

# **TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY**

## **CHAPTER 17. WATER QUALITY**

### **SUBCHAPTER 5. REGISTERED POULTRY FEEDING OPERATIONS**

#### **35:17-5-1. Purpose**

These rules shall serve to control nonpoint source runoff and discharges from poultry waste application of poultry feeding operations. The rules allow for the monitoring of poultry waste application to land or removal from these operations and assist in ensuring beneficial use of poultry waste while preventing adverse effects to the waters of the state of Oklahoma. These rules are promulgated pursuant to and are read in conjunction with the Oklahoma Registered Poultry Feeding Operations Act found at Section 10-9.1 et seq. at Title 2 of the Oklahoma Statutes. The provisions of the Oklahoma Registered Poultry Feeding Operations Act are incorporated by reference.

#### **35:17-5-3. Registration, Nutrient Management Plan (NMP) required**

##### **(a) Registration.**

- (1) It shall be unlawful for any person to construct or operate a new poultry feeding operation without first registering with the State Board of Agriculture.
- (2) Every poultry feeding operation shall be required to ~~reregister~~ renew the registration annually by January 1 to operate.
- (3) Any poultry feeding operation that has a valid license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall not be required to register pursuant to the Oklahoma Registered Poultry Feeding Operations Act.
- (4) The owner or operator of a poultry feeding operation not classified as a poultry feeding operation may register if the owner elects to come under the provisions of the Oklahoma Registered Poultry Feeding Operations Act and the rules of the State Board of Agriculture.

##### **(b) Nutrient Management Plan.**

- (1) Every poultry feeding operation shall obtain or apply for an approved NMP addressing both nitrogen and phosphorus.
- (2) All new operators of poultry feeding operations shall obtain or apply for a NMP prior to construction of the facility. The NMP shall be completed and implemented within one year of application.
- (3) The NMP shall be prepared by USDA NRCS or an entity approved by the Oklahoma Department of Agriculture, Food, and Forestry.
- (4) Plans shall be reviewed and updated at least every six (6) years from the date the NMP was obtained. Plans shall also be reviewed and updated in the following circumstances:
  - (A) When the Oklahoma Department of Agriculture, Food, and Forestry changes the waste utilization standards or
  - (B) Upon notification of the Oklahoma Department of Agriculture, Food, and Forestry.
- (5) The NMP shall be updated prior to the expansion of a facility.
- (6) Implementation of the NMP shall occur within ninety (90) days of receipt of the NMP unless otherwise determined by the Oklahoma Department of Agriculture, Food, and

Forestry. In no event shall the poultry feeding operation land apply poultry waste in excess of the standards contained in Appendix A.

**(c) Transfer.**

(1) Owners intending to sell a registered poultry feeding operation shall notify the Department at least ten (10) days prior to the final sale.

(2) Owners selling the registered poultry feeding operation shall submit a final annual report for the current fiscal year within thirty (30) days following the final sale.

(3) New owners purchasing a registered poultry feeding operation shall have thirty (30) days to submit a transfer application on a form prescribed by the Department along with the Ten (10) Dollar nonrefundable application fee.

**35:17-5-3.1. Setbacks for new or expanding construction of poultry barns**

(a) New or expanding poultry feeding operations, including, but not limited to, poultry barns, composters and other carcass disposal areas, litter sheds, and other buildings associated with the operation, but not to include land application sites, shall not be located within the following applicable distances:

(1) Occupied residence:

(A) Fewer than, and including, one hundred and fifty thousand (150,000) birds shall be five hundred (500) feet; and

(B) More than one hundred and fifty thousand (150,000) birds shall be one thousand (1,000) feet.

(C) The distance between an occupied residence and a poultry waste facility shall be measured from the closest corner of the wall of the occupied residence to the closest point of the poultry waste facility;

(2) Public school shall be one thousand five hundred (1,500) feet;

(3) Incorporated city limits shall be one thousand five hundred (1,500) feet;

(4) Public roadway shall be one hundred and fifty (150) feet and such measurement shall be taken from the center line of the public road;

(5) Property line shall be one hundred and fifty (150) feet;

(6) Perennial or intermittent stream as identified on a current USGS 7.5 minute topographic map shall be two hundred (200) feet;

(7) Private well not owned or used for the poultry feeding operation shall be one hundred (100) feet; and

(8) Public well shall be five hundred (500) feet.

