

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 1490

By: Sullivan, Derby and Tibbs
of the House

4 and

5 Easley of the Senate

6
7
8
9 (environment - Eucha-Spavinaw Nutrient Management
10 Act - priority - State Board of Agriculture -
11 Oklahoma Department of Agriculture, Food, and
12 Forestry - poultry waste - requiring soil testing
13 - injunctive relief - land application of poultry
14 waste - soil and poultry waste tests -
15 codification - effective date -
16 emergency)

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18 AUTHOR: Add the following Senate Coauthor: Williamson

19 AMENDMENT NO. 1. Page 1, strike the title, enacting clause
20 and entire bill and insert

21 "[agriculture - Eucha-Spavinaw Nutrient Management
22 Act - poultry waste management plans - codification
23 - effective date -
24 emergency]

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 10-10.1 of Title 2, unless there
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Eucha-Spavinaw
6 Nutrient Management Act".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 10-10.2 of Title 2, unless there
9 is created a duplication in numbering, reads as follows:

10 As used in the Eucha-Spavinaw Nutrient Management Act:

11 1. "Board" means the State Board of Agriculture;

12 2. "City of Tulsa Case" means the federal court proceeding
13 styled The City of Tulsa et al. v. Tyson Foods Inc. et al., Case No.
14 01 CV0900EA(C), filed in the United States District Court for the
15 Northern District of Oklahoma in December, 2001;

16 3. "Department" means the Oklahoma Department of Agriculture,
17 Food, and Forestry;

18 4. "Eucha-Spavinaw phosphorous index (PI)" means the phosphorus
19 assessment tool adopted by the court in the City of Tulsa Case by
20 court order entered on February 13, 2004, developed to govern the
21 terms and conditions under which litter may be land applied in the
22 Eucha-Spavinaw Watershed, and includes any modifications approved
23 and adopted by the court in that case, or as approved and adopted by
24 the Board in accordance with its rule-making procedures, in the

1 event the court in the City of Tulsa Case relinquishes jurisdiction.
2 PI shall also mean any form of the approved PI used in the Eucha-
3 Spavinaw Watershed, whether described as risk-based, qualitative or
4 quantitative, and may include any other scientific model, standard
5 or assessment tool that is no less protective of the watershed, if
6 approved by the court or the Board;

7 5. "Eucha-Spavinaw Watershed" means the watershed for Lakes
8 Eucha and Spavinaw located in Delaware County and Mayes County,
9 Oklahoma as further defined by Hydrologic Unit Code (HUC) 11070206
10 as compiled by the United States Geological Survey, Natural
11 Resources Conservation Services;

12 6. "Land application" means the application of nutrients or
13 litter to the land in the Eucha-Spavinaw Watershed, through any
14 means whatsoever, for any purpose, but shall not include the
15 incidental placing of litter on land during the process of hauling
16 or moving to storage or composting for a temporary period of time,
17 not to exceed three (3) days as defined in Definition No. 11 of
18 Section A of the Settlement Agreement;

19 7. "Litter" means all by-products associated with the
20 confinement of poultry, including excrement, feed waste, and bedding
21 materials as defined in Definition No. 13 of Section A of the
22 Settlement Agreement;

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1 8. "Nutrient" means poultry litter, and any other animal waste,
2 manure, or commercial fertilizer containing phosphorus, as defined
3 in Definition No. 15 of Section A of the Settlement Agreement;

4 9. "Poultry Act" means the Oklahoma Registered Poultry Feeding
5 Operations Act, the Oklahoma Poultry Waste Transfer Act, and the
6 Oklahoma Poultry Waste Applicators Certification Act, either
7 separately or collectively;

8 10. "Poultry waste management plan (PWMP)" means a nutrient
9 management plan further described in Section G of the Settlement
10 Agreement, and includes other similarly named plans, regardless of
11 how denominated, such as waste management plan, as defined in
12 Definition No. 14 of Section A of the Settlement Agreement;

13 11. "Poultry waste management unit" means any tract of land in
14 the Eucha-Spavinaw Watershed larger than two and one half (2 1/2)
15 acres outside of any city limits where poultry litter or other
16 nutrients from any contract grower or company farm, as defined in
17 the Settlement Agreement, are land applied or expected to be land
18 applied, as defined as an application site in Definition No. 2 of
19 Section A of the Settlement Agreement; and

20 12. "Settlement Agreement" means the settlement agreement dated
21 July 16, 2003, between the parties in the City of Tulsa Case.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 10-10.3 of Title 2, unless there
24 is created a duplication in numbering, reads as follows:

1 A. It shall be the purpose of the Eucha-Spavinaw Nutrient
2 Management Act to preserve and promote the purposes and agreements
3 of the parties set forth in the Settlement Agreement with regard to
4 the standards for the management and land application of litter
5 within the Eucha-Spavinaw Watershed, if and when the court in the
6 City of Tulsa Case relinquishes jurisdiction of the case.

