

**Title 35 - Oklahoma Department of Agriculture, Food, and Forestry**  
**Chapter 17 - Water Quality**  
**Subchapter 4 - Concentrated Animal Feeding Operations**

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# Title 35 - Oklahoma Department of Agriculture, Food, and Forestry

## Chapter 17 - Water Quality

### Subchapter 4 - Concentrated Animal Feeding Operations

#### **35:17-4-1. Purpose**

These rules are for regulating animal feeding operations pursuant to Section 20-40 et seq. of Title 2 of the Oklahoma Statutes and known as the Oklahoma Concentrated Animal Feeding Operations Act. These rules provide that all animal feeding operations be conducted so as to protect the waters of the State of Oklahoma from contamination. The rules applicable to the licensing process are designed to provide harmony within agricultural production while providing protection to the waters of the State of Oklahoma and to establish procedures for obtaining a Concentrated Animal Feeding Operations (CAFO) license by establishing a consistent application process, insuring public participation opportunities, providing for uniform notice requirements, and establishing other relevant requirements.

#### **35:17-4-2. Definitions**

In addition to terms defined in the Oklahoma Concentrated Animal Feeding Operations Act, the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

- "**Act**" means the Oklahoma Concentrated Animal Feeding Operations Act beginning at Section 20-40 of Title 2 of the Oklahoma Statutes.
- "**ALJ**" means Administrative Law Judge.
- "**APA**" means the Oklahoma Administrative Procedures Act, beginning at Section 301 of Title 75 of the Oklahoma Statutes.
- "**Application**" means a set of documents filed with the Oklahoma Department of Agriculture, Food, and Forestry for the purpose of obtaining an Oklahoma CAFO License from the State Board of Agriculture.
- "**ASTM**" means the most current version of the American Society of Testing Materials standards.
- "**CAFO**" means Concentrated Animal Feeding Operation as defined in Section 20-41 of Title 2 of the Oklahoma Statutes.
- "**Discharge**" means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching, or other means of release of wastes or wastewater except as otherwise provided in Section 20-44 of Title 2 of the Oklahoma Statutes. The term discharge shall not include a distribution of waste water into an irrigation system for the purpose of land application of waste to property, provided the waste does not leave the land application area.
- "**Hearing**" means an individual proceeding conducted pursuant to the provisions of the Oklahoma Administrative Procedures Act.
- "**Licensing process**" means the procedures where permission to engage in certain activities pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act is granted by the Board. Procedures include but are not limited to application, notice to affected property owners, Department review, publication of notice of application, hearings, and issuance of a building permit and license.
- "**Party**" means a person or agency named and participating or properly seeking and entitled by these rules to participate in hearings.
- "**Person**" means any individual, association, partnership, firm, company, public trust, corporation, joint-stock company, limited liability company, limited liability partnership, trust, estate, state or federal government agency, municipality, other governmental entity, or any other legal entity or their agent, employee, representative, assignee, or successor.
- "**USDA NRCS**" means the United States Department of Agriculture Natural Resources Conservation Service.
- "**25-year, 24-hour rainfall event**" means the maximum twenty-four (24) hour precipitation event with a probable recurrence interval of once in twenty-five (25) years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information.

### **35:17-4-3. License required**

In addition to CAFOs, any person who has filed a Notice of Intent (NOI) to be covered under the National Pollution Discharge Elimination Systems (NPDES) General Permit on Concentrated Animal Feeding Operations issued by the Environmental Protection Agency (EPA) on February 8, 1993 or its replacement or possessing an NPDES Permit shall be required to obtain an Oklahoma CAFO License. Any animal feeding operation may be required to obtain an Oklahoma CAFO License if it is specifically identified as a significant contributor of pollution by either the Director of EPA Region 6 or the State Board of Agriculture.

### **35:17-4-4. License application for new facilities or operations**

- (a) In addition to the items required by the Oklahoma Concentrated Animal Feeding Operations Act, the application for a CAFO license of a new facility or an operation shall contain, as a minimum, the following information:
  - (1) Name and address of the owner of the facility.
  - (2) Name and address of the animal feeding operation, including driving directions from the nearest municipality and legal description of the facility.
  - (3) Name and address of the operator if other than the owner.
  - (4) Capacity in animal units and number and type of animals housed or confined.
  - (5) If owner is a firm, partnership, corporation, or other legal entity, the name and address of each member with an ownership interest of ten percent (10%) or more.
  - (6) If owner is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation.
  - (7) Environmental history of the past three (3) years of any CAFO operation established or operated by the owner or any other operation with common ownership in Oklahoma or any other state, including all citations, administrative orders or penalties, civil injunctions or other civil actions, and criminal actions, past, current, and ongoing, taken by any person, agency, or court relating to noncompliance with any environmental law, rule, agency order, or court action in conjunction with the operation of an animal feeding operation.
  - (8) List of all environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the owner.
  - (9) Copy of deed, contract to purchase, or option to purchase the proposed site of the facility, waste retention structures, and land application sites. If land application sites are not owned by the applicant, provide a notarized signed copy of spreading or effluent agreement.
  - (10) A map of all property owners within one (1) mile of the facility and waste retention structures and a corresponding mailing list.
  - (11) A plat showing:
    - (A) Location of the facility, waste retention structures, and all land application sites.
    - (B) Location and distance of all occupied residences within one (1) mile of the facility and waste retention structures. The distances shall be measured from the nearest point of the waste retention structure to the nearest point of the occupied residence.
    - (C) Location and distance of all occupied residences within six-hundred (600) feet of any land application site. The distances shall be measured from the nearest point of the land application site to the nearest point of the occupied residence.
    - (D) Location and distance of all existing public or private drinking water wells within four-hundred (400) feet of any land application site. The distance shall be measured from the nearest point of the land application site to the nearest point of the drinking water well.
    - (E) All open roads surrounding the facility and all land application sites.
  - (12) If applicable, a copy of the written waiver by a property owner releasing specified setback requirements as provided by the Act.
  - (13) Characterization of the physical and environmental setup of the facility, including but not limited to the following:
    - (A) Description of topography using a current USGS 7.5 minute topographic map highlighting the location of waters of the state within three (3) miles of the facility, waste retention structures and all land application sites, an outline of the watershed drainage area, and