(b) The setbacks contained in subsections (a)(1), (2), ~~and (3)~~, and (5) of this section shall not apply if the applicable property owner, city governing body, or school district executes a written waiver with the owner or operator of the poultry feeding operation, under the terms and conditions that the parties negotiate. The written waiver becomes effective upon recording of the waiver in the offices of the recorder of deeds in the county where the property is located. The filed waiver shall preclude enforcement of the setback requirements contained in subsections (a)(1), (2), ~~and (3)~~, and (5) of this section. A change in ownership of the applicable property or change in the ownership of the property on which the poultry feeding operation is located shall not affect the validity of the waiver.

(c) As a part of the application for a new or expanding poultry feeding operation, the applicant shall provide the following in a detailed scaled map:

(1) Location of the poultry barns, composters and other carcass disposal areas, litter sheds, and other buildings associated with the operation; and

(2) Identification of all locations listed in subsection (a) within one ~~(1) mile~~ thousand (1,000) feet of the facility.

(d) Prior to approval of any application for a new or expanding poultry feeding operation, the Department shall conduct a presite inspection and review and confirm compliance with all setback requirements contained in this section.

(e) Any proposed poultry feeding operation that completed a bank closing on or before October 8, 2018, for the purpose of constructing a poultry feeding operation which has been affected by the State Board of Agriculture October 8, 2018, "Suspension on Acceptance and Processing of Applications for New or Expanding Poultry Operations" shall not be subject to the requirements contained in this section.

(f) An application to register a poultry feeding operation shall be considered filed on the date the Department receives the registration and applicable fees.

### **35:17-5-3.2. Cancellation of poultry feeding operation registration**

(a) A request to cancel registration of a poultry feeding operation shall be in writing and include a final annual report for the current fiscal year.

(b) Poultry waste shall be ~~property~~ properly removed from all poultry waste management systems prior to request for cancellation of a poultry feeding operation registration.

### **35:17-5-4. Soil and litter tests required**

(a) All soil and poultry waste analysis data shall be dated prior to land application.

(b) Poultry waste shall be applied only by ~~a~~ an Oklahoma certified poultry waste applicator.

### **35:17-5-5. Nutrient Management Plan**

(a) The NMP shall comply with all requirements contained in Appendix B and shall contain, at a minimum, the following:

(1) A description of poultry waste handling procedures and availability of equipment and type of equipment to be used.

(2) The calculations and assumptions used for determining land application rates.

(3) All nutrient analysis data, including soil and poultry waste testing.

(4) Legal description of lands to be used by an operation for land application.

(5) Soils map with description and type or series.

(6) Land application rates of poultry waste shall be based on the available nitrogen and phosphorus content of the poultry waste and soil test results.

(7) The procedures documented in the NMP shall ensure that the handling and utilization of poultry waste complies with the following requirements:

(A) Adequate poultry waste storage shall be provided. Poultry waste shall not be stored without adequate protection from rainfall and runoff. All new poultry feeding operations shall make provisions for storage of poultry waste prior to operating. Exceptions to storage requirements for poultry waste in emergency situations shall be granted on a case by case basis. Exceptions shall include but not be limited to allowing a contract poultry grower to take such actions as are necessary to meet requirements imposed on a grower by an integrator. However, in all situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.

(B) Poultry waste shall not be applied to land when the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen or snow covered except in conformance with the NMP.

(C) Poultry waste shall only be applied to suitable land at appropriate times and rates as specified by the NMP. Runoff of poultry waste from the application site is prohibited.

- (D) All practices necessary to minimize movement of poultry waste to watercourses shall be utilized and documented in the NMP.
- (E) Edge of field, grassed strips shall separate water courses from runoff which may be carrying eroded soil and poultry waste.
- (F) Poultry waste application shall be prohibited on land subject to excessive erosion.
- (G) Land application rates of poultry waste shall provide controls for runoff as appropriate for site conditions.
- (H) Poultry waste shall only be applied by a certified poultry waste applicator.
- (b) The NMP shall also include a method for the disposal of carcasses. The NMP shall include provisions for disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates. Accepted methods of carcass disposal include:
  - (1) Rendering
    - (A) Disposal of all carcasses shall occur within a reasonable period of time as approved by the State Department of Agriculture.
    - (B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.
  - (2) Burial shall only be ~~allowed~~ approved by the Department as a method of emergency carcass disposal if no reasonable alternative exists and specific measures and practices are identified which will be utilized to protect the ground and surface waters of the State.
  - (3) Composting by methods as approved in the NMP.
  - (4) Incineration shall only be used as a method of carcass disposal if the poultry feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division, if required.
  - (5) Alternative methods submitted to and approved by the Department on a case by case basis.
- (c) Storage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to waters of the State or cause a water quality violation to waters of the State.
- (d) The operator shall notify the State Department of Agriculture within twenty-four (24) hours of a discharge or runoff.

### **35:17-5-7. Record keeping**

- (a) ~~The following records~~ Annual reports regarding all poultry waste removed from or land applied by the facility shall be maintained for a minimum of six (6) years ~~and shall be available at all times to the State Department of Agriculture:~~
  - ~~(1) Poultry waste application records, rates, and dates of application.~~
  - ~~(2) If the poultry waste is sold or given to other persons, the poultry feeding operation shall maintain a log of:~~
    - ~~(A) Date of removal from the poultry feeding operation.~~
    - ~~(B) Name of recipient the poultry waste is sold or given to.~~
    - ~~(C) Amount in wet tons, dry tons, or cubic yards of poultry waste removed from the poultry feeding operation.~~
    - ~~(D) Poultry feeding operations located in a nutrient limited watershed or nutrient vulnerable groundwaters as defined by the Oklahoma Water Resources Board shall make available to the recipient any nutrient sample analysis from that year. Poultry feeding operations located in non-nutrient limited watersheds or non-~~

~~nutrient vulnerable groundwaters shall make available to the recipient the most recent nutrient sample analysis.~~

(b) Education certifications shall be maintained for a period of five (5) years and shall be available at all times to the State Department of Agriculture.

(c) Soil and poultry waste analysis data shall be retained by the poultry feeding operation for no less than six (6) years.

## SUBCHAPTER 9. AGRICULTURAL COMPOST FACILITIES

### 35:17-9-2. Definitions

The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Animal waste"** means animal excrement, animal carcasses, feed wastes, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

**"Compost facility" or "facility"** means a facility where source material is converted, under thermophilic conditions, to a product with high humus content for use as a soil amendment or to prevent or remediate pollutants in soil, air, and storm water run off. This includes

~~"Facility"~~ means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling, processing, storage, or disposal of compost and source materials or ingredients used in producing compost.

**"Leachate"** means liquid that has passed through or emerged from animal waste or materials being composted, and may contain soluble, suspended, or mixable materials removed from the source material.

**"Operator"** means the owner and person responsible for the management of ~~each~~ the facility.

**"Source material"** means material used as the main organic source to be converted by ~~the process~~ thermophilic conditions into compost and may include but not be limited to manure and other animal waste.

### 35:17-9-3. Permit provisions and application

(a) Prior to operation, any person using any source materials within the Department's jurisdictional areas of environmental responsibility to produce compost shall obtain a permit to operate the facility from the Department.

(b) The permit shall be renewed every five (5) years on October 1.

(c) The application for a compost facility shall contain, as a minimum, the following information:

(1) Name, address, ~~and~~ telephone number, and email address of the owner;

(2) Name, address, and county of the facility, including ~~specific driving directions from the nearest municipality, and legal description of the facility to the nearest ten (10) acres~~ the Global Positioning System (GPS) coordinates to the entry of the facility;

(3) Name, address, and telephone number of the operator, if other than the owner;

(4) ~~Narrative describing~~ A description of the proposed compost facility purpose of the facility.

(5) A composting plan that shall include but not be limited to the following:

(A) Source materials proposed for use and the estimated amount of compost produced per ~~month or per~~ year;

(B) Proposed type of composting process or processes to be used at the facility, including which may include windrow, static pile, or in vessel composting method;

(C) Characterization of the physical and environmental setup of the facility, including but not limited to the following:

- (i) Description of topography using a current 7.5 minutes topographic map highlighting the location of waters of the state within three (3) miles of the facility, an outline of the watershed drainage area with arrows indicating general direction of surface water drainage from the facility;
- (ii) Soil map showing soil types at the facility; and
- (iii) 100-year flood plain map.

(D) Laboratory test reports showing the amount of nitrogen as nitrate and total phosphorus contained in waters of the state at the facility, including but not limited to groundwater from all existing wells and surface impoundments located on the site.

(E) Design drawings and specifications for:

- (i) receiving, processing, storage, disposal, or reuse areas;
- (ii) leachate collection systems;
- (iii) storage, treatment, and disposal of leachate and sludge;
- (iv) storm water drainage;
- (v) protection of groundwater from leachate;
- (vi) any other design drawings and specifications necessary to describe the proposed operations of the facility.

(F) Proposed operational parameters.

(G) Site layout and construction.

(H) Best management practices used at the site for erosion control, water pollution control, odor control, storage of the source materials, storage of the finished compost, and aesthetic enhancement. Best management practices shall be utilized to ensure environmental hazards are avoided and operations do not create nuisance conditions, including blowing of dust or waste, odor, pest, or attraction of vermin creating public health concerns or erosion.

(I) A notarized sworn statement signed by the owner accepting full responsibility for properly closing the facility upon termination of operation at the facility.

(J) A notarized certification signed by the person applying for the permit, stating: "I certify under penalty of law this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(K) Supporting documentation regarding composting method used, including compost mix design, selection of C:N ratio, determining bulking agent need, aeration method, and moisture content and temperature to be maintained.

(L) All other documentation deemed necessary and requested by the Department to assure the quality of waters of the state is not compromised, and any other information required by the Department directly related to the construction, installation and operation of the facility.

- (d) The application for a new facility or a renewal shall be accompanied by an application fee of Two Hundred Dollars (\$200.00).
- (e) The operator of a facility shall notify the Department in writing that the facility is no longer in operation within thirty (30) days of the cessation of operation.
- (f) The Department shall require closure of any facility under the following circumstances:
  - (1) The operator of the facility notifies the Department that the facility is no longer in operation.
  - (2) The facility has not accepted source material nor produced compost for a period of six (6) months.
  - (3) The facility is ordered to close by the Board due to failure to operate in compliance with any provision of the Agriculture Code or rules of the Board.
- (g) A compost permit shall not be transferred.
  - (1) Upon sale of a compost facility, the new owner shall submit a new application and fee within thirty (30) days of the final sale.
  - (2) The former owner shall provide written notice of sale at least ten (10) days prior to finalization of the sale along with a written statement identifying plans to close or transfer the total retention storage structure.
  - (3) If the new owner agrees to take over responsibility of the total retention storage structure, as outlined in OAC 17-9-9(d), a signed, notarized agreement by both parties shall be submitted to the Department prior to the sale.

#### **35:17-9-4. Siting of composting facility**

- (a) The following factors shall be considered in the selection of a site for the facility:
  - (1) Prevailing wind direction and proximity to occupied residences;
  - (2) Topography of the facility location, including avoiding locating the facility on steep slopes ~~or within the 100-year flood plain~~; or
  - (3) Ground and surface water protection.
- (b) The Department may conduct a presite inspection of the proposed facility prior to issuing any permit for operation.
- (c) The compost facility shall not be located within three hundred (300) feet of a public or private drinking water well.
- (d) The compost facility shall not be located within the 100-year flood plain.
- (e) The composting and storage areas shall not be located with fifty (50) feet of the property boundaries.
- (f) The compost facility shall not be located within 100 feet of a downgradient perennial stream as defined on a current 7.5 minute topographic map.
- (g) The compost facility shall not be located with fifty (50) feet of a downgradient intermittent stream as defined on a current 7.5 minute topographic map.

