

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL 1490

By: Sullivan, Derby and Tibbs  
of the House

6 and

7 Easley and (Williamson) of  
8 the Senate

9  
10  
11 COMMITTEE SUBSTITUTE

12 [ agriculture - Eucha-Spavinaw Nutrient Management  
13 Act - poultry waste management plans - codification -  
14 effective date - emergency ]

15  
16  
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

21 This act shall be known and may be cited as the "Eucha-Spavinaw  
22 Nutrient Management Act".  
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24

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

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

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

6           2.    "City of Tulsa Case" means the federal court proceeding  
7 styled The City of Tulsa et al. v. Tyson Foods Inc. et al., Case No.  
8 01 CV0900EA(C), filed in the United States District Court for the  
9 Northern District of Oklahoma in December, 2001;

10          3.    "Department" means the Oklahoma Department of Agriculture,  
11 Food, and Forestry;

12          4.    "Eucha-Spavinaw phosphorous index (PI)" means the phosphorus  
13 assessment tool adopted by the court in the City of Tulsa Case by  
14 court order entered on February 13, 2004, developed to govern the  
15 terms and conditions under which litter may be land applied in the  
16 Eucha-Spavinaw Watershed, and includes any modifications approved  
17 and adopted by the court in that case, or as approved and adopted by  
18 the Board in accordance with its rule-making procedures, in the  
19 event the court in the City of Tulsa Case relinquishes jurisdiction.  
20 PI shall also mean any form of the approved PI used in the Eucha-  
21 Spavinaw Watershed, whether described as risk-based, qualitative or  
22 quantitative, and may include any other scientific model, standard  
23 or assessment tool that is no less protective of the watershed, if  
24 approved by the court or the Board;

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

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

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

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

20           9. "Poultry Act" means the Oklahoma Registered Poultry Feeding  
21 Operations Act, the Oklahoma Poultry Waste Transfer Act, and the  
22 Oklahoma Poultry Waste Applicators Certification Act, either  
23 separately or collectively;

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

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

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

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

18 A. It shall be the purpose of the Eucha-Spavinaw Nutrient  
19 Management Act to preserve and promote the purposes and agreements  
20 of the parties set forth in the Settlement Agreement with regard to  
21 the standards for the management and land application of liter  
22 within the Eucha-Spavinaw Watershed, if and when the court in the  
23 City of Tulsa Case relinquishes jurisdiction of the case.

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

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

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

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

18       B. In addition to any legislative appropriation allocated to  
19 the Board or Department for normal operations and duties, the Board  
20 or Department is hereby authorized to accept any monetary grant,  
21 donation or other contribution of money or resources from any person  
22 or entity for the purpose of hiring, training, compensating,  
23 providing benefits and supervising any investigator, inspector, or  
24

1 qualified nutrient planner to carry out the provisions of the Eucha-  
2 Spavinaw Nutrient Management Act.

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

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

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

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

21 Section 10-9.19 1. Prior to any land application of poultry  
22 waste by a certified poultry waste applicator, the applicator shall  
23 obtain the most recent soil and poultry waste tests as required by  
24 the Oklahoma Poultry Waste Applicators Certification Act, the

1 Settlement Agreement as defined in the Eucha-Spavinaw Nutrient  
2 Management Act, or rules promulgated by the Oklahoma Department of  
3 Agriculture, Food, and Forestry, whichever law or rule requires the  
4 most frequent testing.

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

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

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

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

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