

AN ACT

relating to the regulation of poultry facilities and poultry litter by the State Soil and Water Conservation Board and to the enforcement authority of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.068 to read as follows:

Sec. 382.068. POULTRY FACILITY ODOR; RESPONSE TO COMPLAINTS. (a) In this section, "poultry facility" and "poultry litter" have the meanings assigned by Section 26.301, Water Code.

(b) The commission shall respond and investigate not later than 18 hours after receiving:

(1) a second complaint against a poultry facility concerning odor associated with:

(A) the facility; or

(B) the application of poultry litter to land by the poultry facility; or

(2) a complaint concerning odor from a poultry facility at which the commission has substantiated odor nuisance conditions in the previous 12 months.

(c) If after the investigation the commission determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue

1 a notice of violation.

2 (d) The commission by rule or order shall require the owner
3 or operator of a poultry facility for which the commission has
4 issued three notices of violation under this section during a
5 12-month period to enter into a comprehensive compliance agreement
6 with the commission. The compliance agreement must include an odor
7 control plan that the executive director determines is sufficient
8 to control odors.

9 (e) The owner or operator of a new poultry facility shall
10 complete a poultry facility training course on the prevention of
11 poultry facility odor nuisances from the poultry science unit of
12 the Texas AgriLife Extension Service not later than the 90th day
13 after the date the facility first accepts poultry to raise. The
14 owner or operator of a new poultry facility shall maintain records
15 of the training and make the records available to the commission for
16 inspection.

17 (f) The poultry science unit of the Texas AgriLife Extension
18 Service may charge an owner or operator of a poultry facility a
19 training fee to offset the direct cost of providing the training.

20 SECTION 2. Section 26.302, Water Code, is amended by adding
21 Subsections (b-2) and (b-3) to read as follows:

22 (b-2) The State Soil and Water Conservation Board in
23 consultation with the Texas Commission on Environmental Quality by
24 rule shall establish criteria to determine the geographic,
25 seasonal, and agronomic factors that the board will consider to
26 determine whether a persistent nuisance odor condition is likely to
27 occur when assessing the siting and construction of new poultry

1 facilities.

2 (b-3) The State Soil and Water Conservation Board may not
3 certify a water quality management plan for a poultry facility
4 located less than one-half of one mile from a business, off-site
5 permanently inhabited residence, or place of worship if the
6 presence of the facility is likely to create a persistent odor
7 nuisance for such neighbors, unless the poultry facility provides
8 an odor control plan the executive director determines is
9 sufficient to control odors. This subsection does not apply to:

10 (1) a revision of a previously certified and existing
11 water quality management plan unless the revision is necessary
12 because of an increase in poultry production of greater than 50
13 percent than the amount included in the existing certified water
14 quality management plan for the facility; or

15 (2) any poultry facility located more than one-half of
16 one mile from a surrounding business, permanently inhabited
17 off-site residence, or place of worship established before the date
18 of construction of the poultry facility.

19 SECTION 3. Subchapter H, Chapter 26, Water Code, is amended
20 by adding Sections 26.304 and 26.305 to read as follows:

21 Sec. 26.304. RECORDS OF SALE, PURCHASE, TRANSFER, OR
22 APPLICATION OF POULTRY LITTER. (a) A poultry facility that sells
23 or transfers poultry litter for off-site application must maintain
24 until the second anniversary of the date of sale or transfer a
25 record regarding:

26 (1) the identity of the purchaser or applicator;

27 (2) the physical destination of the poultry litter

1 identified by the purchaser or transferee;

2 (3) the date the poultry litter was removed from the
3 poultry facility; and

4 (4) the number of tons of poultry litter removed.

5 (b) A person that purchases or obtains poultry litter for
6 land application must maintain until the second anniversary of the
7 date of application a signed and dated proof of delivery document
8 for every load of poultry litter applied to land. The landowner or
9 the owner's tenant or agent shall note on the document the date or
10 dates on which the poultry litter was applied to land.

11 (c) Subsection (b) does not apply to poultry litter that is:

12 (1) taken to a composting facility;

13 (2) used as a bio-fuel;

14 (3) used in a bio-gasification process; or

15 (4) otherwise beneficially used without being applied
16 to land.

17 Sec. 26.305. INSPECTION OF RECORDS. The commission may
18 inspect any record required to be maintained under this subchapter.

