

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

A Bill

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 of the state;

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

1 or 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 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 § 15-20-1108;

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 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. 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 of 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 or less shall be applied at a rate not
23 to exceed the protective rate and in a manner acceptable to the commission
24 and may be performed by the landowner or 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 15-20-1107. Nutrient management plan.

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

33 (1) Soil nutrient testing;

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

35 (3) Nutrient application rates, including the methodology
36 utilized in determining the rate;

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

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

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

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

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

13
14 15-20-1108. Poultry litter management plan.

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) Upon sale or transfer of poultry litter from a poultry feeding
7 operation within a nutrient surplus area to a certified nutrient applicator,
8 the poultry feeding operation shall not be responsible for the ultimate
9 utilization of the poultry litter, unless the poultry feeding operation knew
10 that the certified nutrient applicator was not operating in compliance with
11 this subchapter.

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

16 15-20-1110. Litter utilization committee.

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

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

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

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

27
28 15-20-1111. Implementation.

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

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

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

35 (c)(1) The commission may defer the requirements of §§ 15-20-1106
36 through 15-20-1108 for up to two (2) years after declaration as a nutrient

1 surplus area to allow the development of nutrient management plans and
2 poultry litter management plans in order that persons affected may come into
3 compliance with the subchapter.

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

8
9 15-20-1112. Enforcement.

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

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

16 (b) The process for the imposition of administrative penalties shall
17 be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-
18 201 et seq.

19 (c) The commission and the director may issue subpoenas as provided in
20 § 15-22-208.

21
22 15-20-1113. Administrative penalties.

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

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

30 (2) Penalties collected shall be cash funds when received by the
31 Treasurer of the State and shall not be deposited or deemed to be a part of
32 the State Treasury for the purposes of Arkansas Constitution, Article 5, §
33 29; Arkansas Constitution, Article 16, §12; Arkansas Constitution, Amendment
34 20; or any other constitutional or statutory provision.

35 (c) If a person against whom an administrative penalty has been
36 imposed by the commission, as authorized in this section, fails to pay the

1 penalty to the commission, the commission may file an action to collect the
2 administrative penalty in the circuit court of the county in which the
3 poultry feeding operation is located.

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5 15-20-1114. Criminal penalties.

6 (a)(1) In addition to administrative penalties, a person who violates
7 this subchapter may be punished by a fine of not less than two hundred fifty
8 dollars (\$250) nor more than five hundred dollars (\$500).

9 (2) Any person who pleads guilty or nolo contendere or is found
10 guilty of a violation of any provision of this subchapter, who continues to
11 engage in the behavior or activity giving rise to the violation shall be
12 guilty of a Class A misdemeanor for the second offense.

13
14 15-20-1115. No conflict with Arkansas Water and Air Pollution Control
15 Act.

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

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

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

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

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

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/s/ Scroggin, et al