7 B. The Eucha-Spavinaw Nutrient Management Act shall apply to
8 any other person or entity who is a land applicator, or a land or
9 facility owner or operator in the Eucha-Spavinaw Watershed, whether
10 or not that person or entity is a party to the Settlement Agreement.

11 C. The Eucha-Spavinaw Nutrient Management Act shall be
12 construed in harmony with the purpose, intent and provisions of all
13 other applicable state or federal laws, rules and regulations that
14 preserve and protect the waters of the state, public health and
15 safety and the environment, including but not limited to Title 2 and
16 Title 27A of the Oklahoma Statutes. In the event of any conflict
17 between or among the provisions of the Eucha-Spavinaw Nutrient
18 Management Act, the Poultry Act, the Settlement Agreement, any court
19 order entered in the City of Tulsa Case, and any other applicable
20 state and federal law, rule or regulation, the provision that is
21 most protective of the waters of the state, the public health and
22 safety and the environment shall control. Any registration that is
23 required by the Eucha-Spavinaw Nutrient Management Act is in
24 addition to, and not in lieu of, any other registration or permit

1 that may be required for any operation or facility by any other
2 state or federal law.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10-10.4 of Title 2, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The Eucha-Spavinaw Nutrient Management Act shall be
7 administered and enforced by the State Board of Agriculture and the
8 Oklahoma Department of Agriculture, Food, and Forestry except to the
9 extent that the court in the City of Tulsa Case exercises
10 jurisdiction. Except as otherwise provided for in this section, the
11 Board and the Department may exercise any powers, impose any
12 penalties and sanctions, or conduct any inspections or
13 investigations granted in the Poultry Act or other applicable law.
14 The rights and powers of the Board and Department shall apply to
15 inspections or investigations of poultry waste management units in
16 the Eucha-Spavinaw Watershed to the same extent that the Poultry Act
17 authorizes inspections or investigations of poultry feeding
18 operations. Any inspector or investigator for the Department may
19 exercise any right or duty granted to the Watershed Monitoring Team
20 as provided in the Settlement Agreement, except for the preparation
21 of poultry waste management plans (PWMPs), which shall be prepared
22 by a qualified nutrient planner.

23 B. In addition to any legislative appropriation allocated to
24 the Board or Department for normal operations and duties, the Board

1 or Department is hereby authorized to accept any monetary grant,
2 donation or other contribution of money or resources from any person
3 or entity for the purpose of hiring, training, compensating,
4 providing benefits and supervising any investigator, inspector, or
5 qualified nutrient planner to carry out the provisions of the Eucha-
6 Spavinaw Nutrient Management Act.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 10-10.5 of Title 2, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The land application rate for all litter on all poultry
11 waste management units in the Eucha-Spavinaw Watershed shall be
12 specified in the poultry waste management plan (PWMP) for each unit,
13 and shall follow the requirements and limitations of the applicable
14 Eucha-Spavinaw phosphorous index (PI) unless a more restrictive or
15 protective application rate is prescribed by some other state or
16 federal law, rule or court order, in which case the more restrictive
17 or protective rate shall be followed.

18 B. Soil testing and litter testing shall be performed for all
19 poultry waste management units in the Eucha-Spavinaw Watershed in
20 the manner and frequency prescribed in the Poultry Act for nutrient-
21 limited watersheds and the records shall be maintained as prescribed
22 in the Poultry Act.

23 SECTION 6. AMENDATORY 2 O.S. 2001, Section 10-9.19, is
24 amended to read as follows:

1 Section 10-9.19 1. Prior to any land application of poultry
2 waste by a certified poultry waste applicator, the applicator shall
3 obtain the most recent soil and poultry waste tests as required by
4 the Oklahoma Poultry Waste Applicators Certification Act, the
5 Settlement Agreement as defined in the Eucha-Spavinaw Nutrient
6 Management Act, or rules promulgated by the Oklahoma Department of
7 Agriculture, Food, and Forestry, whichever law or rule requires the
8 most frequent testing.

9 2. Land application of ~~poultry waste~~ litter in a non-nutrient-
10 limited watershed and non-nutrient-vulnerable groundwaters shall not
11 be made at any rate which exceeds the most recently published United
12 States Department of Agriculture Natural Resources Conservation
13 Service Waste Utilization Standards.

14 3. ~~The Oklahoma Department~~ State Board of Agriculture, ~~Food,~~
15 ~~and Forestry~~ may promulgate rules pursuant to the Administrative
16 Procedures Act which will prohibit the land application of ~~poultry~~
17 ~~waste~~ litter in nutrient-limited watersheds and nutrient-vulnerable
18 groundwaters based upon lower soil phosphorous levels than are
19 allowed in this section for non-nutrient-limited watersheds and non-
20 nutrient-vulnerable groundwaters.

21 SECTION 7. This act shall become effective July 1, 2007.

22 SECTION 8. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval."

3 Passed the Senate the 23rd day of April, 2007.

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Presiding Officer of the Senate

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7 Passed the House of Representatives the ____ day of _____,

8 2007.

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Presiding Officer of the House
of Representatives

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