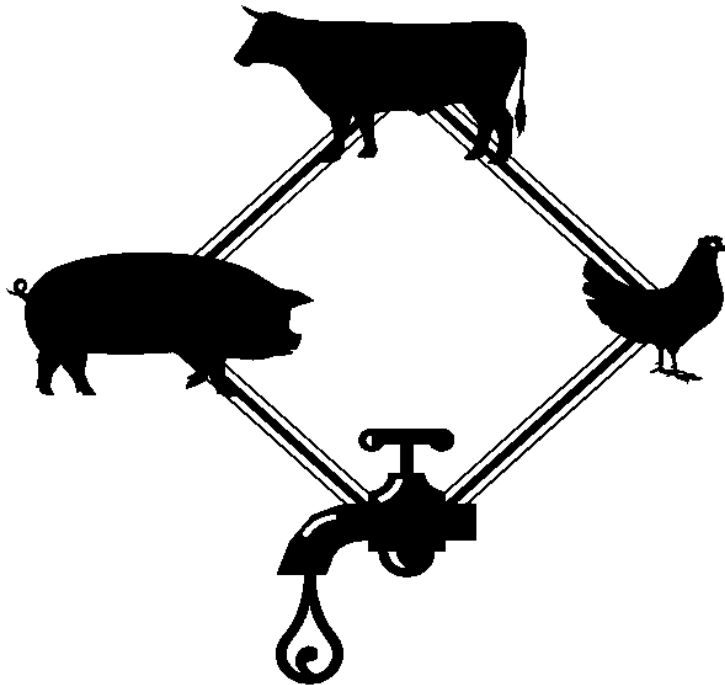




STATE OF OKLAHOMA

**GOVERNOR FRANK KEATING'S
ANIMAL WASTE & WATER QUALITY PROTECTION TASK FORCE**

Final Report



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EXECUTIVE SUMMARY

Seven state environmental agency representatives and eight governor-appointed private citizens met bi-weekly from June to December 1997 to develop recommendations for Governor Keating to ensure the protection of Oklahoma's water supply from the state's burgeoning confined animal production industry.

In its six months of deliberations, the Animal Waste and Water Quality Protection Task Force ("Task Force"), created by Executive Order 97-07, identified a substantial list of concerns and issues surrounding Oklahoma's confined animal production industry.

By concentrating on its directive under Executive Order 97-07, the Task Force was able to narrow its focus to **water quality** concerns stemming from confined animal production. This would allow the Task Force members not only to meet their December 1, 1997 deadline, but also, to deliberate issues related to their experience and expertise. Thus, the majority of this final report to Governor Keating deals with issues and recommendations for **water quality** protection.

Generally, the Task Force agreed that *Oklahoma's Concentrated Animal Feeding Operations Act* (the "CAFO Act"), created by H.B. 1522, was an excellent "first step" in bringing needed regulation to Oklahoma's expanding swine industry. As with any new piece of legislation, however, some amendments to this law were deemed appropriate by the Task Force and are included within the text of this report.

These recommendations are offered in an attempt to strengthen some of the requirements placed on swine and other CAFO industries by the CAFO Act.

In addition to the recommended amendments to the CAFO Act, the Task Force realized that one large sector of confined animal production, *viz.*, the poultry industry, was essentially exempted from regulation.

Only those poultry operations that utilize a liquid animal waste system were captured by the CAFO Act. However, the majority of Oklahoma's poultry operations are considered "dry litter" operations. Because these dry litter operations have been cited by both state and national research as sources of nutrient runoff into streams and lakes, the Task Force believed that new legislation should be drafted to ensure that dry litter poultry operations take extra precautions to control nutrient runoff from the land application of dry litter. Essentially, the Task Force calls upon the legislature to statutorily require dry litter poultry operations to do what many operations already are doing voluntarily -- to follow the U.S. Department of Agriculture Natural Resource Conservation Service ("NRCS") guidelines for the proper collection, storage, and disposal of animal waste.

This final report is a compilation of the more than seventy-five recommendations passed during the Task Force's six months of deliberations. The recommendations are organized into sections based on the method needed to implement those recommendations. Recommendations that are not "industry-specific" are included in the first section of the report; the industry-specific recommendations follow.