- arrows indicating general direction of surface water drainage from the facility, waste retention sites, and land application sites.
- (B) Soil map showing soil types at the facility, waste retention structure, and all land application sites.
  - (C) 100 year flood plain map, if applicable. In no event shall a waste storage structure be located within the 100 year flood plain as established by the Federal Emergency Management Agency (FEMA).
- (14) Report from an independent soil testing laboratory containing the following:
- (A) Site map showing the location of all soil borings in relation to the facility and waste retention structure.
    - (i) The test boring shall be in the immediate vicinity of the proposed waste retention structure.
    - (ii) Bore holes shall be left open for a minimum of 48 hours for the groundwater to recover.
    - (iii) All bore holes shall be plugged according to Oklahoma Water Resources Board requirements.
  - (B) Soil tests per ASTM standards on all soils to be used in construction of the liner, with the following procedures and results reported:
    - (i) Grain size particle distribution analysis according to ASTM standards.
    - (ii) A standard Proctor compaction test based on ASTM D 698 procedure.
    - (iii) Perform Atterberg limits test per ASTM standards (ASTM D 4318).
    - (iv) Permeability tests on remolded samples compacted at ninety-five percent (95%) of standard Proctor maximum dry density at optimum moisture content conducted in accordance with ASTM D-5084 for the measurement of Hydraulic Conductivity of Saturated Porous Materials using a Flexible Wall Permeameter.
    - (v) Laboratory tests of representative samples presented in summary tables and on boring logs.
  - (C) Provide a soil boring log showing lithology, the above test results, and the classification of soils based on the Unified Soil Classification system.
  - (D) USDA Natural Resources Conservation Service (NRCS) soil testing standards and procedures shall only be substituted if the retention structure is designed by USDA NRCS Engineers.
- (15) Laboratory test reports showing the amount of Nitrogen as Nitrate and total Phosphorous contained in the following:
- (A) Groundwater from all existing water wells located at the facility and land application sites.
  - (B) All surface water impoundments located at the facility and land application sites.
  - (C) Composite soil samples from each land application site.
- (16) A Pollution Prevention Plan (PPP) which contains an Animal Waste Management Plan (AWMP), a carcass disposal plan, an erosion control plan, and Best Management Practices (BMPs).
- (17) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the CAFO operation.
- (18) A financial statement declaring the financial ability of an owner to operate an animal feeding operation with a liquid waste management system in order to comply with the surety requirements of the Act. The financial statement shall be confidential and shall not be opened to public inspection.
- (19) A notarized certification signed by the person applying for a license, which states: "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."
- (20) All documentation deemed necessary and requested by the Oklahoma Department of Agriculture, Food, and Forestry to assure the quality of waters of the state are not compromised, including waste

retention structure liner specifications and design plans and any other information required by the Department directly related to the construction, installation, or future modification or operation of a CAFO.

- (b) All items listed in subpart (a) of this section shall be received by the Department before the application is considered complete. At the Department's discretion, no action will be taken on the application until all items have been received by the Department, including but not limited to presite inspections.

#### **35:17-4-5. Notice requirements**

- (a) Individual notice to all affected property owners shall be documented. Proof of notice shall include a sample letter and a certificate of mailing corresponding to the names on the mailing list provided with the CAFO license application. The certificate of mailing shall be verified by the owner and include a U.S. Post Office certified mailing number and the name and address of each affected property owner. U.S. Post Office stamped certified mail receipts, letters returned as undeliverable or refused, and domestic return receipts evidencing receipt of the notice shall be kept on file by the owner and provided to the Department upon request. Notice shall provide the following information:
  - (1) An application for an animal feeding operation has been submitted to the Department.
  - (2) The legal location and name of the proposed facility.
  - (3) The opportunity to send written comments to the Oklahoma Department of Agriculture, Food, and Forestry, P.O. Box 528804, Oklahoma City, OK 73152-8804.
  - (4) A twenty (20) working day public review period shall begin no earlier than the day following the certified mailing of all required individual notices. In the event a hearing is requested, the application shall be available for public review until the date of the hearing.
  - (5) The opportunity to request a hearing within twenty (20) working days from the date the application is first available for public viewing. Notice as required by this rule shall include the following language: "A hearing must be requested, in writing, within twenty (20) working days of the availability of this application for public review, or your right to the hearing is waived. Do not rely on the request of another party to insure a hearing. A hearing requested by another party may be dismissed without your permission if you have not personally filed a request for a hearing with the Department of Agriculture."
  - (6) Individual notice shall occur to all affected property owners, regardless of state residency or property location.
  - (7) Notice shall be given to the applicable tribal chairperson, where ascertainable, and to the United States Bureau of Indian Affairs (USBIA) when tribally owned land or former reservation land is within one (1) mile of the facility.
- (b) In addition to the individual notice, proof of publication notice of a new or application for a CAFO license shall be given by the owner which complies with the provisions of the Act.

