



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Nutrient Management Plans Statutes & Regulations

Kansas

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Nutrient Management Plans

STATE OF KANSAS

- 1) K.S.A. §§ 2-3318, 65-1,181, 65-1,182; K.A.R. §§ 28-18a-14, 4-20-15; 4-21-1 et seq.
- 2) K.S.A. § 65-1,181; K.A.R. §§ 28-18a-4, 13
- 3) K.S.A. §§ 65-166a, 65-171d

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Kansas Revisor of Statutes.

1) K.S.A. §§ 2-3318; 65-1,181 65-1,182; K.A.R. §§ 28-18a-14, 4-20-15, 4-21-1 et seq.

§ 2-3318. Application of swine waste; authority of secretary of health and environment; nutrient utilization plans, review and approval; penalties for violations.

(a) Regardless of whether irrigation water is added, whenever swine waste is applied to crops or land, the secretary of health and environment is authorized to investigate, inspect or conduct any manner of examination or review of the application of swine waste. No swine waste shall be applied to crops or land in excess of agronomic application rates.

(b) The secretary of health and environment shall review and approve all nutrient utilization plans that provide for the application of swine waste to crops or land and that are submitted by swine confined feeding facilities pursuant to K.S.A. 65-1,182, and amendments thereto, if the plans demonstrate that swine waste will be applied pursuant to agronomic application rates and include all required information. Nutrient utilization plans shall be submitted on a form required by the secretary of health and environment.

(c) Failure of the operator of a swine confined feeding facility to implement a nutrient utilization plan approved by the secretary of health and environment shall be considered a violation of the Kansas chemigation safety law for which the secretary may suspend a permit pursuant to K.S.A. 2-3310, and amendments thereto, or may impose a civil penalty pursuant to K.S.A. 2-3317, and amendments thereto, or both.

(d) This section shall be part of and supplemental to the Kansas chemigation safety law.

65-1,181. Manure management plan; lagoon standards; monitoring wells, when.

(a) Each applicant for a permit for construction of a new swine facility having an animal unit capacity of 1,000 or more or expansion of an existing swine facility to an animal unit capacity of 1,000 or more shall submit with the application for a permit a manure

management plan and shall comply with the plan when the permit is issued by the department.

(b) Each existing swine facility that has an animal unit capacity of 1,000 or more on the effective date of this act shall submit to the department, within six months after the rules and regulations implementing this act are adopted, a manure management plan for approval by the department and shall comply with the plan as soon thereafter as practicable.

(c) Each manure management plan required by this section shall describe the methods for, and account for, the disposal of all manure and wastewater generated by the swine facility. If the methods of disposal of the manure or wastewater include land application, the facility also shall prepare a nutrient utilization plan, as required by subsection (b) of K.S.A. 65-1,182, and amendments thereto.

(d) Each swine facility that is required by this section to have a manure management plan shall amend such plan whenever warranted by changes in the facility or in other conditions affecting the facility.

(e) The secretary shall establish by rules and regulations the circumstances under which amendments to manure management plans must be submitted to the department for the department's approval.

(f) Each swine facility that is required by this section to have a manure management plan shall maintain such plan in accordance with K.S.A. 65-1,185, and amendments thereto.

(g) As a condition of approval of any permit for a swine facility that is required by this section to have a manure management plan, the department shall require that, if the operator of the facility does not own the swine at the facility, the operator shall execute with the owner of the swine a contract that specifies responsibility for management of the manure and wastewater generated at the facility.

(h) If a swine facility is required by this section to have a manure management plan and such facility generates manure or wastewater, or both, that is sold or given to a person who is not employed by the facility and is to be disposed of by means other than land application on areas covered by the facility's nutrient utilization plan, the department shall require that:

(1) The facility shall maintain a log of removal of the manure or wastewater from the facility and such log shall contain the following:

(A) The name and address of each person to whom the manure or wastewater is sold or given and of each hauler of the manure or wastewater;

(B) the date of the removal of the manure or wastewater; and

(C) the volume of the removed manure or wastewater; and

(2) the facility shall provide to the hauler of the removed manure or wastewater the most recent manure nutrient analysis conducted pursuant to subsection (c) of K.S.A. 65-1,182 and amendments thereto, if the removed manure or wastewater are to be land applied.

(i)

(1) Except as provided by subsection (i)(5), if a swine waste retention lagoon or pond is utilized by a swine facility that has an animal unit capacity of 3,725 or more and is located where the groundwater is at a depth of 25 feet or less from the underneath side of the liner of the lagoon or pond:

(A) The sides and bottom of such lagoon or pond shall be lined with:

(i) A compacted soil liner with a minimum depth of one foot and maximum seepage rate of 1/8 inch per day; or

(ii) an impermeable liner on top of a compacted soil liner with a minimum depth of one foot and maximum seepage rate of 1/4 inch per day; and

(B) the facility operator shall be required to install not fewer than one upstream and two downstream groundwater monitoring wells for each such single cell lagoon or pond and for the primary cell of each such multiple cell lagoon or pond, or employ equivalent technology, as provided by rules and regulations of the secretary.

(2) Except as provided by subsections (i)(3),(4) and (5), if a swine waste retention lagoon or pond is utilized by a swine facility that has an animal unit capacity of 3,725 or more and is located where the groundwater is at a depth of more than 25 feet from the underneath side of the liner of the lagoon or pond, the sides and bottom of such lagoon or pond shall be lined with:

(A) A compacted soil liner with a minimum depth of one foot and maximum seepage rate of 1/8 inch per day; or

(B) an impermeable liner on top of a compacted soil liner with a minimum depth of one foot and maximum seepage rate of 1/4 inch per day.

(3) If the compacted soil liner requirements of subsection (i)(2) cannot be met for one or more waste retention lagoons or ponds to which such subsection applies:

(A) The sides and bottom of such lagoons or ponds shall be lined with an impermeable liner on top of a soil liner compacted to the extent possible; and

(B) if the groundwater is at a depth of 150 feet or less from the surface of the land at the place where such lagoons or ponds are located, the facility operator shall be required to install not fewer than one upstream and two downstream groundwater monitoring wells for each such single cell lagoon or pond and for the primary cell of each such multiple cell lagoon or pond, or employ equivalent technology, as provided by rules and regulations of the secretary.

(4) Any swine waste retention lagoons or ponds existing on the effective date of this act and utilized by a swine facility that has an animal unit capacity of 3,725 or more shall not be required to meet the requirements of subsection (i)(1), (2) or (3) but the facility operator shall be required to install, before January 1, 2000, not fewer than one upstream and two downstream groundwater monitoring wells for each such single cell lagoon or pond and for the primary cell of each such multiple cell lagoon or pond, or employ equivalent technology, as provided by rules and regulations of the secretary, if the groundwater is at a depth of 150 feet or less from the surface of the land at the place where such lagoons or ponds are located unless: (A) The groundwater is at a depth of more than 25 feet from the underneath side of the liner of the lagoons or ponds; and (B) the facility operator submits to the department engineering or field data that proves compliance with the requirements of subsection (i)(2).

(5) On or after January 1, 2000, if the secretary determines, based on scientific evidence, that the standards imposed by subsections (i)(1), (2), (3) and (4) are not required to protect the groundwater, the secretary may increase the animal unit capacity at which such standards apply.

(j) The secretary may require installation and sampling of groundwater monitoring wells in the vicinity of any swine waste retention lagoon or pond when the secretary determines necessary, or the secretary may allow the use of equivalent technology, as provided by rules and regulations of the secretary. The locations and design of such monitoring wells shall be subject to approval by the secretary.

(k) The secretary may require, as a condition of issuance or renewal of a permit for a swine facility having an animal unit capacity of 1,000 or more, that trees be planted as vegetative screening to control odor. *

(l) The secretary may adopt by rules and regulations such additional standards for location and construction of swine waste retention lagoons and ponds utilized by swine facilities having an animal unit capacity of 1,000 or more as the secretary determines necessary to protect the waters and soils of the state and the public health.

(m) Before issuing any permit for a swine facility that will utilize a swine waste retention lagoon or pond or approving any plans for a swine waste retention lagoon or pond, the department shall make a determination, after consultation with the state corporation commission, that there is no unplugged oil or gas well at the planned location of such lagoon or pond. If, during construction of any swine waste retention lagoon or pond, an unplugged well is discovered at the location of such lagoon or pond, the facility owner and the facility operator shall have the duty to report the discovery to the department immediately.

§ 65-1,182. Nutrient utilization plan; requirements for land application of manure or wastewater.

(a) The department of health and environment shall not issue or renew a permit for any swine facility that has an animal unit capacity of 1,000 or more and that applies manure or wastewater to land unless:

(1) The land application process complies with the applicable requirements of this section; and

(2) the nutrient utilization plan required by this section is approved by the secretary of health and environment as specified by K.S.A. 2013 Supp. 2-3318, and amendments thereto.

(b)

(1) If the manure management plan prepared pursuant to K.S.A. 65-1,181, and amendments thereto, provides for land application of manure or wastewater:

(A) The applicant for a permit for construction of a new swine facility or for expansion of an existing swine facility shall submit with the application for a permit a nutrient utilization plan on a form prescribed by the secretary of health and environment as applicable and shall comply with the plan when the permit is issued by the department of health and environment; and

(B) the operator of an existing swine facility shall submit to the department of health and environment, within six months after the rules and regulations implementing this act are adopted, a nutrient utilization plan on a form prescribed by the secretary of health and environment, for approval by the secretary of health and environment and shall comply with the plan by a date established by the secretary of health and environment.

(2) Each nutrient utilization plan shall address site-specific conditions for land application of manure, wastewater and other nutrient sources, comply with the requirements of this section and contain, at minimum, the following:

(A) A site map of all land application areas, including section, township and range;

(B) crop rotations on the land application areas;

(C) annual records of soil tests, manure nutrient analyses, and calculations required by subsection (c);

(D) nutrient budgets for the land application areas;

(E) rates, methods, frequency and timing of application of manure, wastewater and other nutrient sources to the land application areas;

(F) the amounts of nitrogen and phosphorus applied to the land application areas;

(G) precipitation records and the amounts of irrigation and other water applied;

(H) records of inspections and preventive maintenance of equipment required by subsection (f)(6);

(I) copies of all landowner agreements for land that is not owned by the swine facility and is scheduled to receive manure or wastewater;

(J) names of employees and contractors whom the operator of the swine facility has identified pursuant to subsection (f)(7) to supervise the process of transferring manure or wastewater to land application equipment and the process of land application;

(K) records of training of all personnel who supervise and conduct the land application of manure or wastewater, as required by subsection (f)(7); and

(L) any other information required by the secretary of health and environment to facilitate approval.

(3)

(A) A swine facility that is required to have a nutrient utilization plan shall amend such plan whenever warranted by changes in the facility, soil test results or other conditions affecting the facility.

(B) Amendments to the nutrient utilization plan must be approved by the secretary of health and environment.

(4) A swine facility that is required to have a nutrient utilization plan shall maintain such plan in accordance with K.S.A. 65-1,185, and amendments thereto.

(c)

(1) Each swine facility that has a manure management plan that includes land application of manure or wastewater shall:

(A) Conduct soil tests, including but not limited to tests for nitrogen, phosphate, chloride, copper and zinc, on the land application areas prior to preparation of the nutrient utilization plan and at least annually thereafter, or as often as required by best available soil science and standards relative to the soils of, and crops to be grown on, the land application areas or as required by the secretary of health and environment; and

(B) include the results of such tests in its nutrient utilization plan.

(2) Each swine facility that has a manure management plan that includes land application of manure or wastewater or sells or gives manure or wastewater to third persons pursuant to subsection (h) of K.S.A. 65-1,181, and amendments thereto, shall:

(A) Conduct manure nutrient analyses of its manure and wastewater prior to preparation of its nutrient utilization plan and at least every two years thereafter; and

(B) include the results of such analyses in its nutrient utilization plan.

(3) Each swine facility that has a manure management plan that includes land application of manure or wastewater shall:

(A) Compare the manure nutrient analyses required by subsection (c)(2) with the soil tests required by subsection (c)(1) to calculate needed fertility and application rates for pasture production and crop target yields on the land application areas prior to the preparation of the nutrient utilization plan and each time thereafter when new soil tests or manure nutrient analyses are conducted; and

(B) include such calculations in the nutrient utilization plan.

(d) If a swine facility is required to have a nutrient utilization plan and finds that the soil tests required pursuant to this act indicate that the phosphorus holding capacity for any soils in the facility's land application areas may be exceeded within five years, the facility shall promptly initiate the process to obtain access to the additional land

application areas needed, or make other adjustments, to achieve the capability to apply manure or wastewater at appropriate agronomic rates.

(e) The Kansas department of health and environment may require a swine facility that is required to have a nutrient utilization plan to apply manure or wastewater on all or a portion of the facility's land application areas at a rate within the agronomic phosphorus needs of the crops or pasture, or the soil phosphorus holding capacity, in less than the time originally allowed in the approved nutrient utilization plan if the department of health and environment finds that the land application actions of the facility are contributing to the impairment of groundwater or surface water.

(f)

(1) Each swine facility that is required to have a nutrient utilization plan shall include in such plan, and thereafter comply with, the requirements that manure or wastewater shall not be applied on bare ground by any process, other than incorporation into the soil during the same day, within 1,000 feet of any habitable structure, wildlife refuge or city, county, state or federal park, unless:

(A) The manure or wastewater has been subjected to physical, biological or biochemical treatment or other treatment method for odor reduction approved by the department of health and environment;

(B) the manure or wastewater is applied with innovative treatment or application that is best available technology for swine facilities and best management practices for swine facilities or other technology approved by the department of health and environment; or

(C) the owner of the habitable structure has provided a written waiver to the facility.

(2) The separation distance requirements of subsection (f)(1) shall not apply to any structure constructed or park designated as a city, county, state or federal park after the effective date of this act, for swine facilities in existence on the effective date of this act, or any structure constructed or park designated as a city, county, state or federal park after submission of an application for a permit for a new swine facility or expansion of an existing swine facility.

(3) Swine facilities that are required to have a nutrient utilization plan shall not apply manure or wastewater:

(A) To lands classified as highly erodible according to the conservation compliance provisions of the federal food security act of 1985, as in effect on the effective date of this act, and classified as highly erodible on the basis of erosion resulting from water runoff, except where soil conservation practices to control erosion and runoff in compliance with

the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility;

(B) during rain storms, except where soil conservation practices to control erosion and runoff in compliance with the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility;

(C) to frozen or saturated soil, except where soil conservation practices to control runoff in compliance with the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility; and

(D) to any areas to which the separation distance requirements of subsection (f) apply.

(4) Swine facilities that are required to have a nutrient utilization plan shall follow procedures and precautions in the land application of manure or wastewater to prevent discharge of manure or wastewater to surface water and groundwater due to excess infiltration, penetration of drainage tile lines, introduction into tile inlets or surface runoff, including appropriate soil conservation practices to protect surface water from runoff carrying eroded soil and manure particles.

(5) Swine facilities that are required to have a nutrient utilization plan and that conduct wastewater irrigation shall:

(A) Employ measures to irrigate under conditions that reasonably prevent surface runoff; and

(B) use reasonable procedures and precautions to avoid spray drift from the land to which it is applied.

(6) Each swine facility that is required to have a nutrient utilization plan and that land applies manure or wastewater shall ensure that any equipment used in the land application process is properly maintained and calibrated and monitor the use of the equipment so that any malfunction that develops during the land application process is detected and the process ceases until the malfunction is corrected.

(7) The operator of each swine facility that is required to have a nutrient utilization plan and that land applies manure or wastewater shall:

(A) Identify, train and keep current the training of each employee and contractor who supervises the transfer of manure or wastewater to land application equipment and the conducting of land application activities; and

(B) train, and keep current the training of, all employees and contractors who conduct land application activities.

(g) Each swine facility that is required to have a nutrient utilization plan shall amend such plan whenever warranted by changes in conditions. The operator of the facility shall file such plan and any amendments to such plan with the department of health and environment.

(h) The secretary of health and environment shall make a determination to approve or disapprove a nutrient utilization plan not later than 45 days after the plan is received from the department of health and environment.

§ 28-18a-14. Nutrient utilization plan for swine.

(a) A nutrient utilization plan shall be developed and implemented for each proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more that applies swine or other process wastes to the land, pursuant to L. 1998, ch. 143, sec. 6, and amendments thereto [K.S.A. 1998 Supp. 65-1,182, and amendments thereto]. When submitting nutrient utilization plans to the department, each swine operator shall submit at least five copies of the plan.

(b) Each swine facility required to develop and implement a nutrient utilization plan shall amend the plan and submit the plan to the department whenever specifically directed by the department or whenever warranted by one or more of the following:

(1) Changes in operation of the swine facility;

(2) a change or modification in the swine waste management or pollution control system; or

(3) other conditions affecting the swine facility, waste management system, or pollution control system.

(c) The nutrient utilization plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous five years' versions of the plan and any associated records, data, or other information.

§ 4-20-15. Agronomic application rates.

The agronomic application rate for swine waste shall be the amount of waste required for plant nutrition and for the nutrient-holding capacity of the surfaces or soils to which swine waste is applied, as determined by sound agronomic methods. Sound agronomic application rates shall be determined in consultation with Kansas state university. Sound

agronomic methods may include the rate derived from the calculations from the form prescribed by the secretary of agriculture in K.A.R. 4-21-1 and K.A.R. 4-21-7.

§ 4-21-1. “Nutrient utilization plan” defined; amendments to the plan; exceptions.

(a) A confined feeding facility for swine under Kansas law that has an animal unit capacity of 1,000 or more and whose waste is applied to land shall prepare a nutrient utilization plan for review by the secretary of agriculture. The plan shall be on a form prescribed by the secretary and shall be a plan that forecasts nutrient management from the date of submission through the next five years. The plan shall be updated annually, maintained at the office of the swine facility, along with the three previous years’ versions of the records, and made available to the secretary of agriculture upon request.

(b) Whenever the term “waste” is referred to in article 21 of these regulations, it shall mean swine manure, swine wastewater, or swine manure and swine wastewater mixed together.

(c) Changes in conditions that warrant amendments requiring the secretary’s approval to a facility’s nutrient utilization plan shall include any of the following:

(1) A swine facility’s permit is no longer valid, but the facility plans to seek a new permit.

(2) Additional land to which waste will be applied is not described in an approved plan.

(3) A procedure for waste application will be used that is not described in an approved plan.

(4) Land included in an approved nutrient utilization plan is no longer available for application as provided for in the approved nutrient utilization plan because legal authorization for land application no longer exists for that land.

(5) A phosphorus soil analysis result exceeds the phosphorus-holding capacity of the soil in a field as prescribed by K.A.R. 4-21-7.

(d) Swine facilities required by law to prepare nutrient utilization plans shall submit any other amendments necessary to facilitate approval as requested by the secretary of agriculture.

(e) Any amendment described in subsection (c) or subsection (d) of this regulation to the plan

§ 4-21-2. “Field” defined.

A field is defined, for purposes of preparation of a nutrient utilization plan, as an expanse of land devoted to one particular crop or tillage condition at a time and managed uniformly. A field shall also be the area identified by section, township, and range and outlined on a site map contained in a filed nutrient utilization plan approved by the secretary of agriculture.

§ 4-21-3. Soil samples.

(a)

(1) The soil nutrient values may be determined either by analysis of a single composite of representative samples from a field or from the mathematical average of all the results from grid samples. Grid soil sampling is defined as a systematic method of sampling that separates the field into identified subunits with each subunit sampled separately. Each composite sample shall be representative, at the time it is taken, of the soils and of the nutrient values in the field from which the sample is taken.

(2) Each field where waste is to be applied shall be sampled before the application unless the field has been sampled in the preceding 12 months, but sampling shall not be required more frequently than annually unless required by the department due to elevated nutrient levels. The sampling shall consist of a representative number of soil cores from each field and shall be collected by either of the following methods:

(A) Two composite samples shall be collected from each field by separating the top six inches of each core collected from the bottom of the core sample. If multiple cores are taken, all samples from the top six inches of soil shall be mixed together. This composite sample shall be tested for phosphorous, zinc, copper, nitrate-N, and chloride. The bottom segment of each soil core sample from six through 24 inches shall then be mixed together, and this composite sample shall be tested for nitrate-N and chloride.

(B) Two composite samples shall be collected by obtaining individual core samples. A composite sample to be tested for phosphorous, copper, and zinc shall be collected from the top six inches of the soil and mixed if multiple cores are collected. The second composite sample shall be tested for nitrate-N and chloride, and shall be collected by taking a core sample from the soil surface to a soil depth of 24 inches. If multiple cores are taken, the samples shall be mixed before testing.

(b) The owner or operator of each swine facility shall sample the soil within 60 days following any application of waste if the application is the result of an emergency waste disposal. Each individual who collects any soil sample to comply with these regulations shall certify the location and number of representative cores collected from the field.

(c) A copy of the certification of each field and the laboratory analysis of composite or grid soil sample shall be maintained in the office of the swine facility and made available to the secretary of agriculture or designee upon request. The certification required by this regulation shall be submitted on a form prescribed by the secretary.

(d) Samples shall be taken by the secretary of agriculture or designee if, at that individual's discretion, an inspection requires a sample. Each composite soil sample taken by the secretary of agriculture or designee shall be taken in the manner required by this regulation and by K.A.R. 4-21-4. A composite soil sample taken by the secretary of agriculture or designee shall be presumed to be representative of the field. Whether a sample is representative shall be within the sole discretion of the secretary of agriculture, and the secretary's determination of whether a sample is representative shall be final.

§ 4-21-4. Soil tests.

The composite soil samples from each field shall be analyzed for the nutrients specified in subsection (a) in the manner prescribed by this regulation.

(a) The analyses listed in this subsection shall follow the directions on the specified pages that are hereby adopted by reference from the north central regional research publication no. 221, "recommended chemical soil test procedures for the north central region," revised January 1998, as follows:

(1) The analysis for nitrate-N shall follow the directions on pages 17 through 19.

(2) The analysis for phosphorus shall follow the directions on pages 21 through 26. Calcareous soils shall follow the directions for the Olsen phosphorus test on pages 25 through 26. For noncalcareous soils, the analysis shall follow the directions for either the Bray and Kurtz P-1 analysis, on pages 21 through 22, or the Mehlich 3 analysis, on pages 23-24. Calcareous soil is defined as soil having a pH above 7.0 that effervesces when a solution of 3N (three normal) hydrochloric acid is added drop-wise to the sample.

(3) The analysis for copper shall follow the directions for diethylenetriaminepentaacetic acid (DTPA) extraction on pages 41 through 42.

(4) The analysis for chlorides shall follow the directions for the mercury (II) thiocyanate method on pages 49 through 50.

(5) The analysis for zinc shall follow the directions for DTPA extraction on pages 41 through 42.

(b) An analysis different from any analysis specified in this regulation may be used if the analysis is based on generally recognized sound agronomic interpretations and laboratory methods and is approved by the secretary of agriculture.

(c) The authorized representative for the laboratory at which the sample was analyzed shall certify that the sample was analyzed according to the applicable procedure set forth in this regulation and that the results of the analysis are an accurate analysis of the sample. The laboratory's certification shall show the date the sample was received, the date the sample was analyzed, the signature of the laboratory's authorized representative, and the results of the analysis for each chemical in each sample analyzed.

§ 4-21-5. Agreements to apply swine waste.

Each agreement for the application of waste on land owned by a person or persons other than the swine facility that is required to prepare a nutrient utilization plan shall be in writing.

§ 4-21-6. Record keeping.

(a) Each swine facility that is required to prepare a nutrient utilization plan shall keep records required by the law for the five years immediately preceding the date of the then-current inspection or for the years the swine facility operates after January 1, 1999. The swine facility shall not be required to keep records required by these regulations for more than five years from the date of approval.

(b) Actual nutrient values of waste may be used if the analysis used to determine the values is based on generally recognized sound agronomic interpretations and laboratory methods. Book values that are generally recognized as based on sound agronomic calculations may be substituted for actual values in preparing a nutrient utilization plan except for soil nutrient contents that require assay.

(c) Only actual soil analysis values shall be used in the preparation of nutrient utilization plans.

(d) Each facility shall maintain the records required for that facility by K.A.R. 4-21-1 through K.A.R. 4-21-7, and K.A.R. 4-20-15 at the facility's site office. All records required to be kept by K.A.R. 4-21-1 through K.A.R. 4-21-7, and K.A.R. 4-20-15 shall be made available to the secretary of agriculture upon request.

§ 4-21-7. Exceeding the agronomic rate for phosphorus-holding capacity.

A phosphorus soil analysis, as required by the secretary, shall be deemed to exceed the agronomic rate for phosphorus-holding capacity of the soil in a field if any of the following conditions is met:

(a) The average annual rainfall is less than or equal to 22 inches, all of the field has a slope of five percent or less, and the soil analysis result using the Bray and Kurtz P-1 or the Mehlich 3 analysis method for phosphorus ("P") for the field exceeds 200 ppm or exceeds 76 ppm of "P" using the Olsen analysis method, as adopted by reference in K.A.R. 4-21-4.

(b) The average annual rainfall is less than or equal to 22 inches, any part of the field has a slope of greater than five percent, and the soil analysis result using the Bray and Kurtz P-1 or the Mehlich 3 analysis method for "P" exceeds 150 ppm or exceeds 57 ppm of "P" using the Olsen analysis method.

(c) The average annual rainfall is greater than 22 inches but less than 30 inches, the slope for all of the field is less than five percent, and the soil analysis result using the Bray and Kurtz P-1 or Mehlich 3 analysis method for "P" for the field exceeds 150 ppm or exceeds 57 ppm of "P" using the Olsen analysis method.

(d) The average annual rainfall is greater than 22 inches but less than or equal to 30 inches, the slope of any part of the field is greater than five percent, and the soil analysis result using the Bray and Kurtz P-1 or Mehlich 3 analysis method for "P" for the field exceeds 100 ppm or exceeds 38 ppm of "P" using the Olsen analysis method.

(e) The average annual rainfall is greater than 30 inches, and the soil analysis result using the Bray and Kurtz P-1 or Mehlich 3 analysis method for "P" for the field exceeds 100 ppm or exceeds 38 ppm of "P" using the Olsen analysis method.

2) K.S.A. § 65-1,181; K.A.R. §§ 28-18a-4, 13

§ 65-1,181. Manure management plan; lagoon standards; monitoring wells, when.

(a) Each applicant for a permit for construction of a new swine facility having an animal unit capacity of 1,000 or more or expansion of an existing swine facility to an animal unit capacity of 1,000 or more shall submit with the application for a permit a manure management plan and shall comply with the plan when the permit is issued by the department.

(b) Each existing swine facility that has an animal unit capacity of 1,000 or more on the effective date of this act shall submit to the department, within six months after the rules and regulations implementing this act are adopted, a manure management plan for approval by the department and shall comply with the plan as soon thereafter as practicable.

(c) Each manure management plan required by this section shall describe the methods for, and account for, the disposal of all manure and wastewater generated by the swine facility. If the methods of disposal of the manure or wastewater include land application, the facility also shall prepare a nutrient utilization plan, as required by subsection (b) of K.S.A. 65-1,182, and amendments thereto.

(d) Each swine facility that is required by this section to have a manure management plan shall amend such plan whenever warranted by changes in the facility or in other conditions affecting the facility.

(e) The secretary shall establish by rules and regulations the circumstances under which amendments to manure management plans must be submitted to the department for the department's approval.

(f) Each swine facility that is required by this section to have a manure management plan shall maintain such plan in accordance with K.S.A. 65-1,185, and amendments thereto.

(g) As a condition of approval of any permit for a swine facility that is required by this section to have a manure management plan, the department shall require that, if the operator of the facility does not own the swine at the facility, the operator shall execute with the owner of the swine a contract that specifies responsibility for management of the manure and wastewater generated at the facility.

(h) If a swine facility is required by this section to have a manure management plan and such facility generates manure or wastewater, or both, that is sold or given to a person who is not employed by the facility and is to be disposed of by means other than land application on areas covered by the facility's nutrient utilization plan, the department shall require that:

(1) The facility shall maintain a log of removal of the manure or wastewater from the facility and such log shall contain the following:

(A) The name and address of each person to whom the manure or wastewater is sold or given and of each hauler of the manure or wastewater;

(B) the date of the removal of the manure or wastewater; and

(C) the volume of the removed manure or wastewater; and

(2) the facility shall provide to the hauler of the removed manure or wastewater the most recent manure nutrient analysis conducted pursuant to subsection (c) of K.S.A. 65-1,182 and amendments thereto, if the removed manure or wastewater are to be land applied.

(i)

(1) Except as provided by subsection (i)(5), if a swine waste retention lagoon or pond is utilized by a swine facility that has an animal unit capacity of 3,725 or more and is located where the groundwater is at a depth of 25 feet or less from the underneath side of the liner of the lagoon or pond:

(A) The sides and bottom of such lagoon or pond shall be lined with:

(i) A compacted soil liner with a minimum depth of one foot and maximum seepage rate of 1/8 inch per day; or

(ii) an impermeable liner on top of a compacted soil liner with a minimum depth of one foot and maximum seepage rate of 1/4 inch per day; and

(B) the facility operator shall be required to install not fewer than one upstream and two downstream groundwater monitoring wells for each such single cell lagoon or pond and for the primary cell of each such multiple cell lagoon or pond, or employ equivalent technology, as provided by rules and regulations of the secretary.

(2) Except as provided by subsections (i)(3),(4) and (5), if a swine waste retention lagoon or pond is utilized by a swine facility that has an animal unit capacity of 3,725 or more and is located where the groundwater is at a depth of more than 25 feet from the underneath side of the liner of the lagoon or pond, the sides and bottom of such lagoon or pond shall be lined with:

(A) A compacted soil liner with a minimum depth of one foot and maximum seepage rate of 1/8 inch per day; or

(B) an impermeable liner on top of a compacted soil liner with a minimum depth of one foot and maximum seepage rate of 1/4 inch per day.

(3) If the compacted soil liner requirements of subsection (i)(2) cannot be met for one or more waste retention lagoons or ponds to which such subsection applies:

(A) The sides and bottom of such lagoons or ponds shall be lined with an impermeable liner on top of a soil liner compacted to the extent possible; and

(B) if the groundwater is at a depth of 150 feet or less from the surface of the land at the place where such lagoons or ponds are located, the facility operator shall be required to install not fewer than one upstream and two downstream groundwater monitoring wells for each such single cell lagoon or pond and for the primary cell of each such multiple cell lagoon

or pond, or employ equivalent technology, as provided by rules and regulations of the secretary.

(4) Any swine waste retention lagoons or ponds existing on the effective date of this act and utilized by a swine facility that has an animal unit capacity of 3,725 or more shall not be required to meet the requirements of subsection (i)(1), (2) or (3) but the facility operator shall be required to install, before January 1, 2000, not fewer than one upstream and two downstream groundwater monitoring wells for each such single cell lagoon or pond and for the primary cell of each such multiple cell lagoon or pond, or employ equivalent technology, as provided by rules and regulations of the secretary, if the groundwater is at a depth of 150 feet or less from the surface of the land at the place where such lagoons or ponds are located unless: (A) The groundwater is at a depth of more than 25 feet from the underneath side of the liner of the lagoons or ponds; and (B) the facility operator submits to the department engineering or field data that proves compliance with the requirements of subsection (i)(2).

(5) On or after January 1, 2000, if the secretary determines, based on scientific evidence, that the standards imposed by subsections (i)(1), (2), (3) and (4) are not required to protect the groundwater, the secretary may increase the animal unit capacity at which such standards apply.

(j) The secretary may require installation and sampling of groundwater monitoring wells in the vicinity of any swine waste retention lagoon or pond when the secretary determines necessary, or the secretary may allow the use of equivalent technology, as provided by rules and regulations of the secretary. The locations and design of such monitoring wells shall be subject to approval by the secretary.

(k) The secretary may require, as a condition of issuance or renewal of a permit for a swine facility having an animal unit capacity of 1,000 or more, that trees be planted as vegetative screening to control odor. *

(l) The secretary may adopt by rules and regulations such additional standards for location and construction of swine waste retention lagoons and ponds utilized by swine facilities having an animal unit capacity of 1,000 or more as the secretary determines necessary to protect the waters and soils of the state and the public health.

(m) Before issuing any permit for a swine facility that will utilize a swine waste retention lagoon or pond or approving any plans for a swine waste retention lagoon or pond, the department shall make a determination, after consultation with the state corporation commission, that there is no unplugged oil or gas well at the planned location of such lagoon or pond. If, during construction of any swine waste retention lagoon or pond, an unplugged well is discovered at the location of such lagoon or pond, the facility owner and the facility operator shall have the duty to report the discovery to the department immediately.

§ 28-18a-4. Filing of applications and payment of fees.

(a) Each application shall be filed according to K.A.R. 28-16-59 or K.S.A. 65-1,178 and amendments thereto, as applicable.

(b) For the purpose of providing adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a swine facility, the swine operator shall provide to the secretary the name or names and mailing address or addresses of the following:

(1) The United States post office or offices serving the immediate area of the swine facility; and

(2) each owner of a habitable structure or any property located within one mile of the swine facility perimeter, as described by K.S.A. 65-171d, and amendments thereto.

(c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a swine facility, each swine applicant shall submit the following information:

(1) A map identifying the location and layout of the swine facility or the facility perimeter;

(2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the swine facility or the facility perimeter;

(3) a map identifying the location of any wildlife refuge within 16,000 feet of the swine facility or the facility perimeter;

(4) a map identifying all water wells on the swine facility property;

(5) a map identifying any streams and bodies of surface water within one mile of the swine facility or the facility perimeter;

(6) for swine facilities that utilize a swine waste-retention lagoon or pond, any information that the applicant possesses indicating the presence of any unplugged oil, gas, or salt solution mining wells located at the proposed or existing swine facility;

(7) a waste management plan, for any swine facility whose operator is not required to obtain a federal permit;

(8) for swine facilities with an animal unit capacity of 1,000 animal units or more where the swine at the facility are not owned by the operator of the facility, a

copy of the executed contract between the facility operator and owner of the swine, specifying responsibility for management of the manure and wastewater generated at the facility; and

(9) for swine facilities with an animal unit capacity of 1,000 animal units or more, the following information:

(A) A manure management plan;

(B) a nutrient utilization plan that meets the requirements of the Kansas department of agriculture, if the facility applies manure or wastewater to land;

(C) an emergency response plan;

(D) an odor control plan;

(E) a dead swine handling plan;

(F) a nutrient management plan;

(G) a groundwater monitoring plan, if required;

(H) a closure plan, if required; and

(I) for swine facilities with an animal unit capacity of 3,725 animal units or more, financial assurance for closure of the swine facility and closure of the swine waste-retention lagoons or ponds.

(d) Swine facilities on separate pieces of land without a contiguous ownership boundary shall be classified as separate operations, and each applicant shall be assessed a fee under K.A.R. 28-16-56d.

§ 28-18a-13. Manure management plan for swine.

(a) A manure management plan shall be developed and implemented for any proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181 and amendments thereto]. When submitting manure management plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) The manure management plan shall describe the methods for, and shall account for, the disposal of all swine or other process wastes generated by the swine facility. The plan shall include a description of the following:

(1) The source or sources and volume of swine or other process wastes generated by the swine facility;

(2) the method for collecting the swine or other process wastes by the swine facility;

(3) the manner in which the swine or other process wastes shall be directed to any treatment or storage system;

(4) a description of each treatment system utilized;

(5) a description of each storage system utilized;

(6) the location of any sites, including the legal description, where land application of swine or other process wastes will take place;

(7) the method of ultimate disposal or utilization of the swine or other process wastes; and

(8) the procedures to be employed and the information to be retained and provided, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181, and amendments thereto], if swine or other process waste is to be sold or given to a person not employed by the facility and is to be disposed of by means other than land application on areas covered by the facility nutrient utilization plan.

(c) Each swine facility required to develop and implement a manure management plan shall amend the plan and submit the plan to the department for approval whenever specifically directed by the department or whenever warranted by one or more of the following:

(1) Changes in operation of the swine facility;

(2) a change or modification in the swine waste management or pollution control system; or

(3) other conditions affecting the swine facility, waste management system, or pollution control system.

(d) Whenever the operator of a swine facility required to develop a manure management plan does not own all the swine at the facility, the operator shall provide, as a part of the manure management plan, a copy of the executed contract with the owner of the swine that specifies responsibility for management of the swine or other process wastes, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181 and amendments thereto].

(e) The manure management plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous three years' versions of the plan and any associated records, data, or other information.

3) K.S.A. §§ 65-166a, 65-171d

§ 65-166a. Fees for administering water pollution control permit system; expiration of permits; reissuance; permits and fees for confined feeding facilities and truck washing facilities for animal wastes; disposition of moneys.

(a) The secretary of health and environment is authorized and directed to establish by duly adopted rules or regulations a schedule of fees to defray all or any part of the costs of administering the water pollution control permit system established by K.S.A. 65-165 and 65-166, and amendments thereto. The amount of the fees so established shall be based upon the quantity of raw wastes or treated wastes to be discharged, units of design capacity of treatment facilities or structures, numbers of potential pollution units, physical or chemical characteristics of discharges and staff time necessary for review and evaluation of proposed projects. In establishing the fee schedule, the secretary of health and environment shall not assess fees for permits required in the extension of a sewage collection system, but such fees shall be assessed for all treatment devices, facilities or discharges where a permit is required by law and is issued by the secretary of health and environment or the secretary's designated representative. Such fees shall be nonrefundable.