#### **35:17-9-6. Leachate and storm water control**

- (a) The owner or operator shall provide a total retention storage structure or vegetative filter that is of sufficient size to contain or filter all leachate and contaminated storm water, ~~the 100-year/24 hour storm event, and maintain one foot of free board.~~
- (b) If a total retention storage structure is required by the Department, the owner shall ensure:
  - (1) The waste retention structure shall have the volume to store runoff from a 100 year/24 hour storm event,
  - (2) One foot of freeboard is maintained, and

~~(3) The owner or operator shall construct a~~ A permanent marker that identifies the levels of the 100 year/24 hour storm event volume, the one foot of free board, and the bottom of spillway is constructed.

(c) The owner or operator shall provide a drainage system for storm water that prevents erosion at the facility.

(d) The owner or operator shall prevent contact between uncontaminated storm water and source material, composting amendment, composting mix, and final product isolating the material from surface drainage through the use of covers, ditches, dikes, berms, terraces, or other control structures.

### **35:17-9-9. Closure of licensed compost facility retention structures**

(a) The owner of a ~~leachate retention structure facility~~ facility shall notify the Department ~~if the owner intends at least thirty (30) days in advance in writing if they intend~~ to permanently cease operations of the ~~structure facility~~ facility for any reason, including but not limited to, compliance with orders of the Board of Agriculture.

(b) A ~~leachate retention structure facility~~ facility that temporarily ceases operations ~~for longer than six (6) months but otherwise remains in full compliance with its license these rules shall not be considered permanently closed if written notice is provided to the Department prior to six (6) months of ceasing operations.~~

~~(b) Closure requirements of leachate retention structures shall be based on site specific conditions, as follows:~~

~~(1) The owner shall notify the Department in writing whenever a leachate retention structure is abandoned or permanently ceases operations for any reason. The Department shall consider a leachate retention structure is abandoned or has permanently ceased operations if:~~

~~(A) The leachate retention structure is closed by order of the Department; or~~

~~(B) The owner is unable to furnish documents showing receipt of compost material into the leachate retention structure during the previous twenty four (24) months and the owner is not maintaining the retention structure in compliance with the applicable rules or plans approved by the Department.~~

~~(c) In the event of permanently ceasing operations or abandonment of the facility, the owner shall still be responsible for closure of any waste retention structure by ensuring the following:~~

~~(2)(1) Liquid contents of a leachate total retention storage structure may shall be pumped out and land applied according to Department rules requirements.~~

~~(3)(2) Solids from the leachate total retention storage structure shall be removed and disposed of in an environmentally safe manner.~~

~~(4)(3) Sludge from the bottom of the leachate total retention storage structure shall be removed without compromising the integrity of the liner. Sludge may be land applied according to Department rules requirements.~~

~~(5)(4) The owner shall grid sample soil from the bottom of the leachate retention structure and have the samples analyzed in a State certified laboratory for nitrate-nitrogen, total phosphorous, and electrical conductance.~~

~~(6)(5) The owner shall develop a plan, subject to Department approval, regarding soil removal, if necessary, based on the grid sample data.~~

~~(7)(6) If soil is to be removed from the bottom of the leachate total retention storage structure, it shall be managed in an environmentally safe manner approved by the Department. Management options may include, but are not limited to, land application, disposal, and reuse.~~



~~(8)(7)~~ ~~The Department may require monitoring wells if~~ If evidence indicates that contamination has migrated to the groundwater based on site specific conditions, monitoring wells shall be installed as required by the Department.

~~(9)(8)~~ In the event a total retention storage structure requires closure or replacement in other than a permanently ceasing operations event, written notice shall be submitted to the Department prior to closure and shall follow the requirements of this section.

(d) An owner may seek an exemption from the closure obligations of this subsection or transfer the responsibility for a ~~leachate waste~~ total retention storage structure to another party. A written request and approval by the Department are required for an owner to be exempt from closure obligations of this subsection or to transfer the responsibility for a ~~leachate waste~~ total retention storage structure to any other party.