#### **35:17-4-6. Application for license renewal**

- (a) An application for renewal shall be submitted prior to July 1 of each year the license is to be renewed.
- (b) Any license for which a renewal application is received prior to the renewal date established by statute is considered to be valid until a final determination is made. The determination shall be made after a review by the Department.
  - (1) Renewals meeting the requirements shall be reissued a license unless sufficient cause to terminate or revoke the license is shown. If corrections of the renewal application are required, the owner shall have twenty (20) working days from the date of notification to make all necessary revisions.
  - (2) If corrections are not made within twenty (20) working days, the license may be referred to the Board for denial. Applications shall be considered to meet the requirements for renewal if:
    - (A) The application is filled out completely and accurately.
    - (B) The correct renewal fee is paid within the time specified.
    - (C) All plans and amended plans for the animal feeding operation are being followed.
    - (D) The Department determines that there have been no significant changes in the operation since the last renewal which would require that the license be denied due to failure of the facility to meet the requirements of the Act.

### **35:17-4-7. Issuance or expansion of license; hearings**

- (a) For new, previously unlicensed, or expansion applications for a CAFO license, a maximum of sixty (60) working days from the date the application is received by the Department is allocated for investigation, evaluation, and review for completeness of application. For good cause, the Department may take an additional thirty (30) working days to review the application. Good cause shall include but not be limited to a heavier than normal receipt of applications by the Department. The Department shall:
  - (1) Evaluate applications for administrative and technical completeness and when necessary, request changes, revisions, corrections, or supplemental submissions. Any request made by the Department shall cause a new sixty (60) working day period to begin following receipt of the requested additional information.
  - (2) Evaluate individual and public notices related to new applications for accuracy and completeness of content, compliance with procedural requirements, and require that omissions or inaccuracies be cured.
- (b) Requests for a hearing received after the prescribed twenty (20) working day time frame shall not be valid. The ALJ shall, within seven (7) working days of setting a scheduling conference, notify the parties seeking a hearing and the owner of the time and place of the scheduling conference by certified mail, return receipt requested. All further dates and time periods shall be set at the scheduling conference.
- (c) The public comment period shall automatically be extended to the close of the hearing. The ALJ shall, within thirty (30) working days following the comment period, make a full written report and a recommendation to the Department and the Board regarding the application.
- (d) If all persons who requested a hearing provide a written waiver of the hearing, the Department shall dismiss the hearing, and at the next regularly scheduled meeting of the Board, present the application for consideration.
- (e) If the Board does not issue a license, the Department shall provide the owner written notification within twenty (20) working days following date of denial. The notification shall set forth the reasons for the denial and what steps are necessary to meet the requirements for issuance of a license.

### **35:17-4-8. Transfer of license**

In addition to the provisions of the Act, transfer of a license to a new owner or lessee shall meet the following conditions:

- (1) Upon approval of the transfer of a license, the transferee shall provide to the Department within thirty (30) calendar days, a notarized statement and other proof of transfer of ownership or occupancy as the Department requires;
- (2) If a transfer is denied by the Department, the transferee may, within thirty (30) calendar days after receiving notification of the denial, request in writing a hearing to review the denial of the transfer. In addition to the items which are considered at the hearing, the ALJ may also hear evidence and witnesses on the issue of whether a substantial change of condition has occurred since the issuance of the original license and whether the changes should result in a denial of the transfer of the license.

### **35:17-4-9. Pollution Prevention Plan (PPP)**

- (a) Prior to the submission of a CAFO license application, each facility shall develop a Pollution Prevention Plan (PPP) according to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant to the Act. The Plan shall include provisions for documentation of structural controls, documentation of operating Best Management Practices (BMPs), an Animal Waste Management Plan (AWMP), a carcass disposal plan for normal and emergency disposal of carcasses, and record keeping provisions. The Plan shall identify an individual who is responsible for implementing, maintaining, and revising the PPP.
- (b) Equivalent measures contained in a site specific AWMP prepared by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) may be substituted for the appropriate PPP requirements. An AWMP developed by USDA NRCS can be substituted for the documentation of land application rate calculations.
- (c) With Department approval, the owner shall amend the PPP prior to any change in design, construction, operation, or maintenance, which has significant effect on the potential for the discharge of pollutants to the surface or groundwaters of the State.
- (d) The owner shall implement appropriate changes to the Plan within ninety (90) calendar days of notification that the plan does not meet one or more specified minimum requirements unless otherwise provided by the

Department. If notice of changes is not received by the Department within the prescribed ninety (90) calendar days, the application shall be denied.

- (e) In addition to the requirements of the Act, the PPP shall include:
- (1) A list of materials that are used, stored, or disposed of at the facility which may cause pollution. A contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of releases shall include any corrective action taken to prevent recurrence.
  - (2) Testing of groundwater, Nitrogen as Nitrate, total Phosphorous, and fecal coliform bacteria levels shall be performed by an Oklahoma Department of Environmental Quality certified independent testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner.
  - (3) Soil tests from land application sites shall be performed by an Oklahoma Department of Environmental Quality certified testing laboratory or State operated laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner.
  - (4) Sufficient testing of wastewater in waste storage facilities shall be required at least every three (3) years and performed by a qualified independent testing laboratory. Testing may be required more frequently at an individual facility at the Department's request. Additional parameters may be required upon request of the Department.
  - (5) A description of management controls appropriate for the facility. The owner initiates these controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility and conform to criteria established by the Act and the Department.
    - (A) The location and a description of existing surface water controls. Structural controls shall be inspected at least quarterly each year for structural integrity and maintenance. Dates of inspections of the retention structure and a log of the findings of the inspections shall be maintained at the site.
    - (B) Documentation of retention structure capacity shall be submitted to the Department and shall be based upon input parameters, the assumptions and actual calculations, showing volumes for all intermediate steps, used in determining the appropriate volume capacity. Retention structure capacity shall be based upon the following, at a minimum:
      - (i) The runoff volume from open lot surfaces.
      - (ii) The runoff volume from areas between open lot surfaces and the retention structure.
      - (iii) The rainfall multiplied by the area of the retention structure.
      - (iv) The volume of rainfall from any roofed area that is directed into the retention structure.
      - (v) All waste and process generated wastewater produced during a period of time not less than twenty-one (21) calendar days, including: volume of wet manure that enters a pond; plus volume of water used for manure or waste removal; plus volume of wash or cleanup water; plus other water, including drinking water that enters the retention structure. The minimum twenty-one (21) day storage capacity is an absolute minimum. The minimum storage capacity may be increased depending on the number of acres available for land application, crops and crop water demands, climate conditions, operations and management.
      - (vi) Volume of a 25-year, 24-hour rainfall event.
      - (vii) One (1) foot of freeboard below spillway or outlet.
      - (viii) A water budget based on real monthly or daily data from a rain gauge located near the facility.
    - (C) A description of the design standards for the retention facility embankments. The following minimum design standards are required for construction or modification of a retention structure embankment:
      - (i) Soils used in the embankment shall be free of foreign material, including trash, brush, and fallen trees.
      - (ii) The embankment shall be constructed in lifts no more than six (6) inches thick after compaction and compacted to a minimum of 95% of the maximum dry density and

± 2% of optimum moisture content as determined by ASTM D 698 standard proctor test.

- (iii) Each lift of the embankment of the retention structures shall be checked to ensure proper compaction and moisture content; all readings shall be recorded and properly documented with minimum information required for documentation to include:
    - (I) project name,
    - (II) date,
    - (III) test method used,
    - (IV) site name,
    - (V) technician name,
    - (VI) location of reading, including sketch, if necessary,
    - (VII) percent compaction,
    - (VIII) wet density, pcf,
    - (IX) dry density, pcf,
    - (X) moisture content,
    - (XI) lift number, and
    - (XII) soils lab name, report number and proctor test results used to obtain field measurements.
  - (iv) If retention structures are constructed with an emergency spillway, a minimum of one (1) foot of freeboard shall be maintained between the top of the 25-year, 24-hour storm volume and the bottom of the emergency spillway.
  - (v) An erosion control plan shall be developed and approved by the Department detailing how the owner immediately stabilizes the embankment walls to prevent erosion and deterioration. The plan shall include a preventive maintenance section. Each plan shall be approved on a case by case basis and may include the use of vegetative cover, geomembrane liners, sod, or other Department approved methods for controlling erosion.
  - (vi) A permanent measuring device shall be maintained in the wastewater retention structure to show the volume required to contain a 25-year, 24-hour rainfall event. The device shall be visible from the top of the levee and a separate mark shall be placed on the measuring device clearly identifying the 25-year, 24-hour rainfall event. Installation of the measuring device shall be performed in a manner to protect the integrity of liner at all times.
  - (vii) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP.
  - (viii) Documentation of method used to ensure liner of the waste retention structure is protected at or below the inlet.
- (6) The following records, in addition to those required by the Act, shall be maintained at the site for a minimum of three (3) years.
- (A) Weekly measure of water level in the retention facility;
  - (B) Quarterly inspection and maintenance reports;
  - (C) Other specific information required by the Department.
- (7) The following records, in addition to those required by the Act, shall be maintained at the site as long as the facility is in operation:
- (A) Documentation of no significant impact, if applicable.
  - (B) Copy of Notice of Intent (NOI) or Notice of Termination (NOT), if applicable.
  - (C) Other records as required by the Department.

### **35:17-4-10. Documentation of no hydrologic connection**

USDA NRCS design specifications in the USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 (formerly Tech Note 716) shall satisfy documentation of no hydrologic connection so long as the facility is designed by USDA NRCS and does not exceed one thousand (1,000) animal units.