INTRODUCTION

In the year leading up to the creation of Governor Keating's Animal Waste and Water Quality Protection Task Force, there was a great deal of public outcry and debate regarding Oklahoma's burgeoning confined animal production industry. During the first session of the 46th legislature, numerous pieces of legislation attempting to deal with these confined animal production issues were introduced but, ultimately, failed. However, one significant piece of animal production legislation survived the 1997 legislative session -- House Bill 1522 ("H.B. 1522" or the "CAFO Act").

Commonly referred to as the "Hog Bill," H.B. 1522 was a milestone in animal production regulation. Many observers felt that it finally would give state regulatory agencies enough power to ensure the protection of Oklahoma's environment from the rapidly growing confined animal production industry. However, another large contingency believed that H.B. 1522 lacked the teeth necessary to halt what they believed was the sacrificing of Oklahoma's environment to promote industrial growth. Nevertheless, most agreed that H.B. 1522 was an excellent "first step" toward regulating Oklahoma's swine industry.

Recognizing that a growing conflict still existed and the urgent need to ensure protection of Oklahoma's vital water supply, Governor Frank Keating signed Executive Order 97-07 on April 15, 1997 creating the Animal Waste and Water Quality Protection Task Force. Governor Keating realized that the State's regulation of water quality problems associated with the management of poultry, swine, and bovine waste was, at best, "fragmented and inefficient." Desirous of a coordinated, comprehensive effort to protect the quality of Oklahoma's water for future generations, Governor Keating called upon seven state agencies and eight private citizens to perform the following specific tasks:

- ◆ examine the current and past use, marketing, and disposal of poultry, swine and bovine waste and its effect on the quality of Oklahoma's water supply;
- ◆ assemble current laws and regulations in Oklahoma relating to the use, marketing, and disposal of poultry, swine and bovine waste for the purpose of determining areas of responsibility for the protection of the quality of Oklahoma's water supply;
- ◆ analyze and coordinate the activities of each state entity currently examining and regulating the use, marketing, and disposal of poultry, swine and bovine waste; and
- ◆ develop a statewide strategy and action plan to oversee the future use, marketing and disposal of poultry, swine and bovine waste and its effect on the quality of Oklahoma's water supply; the plan shall include a mechanism for progressive monitoring of the state's water quality to determine changes as they are needed. The plan shall also include recommendations for legislation, regulatory change, structural and operational change, public-private partnerships, incentives, and other measures the Task Force deems appropriate to protect the quality of Oklahoma's water supply for future generations.

Beginning June 4, 1997, the Task Force held bi-weekly meetings until the date of its appointed deadline, December 1, 1997. In addition to these regularly scheduled meetings, the Task Force conducted numerous field trips across Oklahoma and into neighboring states in order to investigate the current status and environmental impacts of confined animal production in Oklahoma. In its investigation of the issues involved in confined animal production, the Task Force quickly realized that environmental protection is only one component of the debate surrounding these operations. Much of the contention and hostility toward confined animal production exists because of a wide array of “social” and “economic” issues, as well.

OVERARCHING RECOMMENDATIONS

The recommendations within this section are not specific to any one confined animal production industry. Instead, these recommendations address measures that should be implemented to address all confined animal production concerns.

◆ **PUBLIC PARTICIPATION**

- (1) Allow the registered voters of each county to determine the size and nature of confined animal production activities to be permitted within that county.
- (2) In conjunction with passing “County Option” legislation, the Task Force recommends that the legislature prohibit the Oklahoma Department of Agriculture from granting CAFO licenses for any new facility until such time as may be necessary in order to permit each county to bring their “County Option” referendum to a vote of the people and to establish the criteria for confined animal production activities within their county.
- (3) Statutorily require CAFO and Licensed Poultry Feeding Operation (“LPFO”) licenses *prior to* the construction or expansion of a facility.
- (4) Statutorily require ODA to give equal consideration to issues of interested parties who present specific allegations showing that the proposed facility or expanding operations may have a direct and substantial effect upon the legally protected interests of the affected property owner.

◆ **OPERATOR CERTIFICATION**

- (1) Any person, employee, or independent contractor, or other persons deemed appropriate by the ODA, involved in the collection, storage, treatment, or disposal of animal waste at a licensed animal feeding operation facility shall have completed an ODA-certified animal waste education course. Certification will be based upon successful completion of an examination, and annual refresher courses shall also be required.

◆ **ADMINISTRATIVE PROCEDURES**

- (1) Rather than transfer authority over animal feeding operations to another state agency, allow ODA to implement and enforce all measures recommended by the Task Force and required by H.B. 1522, and evaluate its progress and success after one year.

- (2) The Task Force recommends that the legislature set appropriate fees (on a per animal unit basis) to appropriately fund ODA's administration and enforcement of animal feeding operations. In addition to supporting administration and enforcement, monies collected from fees shall also fund ODA's statewide animal waste education program and a statewide soil testing program.
These fees shall be paid by the parties who own the animals producing the waste. For example, poultry fees shall be paid by the integrators. Swine fees shall be paid by the integrator, in the case of contract growers, and by the license holder if the license holder also owns the swine. Bovine shall be paid by the license or permit holder who can, at their option, either absorb the cost or pass it on to the owner of the livestock.
- (3) The Task Force recommends that the Secretary of Environment exercise his statutory authority (27A §1-2-101(3) *O.S.Supp.1996*) to "Coordinate pollution control activities of the state carried on by **all state agencies** to avoid duplication of effort" (emphasis added). Under this authority, the Secretary of Environment should investigate the current organization and structure of all state agencies with environmental responsibilities, as well as investigate the current administration and use of Federal Water Pollution Control Act ("Clean Water Act") funds, and make recommendations to Governor Keating for a more streamlined approach to the state's water pollution control activities, including but not limited to those activities surrounding confined animal production. In addition to identifying the most efficient organization of environmental duties, the Secretary of Environment should specifically address the most feasible approach to establishing and funding a statewide ambient trend monitoring program for ground and surface waters. Finally, the Governor should recognize the above mentioned task as a high priority for the Secretary of Environment and should recommend the full cooperation of all cabinet secretaries and agency directors to advance this effort.
- (4) In addition to the above, the Secretary of Environment shall pursue the development and implementation of numerical nutrient water quality standards.
- (5) Ensure that ODA's required unannounced, annual inspections are done without advance notice given to the operator of the licensed facility.
- (6) Allow the Oklahoma Board of Agriculture to set appropriate license fees for animal feeding operations.
- (7) Give ODA sixty working days, rather than thirty working days, to approve or deny applications or requests to transfer licenses.

- (8) The Task Force supports OWRB's current efforts to promulgate and implement more stringent standards for improving the safety of Oklahoma's water wells, both existing and abandoned.

◆ **FINANCIAL/TECHNICAL ASSISTANCE**

- (1) Recommend that the legislature work with the appropriate state agencies to establish, and adequately fund, a statewide cost-share program to address water quality and animal waste issues with an emphasis on priority watersheds.

◆ **LAND APPLICATION**

- (1) All soil and animal waste test results shall be kept on-site for as long as the facility is in operation. ODA shall maintain a database of these results, as well.

POULTRY BILL RECOMMENDATIONS

Because poultry waste management procedures are vastly different from those used by other confined animal production industries, the Task Force voted early on to create an entirely new statute to specifically regulate the poultry industry.

◆ **CORPORATE RESPONSIBILITIES**

- (1) As a condition of their contract, integrators shall require their growers and company farms to have, or be in the process of obtaining, an animal waste management plan developed by the NRCS (or other entity approved by ODA) that, as a minimum, will include all land associated with the production and utilization of animal waste. This plan will be available for review by the integrator and/or ODA. Integrator companies shall also be required to include a provision in all contracts with producers that requires implementation of BMPs.
- (2) Integrators shall provide adequate waste disposal training for their contract growers at no cost to the growers.
- (3) At least annual inspections shall be provided by the integrator at all facilities with an AWMP. The inspection shall include a review of the AWMP to determine if it is up-to-date, a review of litter application records to determine compliance with the AWMP, and a review of all other records. If not in compliance, the inspector shall notify ODA within ten days, and the integrator shall provide monthly lists of potential needs for technical assistance. Upon notification, ODA shall inspect the poultry operation and determine if a violation has occurred. After full administrative hearing and due process, the integrator shall be notified by ODA that the operation is not in compliance with the AWMP, and ODA shall direct the integrator to cease providing poultry to the operator until further notice from ODA. In addition to integrator inspections, ODA shall conduct spot check inspections of facilities to ensure compliance with the AWMP.

◆ **OPERATOR CERTIFICATION**

- (1) Require all integrators to require their potential growers to have completed an ODA-certified training course prior to entering into a contractual agreement. All existing contract growers must complete this same course within one year of passage of the Act. All commercial litter handlers and/or spreaders shall also be required to attend this training. Additionally, all employees of integrator companies who handle animal waste shall be required to attend this course. Certification of this training shall be issued based upon passage of an examination. Annual refresher courses also shall be required. No litter shall be spread by anyone who has not completed this training. Failure to comply with this requirement shall be deemed a violation of the Act.

◆ **ADMINISTRATIVE PROCEDURES**

- (1) The legislature should set appropriate fee schedules for integrators (on a per bird basis) to adequately fund ODA's administration and enforcement of animal feeding operation activities.
- (2) Require ODA licensing for "Licensed poultry feeding operations (LPFO)," as defined below, with the understanding that two or more poultry feeding operations under common ownership are considered to be a single operation if they adjoin each other or if they use a common area or system for waste disposal **AND** once the cumulative number of animals managed by a person meets the minimum numbers specified for an LPFO, all additional poultry feeding operations owned or managed by the person shall be required to obtain licenses.
"Licensed poultry feeding operation (LPFO)" means a poultry feeding operation using a dry litter waste management system, which has more than the number of poultry specified in any of the following categories confined:
 - a. 30,000 laying hens or broilers, (animal unit equivalent of 0.033)
 - b. 20,000 turkeys, (animal unit equivalent of 0.050)
 - c. 5,000 ducks, or
 - d. 1,000 animal units.
- (3) Define "***Poultry feeding operation***" as a lot or facility where the following conditions are met:
 - a. Poultry have been, are, or will be confined and fed or maintained for a total of 30 days or more in any 12 month period, and
 - b. crops, vegetation, forage growth or post harvest residues are not sustained in the normal growing seasons over any portion of the lot or facility.
- (4) Facilities in operation at the time of enactment of dry litter regulations will not be exempted from licensing and inspection by ODA and shall be subject to BMPs governing their land application of waste (i.e., no grandfathering).
- (5) Applications for a license to operate a new or previously unlicensed poultry feeding operation, or expanding operation, shall contain, at a minimum, the following information:
 - a. name and address of the owner and operator of the facility;
 - b. name and address of the poultry feeding operation;
 - c. capacity (in animal units), number, and type of poultry housed or confined;
 - d. a copy of the Pollution Prevention Plan containing an AWMP, BMPs or such other plans authorized by the act and approved by ODA;
 - e. name and address of the integrator whose poultry will be raised on the LPFO;
 - f. any other information deemed necessary by ODA to administer the provisions of the act and rules promulgated thereto; and
 - g. the LPFO shall send written notification to ODA upon changing integrators.

- (6) Any person violating the act or coinciding rule shall, upon conviction, be deemed guilty of a misdemeanor and punished by a fine of not less than \$200.00.
- (7) Any owner or operator who fails to take such action as may be reasonable and necessary to avoid pollution of any waters of the state or who violates any rule of the Board of Agriculture adopted to prevent water pollution from poultry feeding operations shall, upon conviction, be deemed guilty of a misdemeanor and punished by a fine of not less than \$300.00 for each violation, by imprisonment in the county jail for not more than 6 months for each violation, or by the assessment of an administrative penalty up to \$10,000.00 for each violation, or by any of such fine, imprisonment and administrative penalty.
- (8) Each day upon which a violation is committed or is permitted to continue shall be deemed a separate offense.
- (9) In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification on any water pollution form, notice or report, or who knowingly renders inaccurate any monitoring device or method required to be maintained by any water pollution regulations adopted by the Board of Agriculture, shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine of not more than \$5,000.00 for each such violation.
- (10) The Board of Agriculture shall adopt a violation points system such that:
 1. Violations that involve the greatest harm to the natural resources of the State, ground or surface water quantity or quality, public health, or the environment shall receive the most points and shall be considered significant violations.
 2. Violations that are committed willfully or intentionally shall be considered significant violations.
 3. The number of points received shall be directly related to the degree of negligence or willfulness.
 4. The commission of three significant violations, or the commission of lesser violations that result in a predetermined cumulative numbers of points, within a limited period of time of not less than 2 years shall result in the mandatory revocation of a license.
 5. The commission of one willful violation that results in serious harm may result in the revocation of a license.

- (11) In developing the Violation Points system under this section, the Board shall determine the:
 1. Number of points that lesser violations must cumulatively total to result in the revocation of a license.
 2. Limited period of time during which the commission of three significant violations, or the commission of a greater number of lesser violations, will result in the revocation of the operator's license. This limited period of time shall not be less than two years.
 3. Duration of the license revocation.
 4. Conditions under which the person whose license is revoked may reapply for another license for an LPFO.
- (12) Appeals shall be in accordance with Article II of the Oklahoma Administrative Procedures Act.
- (13) The Board shall report disciplinary actions taken against a license holder to any state requesting such information. After full administrative hearing, including appeals, the Board also shall report disciplinary actions taken against a license holder in at least one paper of general circulation in the county where the LPFO is located.
- (14) Poultry producers identified by complaint to ODA as flagrantly disregarding BMPs shall result in ODA contacting the integrator associated with the violator. After full administrative hearing and due process, ODA shall notify in writing the integrator.
- (15) ODA shall notify all integrators of all violations assessed against operators who are under contract for the production of poultry with that integrator and, upon the written request of the integrator, notify that integrator of all violations assessed an operator with whom the integrator contemplates entering into a contract.

◆ **LAND APPLICATION**

- (1) In phosphorous-threatened watersheds, an initial soil sample of all fields to receive litter shall be required. The person shall retest annually on all fields testing over 150 pounds of phosphorous and shall retest every three years on all fields testing under 150 pounds of phosphorous.
- (2) Litter testing shall be required on an annual basis prior to clean-out. Sufficient time shall be allowed to provide time to receive results before land application. Litter analyses shall be utilized to determine application rates.

- (3) Soil and litter analysis data shall be retained by the poultry operation for as long as the site is in operation.
- (4) Results of all soil and litter analyses shall be entered into a database maintained by ODA.
- (5) ODA shall establish a mechanism to validate soil and litter testing.
- (6) ODA shall adopt and enforce the most current NRCS standards in determining litter application rates.
- (7) ODA shall perform appropriate testing of soil and litter to detect priority pollutants, including but not limited to those pollutants listed in U.S. EPA's Table 2-1. If any other pollutants are detected, appropriate limits, including those limits established by U.S. EPA in Table 2-1, shall be established by ODA to govern litter application rates in those areas where other pollutants were detected.

◆ **WASTE STORAGE**

- (1) Stored litter should be covered or protected in some manner both to reduce loss of nutrient value (especially nitrogen value) and to prevent phosphorous runoff during rainfall events.
- (2) The LPFO shall develop a plan for the disposal of carcasses associated with normal mortality.
- (3) In the event of a major disease outbreak or other emergency resulting in deaths significantly higher than normal mortality rates, ODA may approve, in writing, an alternate method of carcass disposal during the emergency period.

◆ **FINANCIAL/TECHNICAL ASSISTANCE**

- (1) Establish tax incentives for any business that locates within a sensitive watershed that utilizes litter in such a way as to remove the litter from that watershed.
- (2) The Task Force endorses ODA's efforts to establish a pilot program for litter marketing.

◆ **LOCATION RESTRICTIONS**

- (1) For those setbacks currently established in H.B. 1522, increase the eastern Oklahoma setbacks by one-quarter of a mile and the western Oklahoma setbacks by one-half of a mile. Additionally, establish a two mile setback for any facility with more than 4,000 animal units.
- (2) Prohibit CAFOs from locating within three miles of any church-owned camp or other nonprofit camp pre-existing as of December 1, 1997.
- (3) Prohibit CAFOs from locating within three miles of the center of currently existing Scenic Rivers.
- (4) Prohibit CAFOs from locating within one mile of areas with waters of recreational and/or ecological significance as outlined in Appendix B of the *Oklahoma Water Quality Standards*.
- (5) In its site selection, ODA shall consider the property interests of the proposed CAFO and the property interests of affected property owners within two miles of the proposed facility. Significant harm to an adjacent landowners' use and enjoyment of the property may be grounds for denial of the site selection.
- (6) ODA shall consider OWRB's currently delineated vulnerable aquifers in determining the appropriate siting of CAFO facilities.
- (7) ODA shall establish a schedule of compliance to retrofit existing CAFO lagoons in order to provide added protection in vulnerable aquifer areas.

◆ **WASTE STORAGE**

- (1) Require a ten foot minimum separation (rather than the current four foot separation as provided for in H.B. 1522) between the lagoon bottom and maximum groundwater elevation; require this separation to be certified only by a licensed professional engineer.
- (2) Lagoon liners shall be constructed to meet a minimum permeability of 1×10^{-7} cm/sec except for operations with less than 1,000 animal units, which may use NRCS standards and technical assistance for lagoon construction.
- (3) Require every CAFO and LMFO to have an ODA approved “odor abatement plan” as part of their required Pollution Prevention Plan. This would give ODA personnel something to review when investigating odor complaints against these facilities. It would also give facility operators an opportunity to learn new waste management techniques and encourage development of technology that might reduce odor.
- (4) ODA shall promulgate criteria for CAFO lagoon design to accomplish odor abatement. Odor abatement plans shall be updated periodically, as determined by ODA, to provide for the inclusion of new treatment methods and technologies as they become available.
- (5) The Task Force recommends that ODA conduct a study to determine if the current surety bond system, established under H.B. 1522, is adequate to protect the State from abandoned lagoon cleanup costs or if some other mechanism for insuring against this cost is necessary.

◆ **LAND APPLICATION**

- (1) All LMFOs shall remain liable for compliance with all rules, regulations, and statutes regarding the proper handling and disposal of their animal waste.
- (2) In phosphorous-threatened watersheds, an initial soil sample of all fields to receive animal waste shall be required. The person shall retest annually on all fields testing over 150 pounds of phosphorous and shall retest every three years on all fields testing under 150 pounds of phosphorous.
- (3) Results of all soil and litter analyses should be entered into a database kept by ODA.
- (4) ODA shall establish a mechanism to validate soil testing.
- (5) ODA shall adopt and enforce the most current NRCS standards in determining animal waste application rates.

- (6) ODA shall perform appropriate testing of soil and animal waste to detect priority pollutants, including but not limited to those pollutants listed in U.S. EPA's Table 2-1. If any other pollutants are detected, appropriate limits, including those limits established by U.S. EPA in Table 2-1, shall be established by ODA to govern animal waste application rates in those areas where other pollutants were detected.
- (7) The Task Force recommends that the legislature clarify its intent regarding the 300 foot setback from water wells requirement in H.B. 1522. Does this setback apply only to those wells not owned by the operator of the facility, or does it apply to *all* wells regardless of ownership?

◆ **ADMINISTRATIVE PROCEDURES**

- (1) The legislature should appropriately fund ODA, through fees collected from the animal owners at facilities that house swine and employ liquid animal waste systems, to accomplish the duty assigned to ODA under H.B. 1522 to monitor for groundwater contamination at all facilities utilizing liquid animal waste retention structures.
- (2) Make CAFO licensing mandatory by eliminating the exemption from licensing in H.B. 1522 of facilities that discharge only in 25 year/24 hour storm events.
- (3) Change the definition for confinement in H.B. 1522 back to 45 days, instead of 90 days.
- (4) Reinsert the word "consecutive" in the definition of "confinement" in H.B. 1522 to require 45 consecutive days of confinement.
- (5) Remove the exemptions in H.B. 1522 that prevent those that voluntarily apply for CAFO licenses from being considered CAFOs for regulatory purposes.
- (6) Change the animal unit multiplier for weaned swine under 25 kilograms from one-tenth (0.1) to two-tenths (0.2) and change the animal unit CAFO threshold for swine under 25 kilograms from 10,000 animals to 5,000 animals.
- (7) Allow ODA to assess a fine of not more than \$10,000 for any person that willfully or maliciously misrepresents information in a CAFO application or tampers with a CAFO application once it is posted for public view.
- (8) Establish and adopt a Violation Points system applicable to licenses for CAFOs to operate in addition to the provisions of the CAFO Act.

◆ **PUBLIC PARTICIPATION**

- (1) Redefine membership of the CAFO rule advisory committee as follows:
- three (instead of six) members shall be animal feeding operators
 - one member shall be from the field of geology (same)
 - one member shall be a soil scientist (same)
 - one member shall be a water quality scientist (none previously)
 - one member shall represent the Oklahoma Water Resources Board (none previously)
 - one member shall represent the Department of Environmental Quality (none previously)
 - one member shall be an ecologist
 - three (instead of one) members shall represent the general public.
- (2) Add the following clause to H.B. 1522: “CAFOs shall report any discharge in at least one newspaper of general circulation in the county where the discharging facility is located. The report shall include all information submitted to ODA regarding the discharge.”