19 SECTION 4. Section 5.1175, Water Code, is amended to read as
20 follows:

21 Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) The
22 commission by rule may [~~shall~~] allow a person who [~~small business~~
23 ~~that~~] owes a monetary civil or administrative penalty imposed for a
24 violation of law within the commission's jurisdiction or for a
25 violation of a license, permit, or order issued or rule adopted by
26 the commission to pay the penalty in periodic installments. The
27 rule must provide a procedure for a person [~~qualified small~~

1 ~~business]~~ to apply for permission to pay the penalty over time.

2 (b) ~~[The rule must classify small businesses by their net~~
3 ~~annual receipts and number of employees. A business that is a~~
4 ~~wholly owned subsidiary of a corporation may not qualify as a small~~
5 ~~business under this section.~~

6 [~~e~~] The rule may vary the period over which the penalty
7 may be paid or the amount of the periodic installments according to
8 the amount of the penalty owed and the size of the business that
9 owes the penalty. The period over which the penalty may be paid may
10 not exceed 36 [~~12~~] months.

11 SECTION 5. Section 7.002, Water Code, is amended to read as
12 follows:

13 Sec. 7.002. ENFORCEMENT AUTHORITY. The commission may
14 initiate an action under this chapter to enforce provisions of this
15 code and the Health and Safety Code within the commission's
16 jurisdiction as provided by Section 5.013 of this code and rules
17 adopted under those provisions. The commission or the executive
18 director may institute legal proceedings to compel compliance with
19 the relevant provisions of this code and the Health and Safety Code
20 and rules, orders, permits, or other decisions of the commission.
21 The commission may delegate to the executive director the authority
22 to issue an administrative order, including an administrative order
23 that assesses penalties or orders corrective measures, to ensure
24 compliance with the provisions of this code and the Health and
25 Safety Code within the commission's jurisdiction as provided by
26 Section 5.013 of this code and rules adopted under those
27 provisions.

1 SECTION 6. Subsection (h), Section 26.0135, Water Code, is
2 amended to read as follows:

3 (h) The commission shall apportion, assess, and recover the
4 reasonable costs of administering the water quality management
5 programs under this section [~~from users of water and wastewater~~
6 ~~permit holders in the watershed according to the records of the~~
7 ~~commission generally in proportion to their right, through permit~~
8 ~~or contract, to use water from and discharge wastewater in the~~
9 ~~watershed~~]. Irrigation water rights, non-priority hydroelectric
10 rights of a water right holder that owns or operates privately owned
11 facilities that collectively have a capacity of less than two
12 megawatts, and water rights held in the Texas Water Trust for terms
13 of at least 20 years will not be subject to this assessment. The
14 cost to river authorities and others to conduct water quality
15 monitoring and assessment shall be subject to prior review and
16 approval by the commission as to methods of allocation and total
17 amount to be recovered. The commission shall adopt rules to
18 supervise and implement the water quality monitoring, assessment,
19 and associated costs. The rules shall ensure that water users and
20 wastewater dischargers do not pay excessive amounts, [~~that program~~
21 ~~funds are equitably apportioned among basins,~~] that a river
22 authority may recover no more than the actual costs of
23 administering the water quality management programs called for in
24 this section, and that no municipality shall be assessed cost for
25 any efforts that duplicate water quality management activities
26 described in Section 26.177. [~~The rules concerning the~~
27 ~~apportionment and assessment of reasonable costs shall provide for~~

1 ~~a recovery of not more than \$5,000,000 annually. Costs recovered by~~
2 ~~the commission are to be deposited to the credit of the water~~
3 ~~resource management account and may be used only to accomplish the~~
4 ~~purposes of this section. The commission may apply not more than 10~~
5 ~~percent of the costs recovered annually toward the commission's~~
6 ~~overhead costs for the administration of this section and the~~
7 ~~implementation of regional water quality assessments. The~~
8 ~~commission, with the assistance and input of each river authority,~~
9 ~~shall file a written report accounting for the costs recovered~~
10 ~~under this section with the governor, the lieutenant governor, and~~
11 ~~the speaker of the house of representatives on or before December 1~~
12 ~~of each even-numbered year.]~~

13 SECTION 7. The change in law made by Subsection (e), Section
14 382.068, Health and Safety Code, as added by this Act, applies only
15 to an owner or operator of a poultry facility the construction of
16 which begins on or after the effective date of this Act. An owner or
17 operator of a poultry facility the construction of which began
18 before the effective date of this Act is governed by the law in
19 effect at the time the construction of the facility began, and the
20 former law is continued in effect for that purpose.

21 SECTION 8. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1693 passed the Senate on April 24, 2009, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 30, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1693 passed the House, with amendments, on May 26, 2009, by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor