

ARKANSAS SENATE
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of Senate Bill No. 1160

"AN ACT TO AMEND THE ARKANSAS POULTRY FEEDING OPERATIONS
REGISTRATION ACT."

Amendment No. 1 to Senate Bill No. 1160.

Amend Senate Bill No. 1160 as originally introduced:

Delete everything after the ENACTING CLAUSE and substitute the following:

“SECTION 1. Arkansas Code § 15-20-1106, concerning designated nutrient application, is amended to add a new subsection as follows:

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

SECTION 2. Arkansas Code Title 15, Chapter 20, is amended to add an additional subchapter to read as follows:

15-20-1201. Legislative intent.

The General Assembly finds that:

(1) Proper application of nutrients is necessary for maximum soil fertility and proper plant growth;

(2) The Environmental Protection Agency has determined that land applications of dry poultry litter from a concentrated animal feeding operation are subject to National Pollution Discharge Elimination System permitting requirements;

(3) The State of Arkansas should establish and administer its own program to prevent, control, or abate pollution, working with the regulated community to develop a program that will address the problem of excessive nutrients and promote conservation-based farming in the least burdensome way possible; and

(4) The Arkansas Soil and Water Conservation Commission or its successor, the Arkansas Natural Resources Commission, is authorized to administer a program to comply with Environmental Protection Agency requirements.

15-20-1202. Definitions.

(a) As used in this subchapter:

(1) "Animal feeding operation" means a lot or facility where:

(A) Animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) 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;

(2) "Commission" means the Arkansas Soil and Water Conservation Commission and its successor, the Arkansas Natural Resources Commission;

(3) "Concentrated animal feeding operation" means an animal feeding operation that due to size or designation by the Environmental Protection Agency Regional Administrator or the commission must file a comprehensive nutrient management plan, apply for a permit, or coverage under a general permit, and meet requirements established by the commission to meet the Environmental Protection Agency's requirements for concentrated animal feeding operations;

(4) "Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission;

(5) "Permit" means individual and general permits administered by the commission as provided by § 402(b) of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as in effect on January 1, 2005, and approved under that act by the United States Environmental Protection Agency; and

(6) "Significant portion of income" means ten per cent (10%) or more of gross personal income in a calendar year or fifty percent (50%) or more of gross personal income in a calendar year if the recipient of the income is more than sixty (60) years of age and is receiving that portion of income under retirement benefits, including a pension or similar arrangement.

(b) All undefined words and phrases used in this subchapter shall have the same meaning as used in the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as in effect January 1, 2005, and the regulations adopted under that act.

15-20-1203. Administration of dry poultry litter -- Concentrated animal feeding operations program.

(a) Without limiting the generality of the provisions of this subchapter or of the powers that the Arkansas Soil and Water Conservation Commission and the director may have under this or any other law, the Arkansas Soil and Water Conservation Commission shall:

(1) Administer a dry poultry litter permit program on behalf of the state for concentrated animal feeding operation programs including the power and duty to issue, renew, revoke, modify, or deny individual concentrated animal feeding operation permits or coverage under general permits so long as no permit action would violate the provisions of any federal law, rule, or regulation;

(2) Submit to the Administrator of the Environmental Protection Agency a complete description of the program that the commission proposes to establish and administer, as provided by § 402(b) of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as in effect on January 1, 2005, for Environmental Protection Agency approval; and

(3) Accept a delegation of authority from the Administrator of the Environmental Protection Agency to administer the dry poultry litter program.

(b) No member of the commission who receives or has received during the previous two (2) years a significant portion of his or her income

directly or indirectly from dry litter concentrated animal feeding operation permit holders or dry litter concentrated animal feeding operation permit applicants shall participate in the approval of any concentrated animal feeding operation permit application or portions of any application, if participation by commissioners is required.

