

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

A Bill

HOUSE BILL 1654

4
5 By: Representatives Scroggin, Agee, Berry, Gillespie, Borhauer, Edwards, Judy
6 By: Senators Baker, Horn, Whitaker

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.

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 of the state;

35 (12) "Nutrient surplus area" means an area, declared or designated by
36 § 15-20-1104 or § 15-20-1105, in which the soil concentration of one (1) or

1 more nutrients is so high or the physical characteristics of the soil or area
 2 is such that continued application of the nutrient to the soil could
 3 negatively impact soil fertility and the waters of 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 § 15-20-1109;

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 of the
 19 state; and

20 (18) "Waters of the state" means all streams, lakes, marshes, ponds,
 21 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. Designation of nutrient surplus areas.

14 (a) In addition to the declarations in § 15-20-1104, the Arkansas Soil
15 and Water Conservation Commission may by regulation designate areas of the
16 state as nutrient surplus areas for one (1) or more nutrients, or designate
17 additional nutrients for the areas declared to be nutrient surplus areas
18 under § 15-20-1104.

19 (b) In making the designation the commission shall consider:

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

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

24 (3) Litter produced and applied in the proposed area;

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

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

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

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

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

36

15-20-1106. Removal of designation.

(a) The Arkansas Soil and Water Conservation Commission may by regulation remove the nutrient surplus area designation for one(1) or all nutrients from all or part of the area previously designated.

(b) In removing the designation, the commission shall consider:

(1) The past and present level of the designated nutrients in the soil within the area;

(2) The past, current, and potential impacts of the designated nutrient within the area;

(3) Litter produced and applied in the area, currently and in the past;

(4) Other sources of nutrients within the area, currently and in the past;

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

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

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

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

15-20-1107. Designated nutrient application.

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

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

(c) Except as provided in subsection (e), only a certified nutrient applicator may apply a designated nutrient application within a nutrient surplus area.

1 (d)(1) Except as provided in subsection (e), nutrient application
 2 within a nutrient surplus area shall be documented by the nutrient applicator
 3 in a method acceptable to the commission.

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

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

8 (e)(1) Designated nutrient application within a nutrient surplus area
 9 on residential lands of five (5) acres or less shall be applied at a rate not
 10 to exceed the protective rate and in a manner acceptable to the commission
 11 and may be performed by the landowner or resident.

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

15
 16 15-20-1108. Nutrient management plan.

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

- 20 (1) Soil nutrient testing;
- 21 (2) The level of nutrients contained in the nutrient source;
- 22 (3) Nutrient application rates, including the methodology
 23 utilized in determining the rate;
- 24 (4) Crops being grown, soil type, geology, hydrology, and other
 25 physical characteristics of land on which the nutrient will be applied;
- 26 (5) The manner and timing of nutrient application; and
- 27 (6) The method for keeping application records contained in the
 28 plan.

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

35
 36 15-20-1109. Poultry litter management plan.

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

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

6 (b) A poultry litter management plan shall contain a:

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

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

11 (A) Land application within a nutrient surplus area is in
 12 accordance with a nutrient management plan;

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

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

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

21 (c) The commission may accept a plan or permit prepared to comply with
 22 federal law as a poultry litter management plan, if the plan or permit
 23 substantially meets the requirement of this section.

24
 25 15-20-1110. Sale or transfer of litter.

26 (a) Upon sale or transfer of poultry litter to a certified nutrient
 27 applicator, the poultry feeding operation shall not be responsible for the
 28 ultimate utilization of the poultry litter, unless the poultry feeding
 29 operation knew that the certified nutrient applicator was not operating in
 30 compliance with this subchapter.

31 (b) Any person receiving poultry litter from a poultry feeding
 32 operation shall utilize the poultry litter in compliance with the poultry
 33 litter management plan, if applicable, and comply with other requirements of
 34 this subchapter.

35
 36 15-20-1111. Litter utilization committee.

1 (a) In designated nutrient surplus areas, the Arkansas Soil and Water
 2 Conservation Commission shall activate a litter utilization committee to
 3 facilitate utilization or removal of excess litter.

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

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

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

11
 12 15-20-1112. Implementation.

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

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

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

19 (c)(1) The commission may defer the requirements of §§ 15-20-1107 –
 20 15-20-1109 for up to two (2) years after declaration or designation as a
 21 nutrient surplus area to allow the development of nutrient management plans
 22 and poultry litter management plans in order that persons affected may come
 23 into compliance with the subchapter.

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

28
 29 15-20-1113. Enforcement.

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

32 (2) If the entry is to a facility where poultry is regularly
 33 kept, the agent shall follow normal bio-security measures to minimize the
 34 possible spread of disease and the agent shall notify the landowner before
 35 entry.

36 (b) The process for the imposition of administrative penalties shall

1 be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-
 2 201 et seq.

3 (c) The commission and the director may issue subpoenas as provided in
 4 § 15-22-208.

5
 6 15-20-1114. Administrative penalties.

7 (a) The Arkansas Soil and Water Conservation Commission may impose
 8 administrative penalties not to exceed five thousand dollars (\$5,000) per
 9 violation against any person that violates the requirements of this
 10 subchapter.

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

14 (2) Penalties collected shall be cash funds when received by the
 15 Treasurer of the State and shall not be deposited or deemed to be a part of
 16 the State Treasury for the purposes of Arkansas Constitution, Article 5, §
 17 29; Arkansas Constitution, Article 16, §12; Arkansas Constitution, Amendment
 18 20; or any other constitutional or statutory provision.

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

24
 25 15-20-1115. Criminal penalties.

26 (a) In addition to administrative penalties, a violation of this
 27 subchapter is a Class A misdemeanor.

28 (b) Any person who pleads guilty or nolo contendere or is found guilty
 29 of a Class A misdemeanor for violation of any provision of this subchapter,
 30 who continues to engage in the behavior or activity giving rise to the
 31 violation, shall be guilty of a Class D felony for the second or any
 32 subsequent offense.

33 (c) Any law enforcement officer of this state or any political
 34 subdivision of this state may arrest persons described in this section.

35
 36 15-20-1116. No conflict with Arkansas Water and Air Pollution Control

1 Act.

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

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

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

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

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

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