25-15-201 et seq.

12 ~~(c) The Arkansas Soil and Water Conservation Commission and the~~
13 ~~Executive Director of the Arkansas Soil and Water Conservation Commission may~~
14 ~~issue subpoenas as provided in § 15-22-208.~~

15
16 *SECTION 6. Arkansas Code Title 15, Chapter 20 is amended to add an*
17 *additional subchapter to read as follows:*

18 15-20-1201. Complaints.

19 (a) A person who provides information to the Arkansas Soil and Water
20 Conservation Commission concerning a possible violation of the Arkansas
21 Poultry Feeding Operations Registration Act, § 15-20-901 et seq., the
22 Arkansas Soil Nutrient Management Planner and Applicator Certification Act, §
23 15-20-1001 et seq., or the Arkansas Soil Nutrient Application and Poultry
24 Litter Utilization Act, § 15-20-1101 et seq. shall provide:

25 (1) A written complaint to the commission; and

26 (2) His or her:

27 (A) Legal name; and

28 (B) Current mailing and physical address at which the
29 complainant may be contacted.

30 (b) The complaint shall be verified by the notarized signature of the
31 complainant.

32 (c) All complaints provided under this section shall be open to public
33 inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq.

34
35 /s/ Norton, et al
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APPROVED: 04/08/2005