(c) The commission may delegate, by rule or resolution, portions of the administration of the program established by this subchapter to the Executive Director of the Arkansas Soil and Water Conservation Commission or conservation districts, or both.

15-20-1204. Service of notice and other documents.

Except as otherwise expressly provided in this subchapter, any notice, order, or other document issued by or under authority of the Arkansas Soil and Water Conservation Commission may be served upon any person affected by the notice or other document by the following means:

- (1) Personal service;
- (2) By mailing a copy of the notice, order, or other document, by certified mail, directed to the person affected at his or her last known address as shown by the files or records of the commission;
- (3) By one (1) publication of notice in a newspaper of general circulation in the area affected; or
- (4) By any method acceptable for service of a summons in a civil action in the courts of the State of Arkansas.

15-20-1205. Disposition of collected money.

(a) Fees and penalties collected under this subchapter shall be deposited in the Arkansas Water Development Fund and used in furtherance of the program established by this subchapter, except that a portion of fees may be retained by conservation districts if a portion of the program has been delegated to conservation districts.

(b) Fees or penalties collected shall be cash funds when received by the Treasurer of State and shall not be deposited or deemed to be a part of the State Treasury for purposes of:

- (1) Arkansas Constitution, Article 5 § 29;
- (2) Arkansas Constitution, Article 16, § 12;
- (3) Arkansas Constitution, Amendment 20; or
- (4) Any other constitutional or statutory provision.

15-20-1206. Application for individual concentrated animal feeding operation permit, coverage under a general permit, and permit modification.

An applicant for an individual concentrated animal feeding operation permit, coverage under a general concentrated animal feeding operation permit, or a major modification of an existing concentrated animal feeding operation permit shall submit an application and fee to the Arkansas Soil and Water Conservation Commission as required by commission rule.

15-20-1207. Approval of applications.

(a) Applications consistent with the requirements of federal law, rules, the terms of any delegation of authority from the Environmental Protection Agency to the commission, and any general concentrated animal feeding operation permits held by the commission shall be approved by the commission by a process set forth in rules adopted under this subchapter

unless:

- (1) The application contains misleading or false information;
- (2) The Administrator of the Environmental Protection Agency objects in writing to the issuance of the permit or permit coverage in accordance with § 402(d) of the Federal Water Pollution Control Act; or
- (3) The application meets additional grounds for denial established by rule.

15-20-1208. Renewal.

An individual concentrated animal feeding operation permit or coverage under a general permit issued under this subchapter shall be renewed by:

- (1) Submitting an application for renewal to the Arkansas Soil and Water Conservation Commission at least one hundred eighty (180) days before the expiration date of the coverage; and
- (2) Complying with any other requirements established by this subchapter and by rule.

15-20-1209. Transfer of permit or permit coverage.

(a) Permits and coverage under general permits shall remain freely transferable, provided the applicant for the transfer notifies the Arkansas Soil and Water Conservation Commission at least thirty (30) days in advance of the proposed transfer date and completely submits the commission's transfer form.

(b) Transfer may only be denied if:

- (1) Relevant information submitted through the transfer form is deliberately falsified or omitted;
- (2) The applicant has a history of environmental noncompliance;

or

(3) The applicant owns or operates other animal feeding facilities not in compliance with state law or rules.

(c) The permit or permit coverage is automatically transferred to the new operator unless the commission denies the request within thirty (30) days of the receipt of the transfer form.

15-20-1210. Temporary variances and interim authority.

(a) Unless otherwise prohibited by federal law, the Arkansas Soil and Water Conservation Commission may grant, for compelling reasons and good cause shown:

- (1) Temporary variances from the requirements of any individual concentrated animal feeding operation permit or coverage issued by the commission; or
- (2) Interim authority to operate during the application review and concentrated animal feeding operation permit issuance process.

15-20-1211. Enforcement.

(a) Representatives of the Arkansas Soil and Water Conservation Commission may enter onto private property to determine compliance with this subchapter.