### **35:17-4-11. Criteria for liners**

- (a) Soil liners shall be constructed to meet the following minimum requirements:
- (1) Constructed in lifts or layers no more than six (6) inches thick when compacted.
    - (A) Soils used in the liner shall be free of foreign material, including trash, brush, and fallen trees.
    - (B) All side slopes and the floor of the retention structures shall be checked after each lift to ensure proper compaction and moisture content. All readings shall be recorded and properly documented. Minimum information required for documentation shall include:
      - (i) Project name.
      - (ii) Date.
      - (iii) Test method used per ASTM specification.
      - (iv) Site name.
      - (v) Technician name.
      - (vi) Location of reading, include sketch.
      - (vii) Percent compaction
      - (viii) Wet density in pounds per cubic foot (pcf).
      - (ix) Dry density in pounds per cubic foot (pcf).
      - (x) Moisture content, percent.
      - (xi) Lift number.
      - (xii) Soils lab name, report number, and Proctor Test results used to obtain field measurements.
  - (2) Compaction to a minimum of ninety-five percent (95%) of Standard Proctor (ASTM D 698) at optimum or wetter moisture content.
  - (3) Hydraulic conductivities of no greater than  $1 \times 10^{-7}$  cm/sec. The field permeability of the liner shall be verified by using one of the following methods:
    - (A) If a sealed Double Ring Infiltrometer is used to determine the field permeability of the liner, at least one representative location on each corner and one location in the center of the waste retention structure bottom shall be selected for Double Ring Infiltrometer determination.
    - (B) At least four (4) representative undisturbed core samples, one from each corner of the waste retention structure bottom shall be retrieved for permeability determination in the laboratory. The permeability shall be determined using a Flexible Wall Permeameter (ASTM D 5084).
  - (4) Minimum thickness of one and one half (1.5) feet.
  - (5) Maximum hydrostatic head of ten and one half (10.5) feet.
  - (6) Hydrostatic head or water depth may be increased above ten and one half (10.5) feet in one of the following circumstances:
    - (A) Liner thickness above the minimum shall be increased by an amount needed to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity.
    - (B) Soils with permeabilities less than  $1 \times 10^{-7}$  cm/sec are used to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity. Soils which do not meet the maximum criteria of  $1 \times 10^{-7}$  cm/sec can be mixed with a sufficient amount of bentonite clay to achieve the desired standard.
    - (C) Any combination of (A) or (B). In no case shall hydraulic conductivity be used to reduce the minimum thickness of one and one half (1.5) feet or shall thickness be used to increase the maximum hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec.
- (b) The owner shall maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from burrowing and other animals by fences or other protective devices. Liners shall also be protected from the potential root zone of all trees.

- (c) Any mechanical or structural damage to the liner shall be evaluated by an environmental, agricultural, or other Department approved professional engineer registered in the state of Oklahoma within thirty (30) calendar days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan.
- (d) USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 Appendix D shall only be used when an NRCS Engineer designs the retention structures.
- (e) Flexible membrane or synthetic liners may be used in connection with a soil liner or as a substitute for a soil liner. Geosynthetic liners and flexible membrane liners shall be installed so as to protect waters of the State from contamination.
  - (1) The subgrade soil shall be prepared according to the design standards. A subgrade verification form shall be submitted with liner documentation.
  - (2) The surface to be lined shall be rolled and compacted and free of irregularities, undulations, protrusions, vegetation, excessive moisture, loose soil, or abrupt changes in slope.
  - (3) The subgrade surface shall be free of foreign material including stones, cobbles, broken pieces of wood, plastic, or glass.
  - (4) The owner shall provide a copy of a completed Surface Acceptance Form indicating acceptable locations. In no case shall the installer deploy any geomembrane or flexible membrane liner in areas not acceptable within these rules.
  - (5) If at any time during the installation the subgrade surface deteriorates or is damaged, or in any way deemed unacceptable by the regulatory authority, all work shall stop until proper repair is performed.
  - (6) The anchor trench shall be constructed according to the standard industry practices. The trench shall be adequately drained to prevent ponding or softening of the side walls. After installation of the liner, the trench shall be back filled, compacted, and anchored according to the standards.
  - (7) The liner placement plan shall take into consideration the site drainage, low lying areas, temperature, and prevailing wind velocity and direction. Field panels shall be deployed one at a time and seamed as soon as possible to minimize the risk of wind or water damage.
  - (8) Field panel deployment shall not proceed at an ambient temperature below forty degrees (40°) F, unless Low Temperature Welding Procedures are used. All deployed panels should be amply ballasted or sand bagged at all times to avoid wind damage.
  - (9) Personnel responsible for placement of the liner shall not smoke, wear damaging shoes, or engage in other activities which may cause damage to the liner. The method of deployment shall not cause scratches, crimps, or tear the liner or damage the subgrade. Adequate sand bags shall be placed on the edges of the liner to avoid wind uplifting.
  - (10) The installer shall visually inspect the panels as soon as possible after deployment for damage or distressed surfaces.
  - (11) A seam is considered a separate entity if it joins two panels. Repairs are not considered seams in this context. Seams shall be generally oriented parallel to the line of maximum slope, or along instead of across the slope. In corners and odd shaped geometric locations the number of seams should be minimized.
  - (12) The Extrusion Process shall be used only for repairs and patching and shall not be used for the overall operation. The Fusion Process shall be used for seaming panels together using hot-wedge type or solid wedge type automated self-propelled apparatus equipped with temperature gauges.
  - (13) The nondestructive seam continuity test shall be performed during daylight hours and certified by the owner.

**35:17-4-12. Animal Waste Management Plans (AWMPs)**

- (a) An AWMP or its equivalent shall be prepared, according to Departmental policy, for each facility prior to the submission of a CAFO license application. An AWMP or its equivalent may include, but is not limited to, a Comprehensive Nutrient Management Plan per NRCS guidance, or a Nutrient Management Plan per EPA guidance.
- (b) The AWMP shall include:
  - (1) A plan with a proposed schedule for liquid and solid animal waste removal, including sludge.
  - (2) A date log indicating weekly inspection of wastewater level in the retention structure, including specific measurement of wastewater level. Facilities using pits, ponds, or other waste retention structures for storage and treatment of storm water, manure, and process generated wastewater,

including flush water waste handling systems, shall maintain in their wastewater retention structure sufficient capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The owner shall immediately restore sufficient capacity to contain a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces capacity, weather permitting. The 25-year, 24-hour rainfall event capacity shall be in addition to the one (1) foot of freeboard required.

- (3) All calculations and all factors and assumptions used in determining land application rates, acreage, and crops for both solid and liquid animal wastes. Land application rates shall take into account the plant available nutrient contribution of any land applied animal wastes. The following requirements shall apply to land application of animal waste on land owned or leased by the owner:
  - (A) Runoff from animal waste is prohibited where it results in a discharge to surface or groundwaters of the State. The owner shall provide controls for runoff and erosion as appropriate for site conditions.
  - (B) Animal wastes shall not be applied when the ground is frozen or saturated or during rainfall events.
  - (C) It shall be considered acceptable emergency procedures for a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the State.
  - (D) Land application practices shall be managed so as to reduce or minimize the following:
    - (i) Ponding or puddling of wastewater on the site.
    - (ii) Adverse conditions that invite pests including flies and rodents.
  - (E) Facilities including waste retention structures, waste storage sites, land application sites, ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to insure the ability to fully comply with the terms of these rules and the Pollution Prevention Plan.
  - (F) Adequate equipment and land application area shall be available for removal of waste and wastewater as required to maintain the proper operating volume of the retention structure. A list of proposed or actual equipment shall be included.
  - (G) Surface disposal of animal wastes in the 100-year flood plain, as established by the Federal Emergency Management Agency (FEMA), or near water courses is prohibited unless protected from inundation and damage that may occur during that flood event by adequate berms or other structures. The land application of animal wastes at agronomic rates shall not be considered surface disposal and is not prohibited.
  - (H) Runoff from animal waste storage piles shall be retained on site.
  - (I) Accumulation of water in animal waste storage areas shall be avoided.
  - (J) Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions. Timing and rate of land application of animal waste shall be based on published materials approved by the Department.
  - (K) Land application shall not occur in areas defined as do not apply areas in the waste application criteria of the USDA NRCS Waste Utilization Standard Conservation Practice Standard 633 and Nutrient Management Conservation Practice Standard Code 590, or their current replacement.
  - (L) The AWMP shall identify areas which due to topography, activities, or other factors have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to surface or groundwaters of the State, the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff. Land subject to excessive erosion shall be avoided.

### **35:17-4-13. Carcass disposal**

- (a) Dead animals shall be disposed of in accordance with a carcass disposal plan developed by the owner and approved by the Department which shall decrease the possibility of the spread of disease, reduce odors, and preclude contamination of ground and surface waters of the state. Dead animals shall be disposed of properly and in an environmentally safe manner in accordance with Federal, State, and local requirements. At all times

- the facility shall comply with the provisions of Section 1223 of Title 21 of the Oklahoma Statutes, in addition to compliance with the carcass disposal plan.
- (b) The plan shall include provisions for the 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.
  - (c) Accepted methods of carcass disposal include the following:
    - (1) Rendering.
      - (A) The owner shall obtain a contract with a rendering service that insures disposal of all carcasses within a reasonable period of time. The name, address, and telephone number of the rendering service shall be provided. In addition, the frequency and schedule of carcass pickup shall be included.
      - (B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.
      - (C) Sealed storage facilities shall not be required for animals weighing 300 pounds or more, but the prevention of pests and odors shall be addressed.
    - (2) Burial.
      - (A) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and the disposal plan contains specific measures and practices which are utilized to protect the ground and surface waters of the state.
      - (C) Prior approval by the Department is required of any carcass disposal plan listing burial as the method of disposal.
    - (3) Composting.
      - (A) Prior approval by the Department is required of any carcass disposal plan listing composting as the method of disposal.
      - (B) The Department may require another method of carcass disposal other than composting if the Department determines that a more feasible and effective method of carcass disposal exists.
    - (4) Incineration shall only be used as method of carcass disposal if the animal feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division.

### **35:17-4-14. Employee education and training**

- (a) Employees responsible for work activities which relate to compliance shall be regularly trained and informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Employee training shall inform personnel at all levels of the general components and goals of the Pollution Prevention Plan. Training shall include but not be limited to the following topics:
  - (1) Proper operation and maintenance of waste retention structures, including proper water level maintenance.
  - (2) Land application of wastes, proper operation, and maintenance of the facility.
  - (3) Good housekeeping and material management practices.
  - (4) Necessary record keeping requirements.
  - (5) Spill response and clean up.
- (b) The owner is responsible for determining the appropriate training frequency for different levels of personnel and the PPP shall identify periodic dates for training.
- (c) Curricula and course content shall be developed under the supervision of Oklahoma State University Cooperative Extension Service and topics shall include:
  - (1) Proper operation and management of waste retention structures.
  - (2) Animal waste nutrient management, including land application of waste.
  - (3) Air quality and odor control.
  - (4) Regulation and record keeping requirements.
  - (5) Water quality.

### **35:17-4-15. Owner inspections**

- (a) The owner or the person named in the PPP as the individual responsible for drafting or implementing the plan shall be responsible for inspections and record keeping.
- (b) Incidents including spills, discharges, and other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records shall be kept on site for a minimum of three (3) years.
- (c) The authorized person named in the PPP shall require inspection of designated equipment and facility areas. Material handling areas shall be inspected for evidence of or the potential for pollutants entering the drainage system. A follow-up procedure shall be used to insure that appropriate action has been taken in response to the inspection.
- (d) In addition to the Department annual inspection, a complete inspection of the facility shall be performed at least annually by the owner. A report documenting the findings of the inspection shall be prepared, which includes the operative status of the check valves system on applicable wells. The inspection shall be conducted by the authorized person named in the PPP to verify that the description of potential pollutant sources is accurate, the drainage map has been updated or otherwise modified to reflect current conditions and the controls outlined in the PPP to reduce pollutants are being implemented and are adequate.
- (e) The Department may sample wells on or near the site.
- (f) Records documenting significant observation made during the site inspection shall be retained as part of the Pollution Prevention Plan. Records of all inspections shall be maintained for a period of three (3) years.

### **35:17-4-16. Best Management Practices (BMPs)**

- (a) The owner shall document all Best Management Practices (BMPs) used to comply with the required effluent limitations. Equivalent measures contained in a site-specific AWMP prepared by NRCS may be substituted for the BMPs.
- (b) The criteria for BMPs shall be established in writing by the Department and shall include but not be limited to the following:
  - (1) There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the facility. Wastewater retention structures or land application of wastewater shall not be located within three hundred (300) feet of an existing public or private drinking water well.
  - (2) Animal waste handling, treatment, and management shall not knowingly or reasonably result in the destruction of endangered or threatened species or contribute to the taking of any federally endangered or threatened species of plant, fish or wildlife, nor shall disposal knowingly interfere with or cause harm to migratory birds. The owner shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird or endangered species kill or die-off on or near retention ponds or in fields where waste has been applied and which could reasonably have resulted from waste management at the facility.
  - (3) Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner designed to prevent pollutants from being discharged to surface or groundwaters of the State.
  - (4) The owner shall prevent the discharge of pesticide contaminated waters into surface or groundwaters of the State. All wastes from dipping vats, pest, and parasite control units and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner which prevents pollutants from entering the surface or groundwaters of the State.
  - (5) Fresh water entering into contaminated areas shall be managed to prevent contamination. Preventing the drainage of fresh surface waters into or onto waste contaminated areas shall be accomplished by one of the following:
    - (A) Terracing and the construction of other diversion structures to redirect fresh water drainage from entering waste contaminated areas.
    - (B) Rainwaters falling directly on waste contaminated areas of the facility shall be collected and dispersed as a waste.
  - (6) Actions as deemed necessary shall be taken to retain all animal waste on the premises until proper waste utilization is accomplished.

- (c) The owner shall describe how each BMP shall be implemented and complied with at the facility.

### **35:17-4-17. Other statutory authority**

No condition of this Subchapter shall release the owner from any responsibility or requirements under other Federal, State, or Local statutes or rules. The burden shall be upon the owner to determine compliance.

### **35:17-4-18. Violation points system**

The following violation points system shall be utilized by the Department to assess points prior to suspension, revocation, or nonrenewal of a CAFO license. This system shall operate in addition to penalties provided for in the Oklahoma Concentrated Animal Feeding Operations Act, and shall not alter the authority to the Board to revoke a license under other sections of the Act.

- (1) When any animal feeding operation accrues a total of fifteen (15) or more points in any two (2) year time period, the license of the animal feeding operation shall be suspended, revoked, or not renewed by the Board.
- (2) Points shall accrue based on violations of the Oklahoma Concentrated Animal Feeding Operations Act and rules.
  - (A) Failure of any CAFO to apply for a license when required by the provisions of the Oklahoma Concentrated Animal Feeding Operations Act shall accrue three (3) to five (5) points.
  - (B) Knowingly making any false statement, representation, or certification in, omitting material data from, or tampering with any application for a license, or notice relating to the determination of affected property owners shall be a significant violation and accrue four (4) to five (5) points.
  - (C) Failure to follow the Pollution Prevention Plan and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.
  - (D) Failure to follow the Pollution Prevention Plan and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.
  - (E) Failure to provide full closure of a facility pursuant to a closure plan shall accrue three (3) to five (5) points.
  - (F) Failure by an animal feeding operation to utilize or comply with Best Management Practices and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.
  - (G) Failure by an animal feeding operation to utilize or comply with Best Management Practices and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.
  - (H) Failure by an animal feeding operation to report a discharge shall accrue two (2) to four (4) points.
  - (I) Failure by an animal feeding operation to utilize or comply with an Animal Waste Management Plan and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.
  - (J) Failure by an animal feeding operation to utilize or comply with an Animal Waste Management Plan and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.
  - (K) Failure by an animal feeding operation to follow a carcass disposal plan shall accrue one (1) to three (3) points.
  - (L) Failure by an animal feeding operation to follow a erosion control plan shall accrue one (1) to two (2) points.

- (M) Failure to take such actions as are reasonable and necessary to avoid pollution of any stream, lake, river or creek or violate any rule to prevent water pollution shall be a significant violation and accrue five (5) points.
  - (N) Knowingly making false statements, representation, or certification in any water pollution form, notice, or report shall be a significant violation and accrue five (5) points.
  - (O) Knowingly rendering inaccurate any monitoring device or method required to be maintained by any water pollution rules shall be a significant violation and accrue five (5) points.
- (3) All violations which are assessed four (4) or five (5) points shall only accrue points upon approval by the State Board of Agriculture. All other violations shall accrue points upon approval by the Agricultural Environmental Management Services Division of the Department. Assessment of points by the Agricultural Environmental Management Services Division may be appealed in writing to the Division Director. If the accumulated number of points reaches a total of fifteen (15) points, the owner may appeal to the State Board of Agriculture.
  - (4) Even if the violation points do not add up to a total of fifteen (15) points, the State Board of Agriculture may deem a violation that results in serious harm to be so significant as to warrant immediate revocation, nonrenewal, or suspension of the license.
  - (5) Any owner whose license is suspended, revoked, or not renewed shall remain without the license for a minimum of one (1) year. At the Department's discretion, the license may be renewed so long as the owner complies with all conditions which the Department imposes on the animal feeding operation.
  - (6) Conditions for renewal shall at a minimum include compliance during the entire period of revocation with all aspects of the Oklahoma Concentrated Animal Feeding Operations Act and its rules, and correction of all conditions which caused the license nonrenewal, suspension, or revocation.

### **35:17-4-19. Receipt and resolution of complaint against owner**

Upon receipt of a written complaint, the Department notifies the person filing the complaint in writing of its receipt and status within five (5) working days. The party whom the complaint is filed against, if known, is notified within five (5) working days. The resolution of a complaint is the completion of the appropriate administrative, jurisdictional, and legal remedies to the extent possible by the Department. The complainant and owner shall be notified in writing within seven (7) working days after resolution of the complaint.

### **35:17-4-20. Biosecurity**

If direct contact with animals or animal quarters becomes necessary, disease prevention measures outlined by the owner will be followed by the inspector.

### **35:17-4-21. Closure of animal waste retention structures**

- (a) If for any reason a waste retention structure is taken out of operation permanently or by action of the State Board of Agriculture is ordered to permanently cease operations, the owner is responsible for notifying the Department of owner's intention to close the waste retention structures for the handling of animal waste. The owner is responsible for the proper closure of all waste retention structures to be closed. If a facility temporarily ceases operations and remains in full compliance with its Pollution Prevention Plan, the facility shall not be considered to have permanently closed.
- (b) The owner shall submit a closure plan as part of the permit application including at a minimum:
  - (1) The sequence of closing process including but not limited to handling of waste retention structure wastewater, solids, and handling and safe disposal of bottom sludge.
  - (2) Demonstrate the availability of sufficient land area for land application of the liquid, solid, and sludge component of the waste retention structure.
  - (3) Provide a copy of a written estimate, in current dollars, of the cost of hiring an independent third party to decommission each waste retention structure.
- (c) All future changes or modifications to the closure plan shall be approved by the Department.
- (d) A post closure monitoring program shall be conducted for a period of at least three (3) years.
- (e) A certificate of post closure performance shall be submitted to the Department at the end of the post closure period. The certificate shall be signed by the owner and by a Professional Engineer registered in the State of

Oklahoma, indicating that all waste retention structures were maintained and monitored in accordance with the approved closure plan.

- (f) Closure requirements of waste retention structures shall be based on site specific conditions, as follows:
- (1) The Department shall be notified in writing whenever a animal waste retention structure becomes permanently inactive, is abandoned, or operation of the structure ceases permanently for any reason. Any animal waste retention structure shall be considered by the Department to have become permanently inactive or to have ceased operations permanently in the following circumstances:
    - (A) The facility is closed by the Department because of repeated violations which result in the filing of a Board order to cease operations.
    - (B) The owner is unable to furnish documentation to show that there has been receipt of animal waste into the retention structure during the previous twenty-four (24) months and the owner is not maintaining the retention structure in consistent compliance with the applicable rules and the Department approved plans.
  - (2) Upon the owner's determination that a animal waste retention structure has become permanently inactive or has permanently ceased operation pursuant subpart (f)(1)(B) above, the owner shall notify the Department in writing within ninety (90) calendar days thereafter of the intention to close waste retention structure. Closure of retention structures shall commence within six (6) months of the date of notice to the Department of the intention to close and be completed within two (2) subsequent growing seasons. Closure shall be in accordance with a closure plan approved by the Department. Any extension of time for closure shall be requested in writing by the owner and approved by the Department. A legal change other than a transfer of the owner of any animal waste retention structure shall not extend the time limit for closure.
  - (3) Liquid contents of a waste retention structure may be pumped out and land applied according to Department rules.
  - (4) Solids from the waste retention structure shall be removed and disposed of in an environmentally safe manner.
  - (5) Sludge from the bottom of the waste retention structure shall be removed without compromising the integrity of the liner. Sludge may be land applied according to Department rules.
  - (6) The owner shall grid sample soil from the bottom of the waste retention structure and, at the owner's election, shall either:
    - (A) have the samples analyzed in a State certified laboratory for nitrate-nitrogen and electrical conductance; or
    - (B) analyze samples in the field for nitrate-nitrogen and electrical conductance using field leaching procedures and a test kit, with laboratory confirmation by sending one sample per every twenty (20) samples to a laboratory for analysis.
  - (7) The owner shall develop a plan, subject to Department approval, regarding soil removal, if necessary, based on the grid sample data.
  - (8) If soil is to be removed from the bottom of a waste retention 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.
  - (9) The Department may require monitoring wells if evidence indicates that contamination has migrated to the groundwater based on site specific conditions.
  - (10) Exemption from closure and transfer of responsibility for any animal waste retention structure to any other party shall be requested in writing for approval by the Department.

### **35:17-4-22. Variances**

Variances from these rules shall only be granted on a case by case basis and the granting of a variance shall not act as a precedent for any other case, whether similar or not. In each case where a variance is granted, the decision shall be thoroughly documented.

### **35:17-4-23. Licensed facilities not yet constructed**

All structures and facilities licensed but not yet constructed shall be subject to all construction requirements of the Oklahoma Concentrated Animal Feeding Operations Act in effect at the date of construction. Prior to

commencement of construction, the Pollution Prevention Plan shall be updated, and the Department shall be notified of construction prior to commencement.

**35:17-4-24. Repealer**

All previous rules promulgated by the Board under the Oklahoma Feed Yards Act or the Oklahoma Concentrated Animal Feeding Operations Act are repealed.