

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 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S4/1/05
A Bill

SENATE BILL 1160

5 By: Senator Whitaker
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND THE ARKANSAS POULTRY FEEDING
10 OPERATIONS REGISTRATION ACT; TO AMEND THE
11 ARKANSAS SOIL NUTRIENT MANAGEMENT PLANNER AND
12 APPLICATOR CERTIFICATION ACT; TO AMEND THE
13 ARKANSAS SOIL NUTRITION APPLICATION AND POULTRY
14 LITTER UTILIZATION ACT; AND FOR OTHER PURPOSES.
15

16 **Subtitle**

17 AN ACT TO AMEND THE ARKANSAS POULTRY
18 FEEDING OPERATIONS REGISTRATION ACT.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

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

25 *(f) Application of poultry litter to soils or associated crops within*
26 *a nutrient surplus area shall be done in accordance with a nutrient*
27 *management plan or poultry litter management plan after January 1, 2007.*
28

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

31 *15-20-1201. Legislative intent.*

32 *The General Assembly finds that:*

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

35 *(2) The Environmental Protection Agency has determined that land*
36 *applications of dry poultry litter from a concentrated animal feeding*



1 operation are subject to National Pollution Discharge Elimination System
2 permitting requirements;

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

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

12
13 15-20-1202. Definitions.

14 (a) As used in this subchapter:

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

16 (A) Animals have been, are, or will be stabled or confined
17 and fed or maintained for a total of forty-five (45) days or more in any
18 twelve-month period; and

19 (B) Crops, vegetation, forage growth, or post-harvest
20 residues are not sustained in the normal growing season over any portion of
21 the lot or facility;

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

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

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

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

1 and

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

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

11
12 15-20-1203. Administration of dry poultry litter -- Concentrated
13 animal feeding operations program.

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

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

24 (2) Submit to the Administrator of the Environmental Protection
25 Agency a complete description of the program that the commission proposes to
26 establish and administer, as provided by § 402(b) of the Federal Water
27 Pollution Control Act, 33 U.S.C. § 1251 et seq., as in effect on January 1,
28 2005, for Environmental Protection Agency approval; and

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

32 (b) No member of the commission who receives or has received during
33 the previous two (2) years a significant portion of his or her income
34 directly or indirectly from dry litter concentrated animal feeding operation
35 permit holders or dry litter concentrated animal feeding operation permit
36 applicants shall participate in the approval of any concentrated animal

1 feeding operation permit application or portions of any application, if
2 participation by commissioners is required.

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

7
8 15-20-1204. Service of notice and other documents.

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

13 (1) Personal service;

14 (2) By mailing a copy of the notice, order, or other document,
15 by certified mail, directed to the person affected at his or her last known
16 address as shown by the files or records of the commission;

17 (3) By one (1) publication of notice in a newspaper of general
18 circulation in the area affected; or

19 (4) By any method acceptable for service of a summons in a civil
20 action in the courts of the State of Arkansas.

21
22 15-20-1205. Disposition of collected money.

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

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

31 (1) Arkansas Constitution, Article 5 § 29;

32 (2) Arkansas Constitution, Article 16, § 12;

33 (3) Arkansas Constitution, Amendment 20; or

34 (4) Any other constitutional or statutory provision.

35
36 15-20-1206. Application for individual concentrated animal feeding

1 operation permit, coverage under a general permit, and permit modification.

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

7
8 15-20-1207. Approval of applications.

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

15 (1) The application contains misleading or false information;

16 (2) The Administrator of the Environmental Protection Agency
17 objects in writing to the issuance of the permit or permit coverage in
18 accordance with § 402(d) of the Federal Water Pollution Control Act; or

19 (3) The application meets additional grounds for denial
20 established by rule.

21
22 15-20-1208. Renewal.

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

25 (1) Submitting an application for renewal to the Arkansas Soil
26 and Water Conservation Commission at least one hundred eighty (180) days
27 before the expiration date of the coverage; and

28 (2) Complying with any other requirements established by this
29 subchapter and by rule.

30
31 15-20-1209. Transfer of permit or permit coverage.

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

1 (b) Transfer may only be denied if:

2 (1) Relevant information submitted through the transfer form is
3 deliberately falsified or omitted;

4 (2) The applicant has a history of environmental noncompliance;
5 or

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

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

11
12 15-20-1210. Temporary variances and interim authority.

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

16 (1) Temporary variances from the requirements of any individual
17 concentrated animal feeding operation permit or coverage issued by the
18 commission; or

19 (2) Interim authority to operate during the application review
20 and concentrated animal feeding operation permit issuance process.

21
22 15-20-1211. Enforcement.

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

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

28 (c) Documentation of bio-security measures taken and bio-security
29 certification received by the inspection agent, including a bio-security log
30 book, shall be available to the owner upon request.

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

35 (e) The commission may issue subpoenas as provided in § 15-22-208.
36

1 15-20-1212. Emergency orders.

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

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

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

12
13 15-20-1213. Involuntary permit modification, suspension, or
14 revocation.

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

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

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

24
25 15-20-1214. Administrative penalties for violation of concentrated
26 animal feeding operation permit requirements.

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

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

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

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

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

7
8 15-20-1215. Civil remedies for violation of concentrated animal
9 feeding operation permit requirements.

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

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

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

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

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

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

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

35
36 15-20-1216. Criminal penalties for violation of concentrated animal

1 feeding operation permit requirements.

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

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

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

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

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

18
19 15-20-1217. Appeal of Arkansas Soil and Water Conservation Commission
20 decision.

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

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27 /s/ Whitaker
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