(b) The commission shall notify the animal feeding facility operator before entry.

(c) Documentation of bio-security measures taken and bio-security certification received by the inspection agent, including a bio-security log

book, shall be available to the owner upon request.

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

(e) The commission may issue subpoenas as provided in § 15-22-208.

15-20-1212. Emergency orders.

(a) When the Arkansas Soil and Water Conservation Commission finds that an emergency exists requiring immediate action to protect the public health or welfare it may issue an order, without notice or hearing, reciting the existence of such emergency and requiring that such action be taken as it deems necessary to meet the emergency.

(b) The order shall be effective immediately upon service on the operator.

(c) Any person to whom the order is directed shall immediately comply but will be afforded a hearing upon timely request as set forth in the commission's rules.

15-20-1213. Involuntary permit modification, suspension, or revocation.

(a) The Arkansas Soil and Water Conservation Commission, after notice and opportunity for a hearing, may modify, suspend, or revoke a concentrated animal feeding operation permit or general concentrated animal feeding operation permit coverage for any of the following reasons:

(1) Violation of any condition of the permit or general permit coverage; or

(2) Acquisition of the permit or coverage by misrepresentation or failure to disclose fully all relevant facts of storage, treatment, or disposal practice.

15-20-1214. Administrative penalties for violation of concentrated animal feeding operation permit requirements.

(a)(1) Any person who violates any provision of this subchapter, rules, or concentrated animal feeding operation permits issued under this subchapter or rules promulgated under this subchapter may be assessed an administrative penalty not to exceed ten thousand dollars (\$10,000) per violation.

(2) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(b) No administrative penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with rules adopted by the Arkansas Soil and Water Conservation Commission.

(c) Administrative penalties may not be used in conjunction with civil or criminal penalties.

(d) The administrative procedures may also be used to recover all costs, expenses, and damages to the commission and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages.

15-20-1215. Civil remedies for violation of concentrated animal feeding operation permit requirements.

(a) The Arkansas Soil and Water Conservation Commission may institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1)(A) Restrain any violation of or compel compliance with the provisions of this subchapter and of any rules, orders, or concentrated animal feeding operation permits issued under this subchapter.

(B) The commission may immediately and effectively restrain any owner or operator by temporary restraining order or injunction in a court of competent jurisdiction from engaging or threatening to engage in any unauthorized activity that violates the concentrated animal feeding operation program and endangers or causes damage to public health or the environment;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the commission and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages; and

(4) Assess and recover civil penalties in an amount not to exceed five thousand dollars (\$ 5,000) per violation per day for violations of this subchapter and of any rules, concentrated animal feeding operation permits, or plans issued pursuant to this subchapter.

(b) Civil penalties may not be used in conjunction with administrative or criminal penalties.

15-20-1216. Criminal penalties for violation of concentrated animal feeding operation permit requirements.

(a) Any person who knowingly makes any false statement, representation, or certification in any form, notice, or report, required or kept as a condition of concentrated animal feeding operation permit issuance shall be guilty of a misdemeanor and shall be subject to a fine of not more than five thousand dollars(\$ 5,000).

(b)(1) It shall be unlawful for a person to willfully or negligently violate any concentrated animal feeding operation permit condition, filing requirement, or any other provision of this subchapter or any rule promulgated under this subchapter.

(2) A person who violates subdivision (b)(1) of this section shall be subject to a fine of not more than ten thousand dollars (\$ 10,000) per violation per day.

(c) Each day or part of a day during which a violation under this section continues or is repeated shall constitute a separate offense.

(d) Criminal penalties may not be used in conjunction with administrative or civil penalties.

15-20-1217. Appeal of Arkansas Soil and Water Conservation Commission decision.

Parties who have standing and have exhausted the administrative remedies available from the Arkansas Soil and Water Conservation Commission may appeal any final order, rule, or other final determination of the commission under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.”

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Whitaker

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Secretary