(b) Any such permit for which a fee is assessed shall expire five years from the date of its issuance. The secretary of health and environment may issue permits pursuant to K.S.A. 65-165, and amendments thereto, for terms of less than five years, if the secretary determines valid cause exists for issuance of the permit with a term of less than five years. The minimum fee assessed for any permit issued pursuant to K.S.A. 65-165, and amendments thereto, shall be for not less than one year. Permit fees may be assessed and collected on an annual basis and failure to pay the assessed fee shall be cause for revocation of the permit. Any permit which has expired or has been revoked may be reissued upon payment of the appropriate fee and submission of a new application for a permit as provided in K.S.A. 65-165 and 65-166, and amendments thereto.

(c) A permit shall be required for:

- (1) Any confined feeding facility with an animal unit capacity of 300 to 999 if the secretary determines that the facility has significant water pollution potential; and
- (2) any confined feeding facility with an animal unit capacity of 1,000 or more.

(d) At no time shall the annual permit fee for a confined feeding facility exceed:

- (1) \$25 for facilities with an animal unit capacity of not more than 999;
- (2) \$100 for facilities with an animal unit capacity of 1,000 to 4,999;
- (3) \$200 for facilities with an animal unit capacity of 5,000 to 9,999; or
- (4) \$400 for facilities with an animal unit capacity of 10,000 or more.

(e) Annual permit fees for any truck washing facility for animal wastes shall be as follows:

- (1) For a private truck washing facility for animal wastes with two or fewer trucks, not more than \$25;
- (2) for a private truck washing facility for animal wastes with three or more trucks, not more than \$200; and
- (3) for a commercial truck washing facility for animal wastes, not more than \$320.

(f) The secretary of health and environment shall remit all moneys received from the fees established pursuant to this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water program management fund created in section 1, and amendments thereto.

(g) Any confined feeding facility with an animal unit capacity of less than 300 may be required to obtain a permit from the secretary if the secretary determines that such facility has significant water pollution potential.

(h) Any confined feeding facility not otherwise required to obtain a permit or certification may obtain a permit or certification from the secretary. Any such facility obtaining a permit shall pay an annual permit fee of not more than \$25.

§ 65-171d. Prevention of water pollution; standards; permits; exemption; orders; hearings; appeals; fees; confined feeding facilities, registration prior to construction, separation distance requirements, exemptions.

(a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect designated uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential

sources of pollution, as may in the secretary's judgment be necessary to: (1) Protect the soil and waters of the state from pollution resulting from underground storage of liquid petroleum gas and hydrocarbons, other than underground porosity storage of natural gas; (2) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164, and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (3) establish water quality standards for the waters of the state to protect their designated uses, including establishment of water quality standards variances that may apply to specified pollutants, permittees, or waterbody segments that reflect the highest attainable condition during the specified time period for the variance. In no event shall the secretary's authority be interpreted to include authority over the beneficial use of water, water quantity allocations, protection against water use impairment of a beneficial use, or any other function or authority under the jurisdiction of the Kansas water appropriation act, K.S.A. 82a-701, and amendments thereto.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act, and amendments thereto, as in effect on January 1, 1989, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and rules and regulations adopted pursuant thereto:

(1) "Pollution" means: (A) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated uses; or (B) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(2) "Confined feeding facility" means any building, lot, pen, pool or pond: (A) That is used for the confined feeding of animals or fowl for food, fur or pleasure purposes; (B) that is not normally used for raising crops; and (C) in which no vegetation intended for animal food is growing.

(3)

(A) "Animal unit" means a unit of measurement calculated by adding the following numbers: The number of beef cattle weighing more than 700 pounds multiplied by 1.0; plus the number of cattle weighing less than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing more than 55 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or less multiplied by 0.1; plus the number of sheep or lambs multiplied by 0.1; plus the number of horses multiplied by 2.0; plus the number of

turkeys multiplied by 0.018; plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01; plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; plus the number of laying hens or broilers, if the facility has a dry manure system, multiplied by 0.003; plus the number of ducks multiplied by 0.2. However, each head of cattle will be counted as one full animal unit for the purpose of determining the need for a federal permit. A chicken facility using a dry manure system shall obtain a federal permit if 125,000 or more broilers, or 82,000 or more laying hens, are confined.

(B) "Animal unit" also includes the number of swine weighing 55 pounds or less multiplied by 0.1 for the purpose of determining applicable requirements for new construction of a confined feeding facility for which a permit or registration has not been issued before January 1, 1998, and for which an application for a permit or registration and plans have not been filed with the secretary of health and environment before January 1, 1998, or for the purpose of determining applicable requirements for expansion of such facility.

(C) Except as otherwise provided, animal units for public livestock markets shall be determined by using the average annual animal units sold by the market during the past five calendar years divided by 365. Such animal unit determination may be adjusted by the department if the public livestock market submits documentation that demonstrates that such adjustment is appropriate based on the amount of time in 24-hour increments or partials thereof that animals are at the market.

(4) "Animal unit capacity" means the maximum number of animal units that a confined feeding facility is designed to accommodate at any one time.

(5) "Habitable structure" means any of the following structures that are occupied or maintained in a condition that may be occupied and, in the case of a confined feeding facility for swine, are owned by a person other than the operator of such facility: A dwelling, church, school, adult care home, medical care facility, child care facility, library, community center, public building, office building or licensed food service or lodging establishment.

(6) "Wildlife refuge" means Cheyenne Bottoms wildlife management area, Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des Cygnes and Kirwin national wildlife refuges.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent

pollution. If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir or pond is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir or pond to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e)

(1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that storage or disposal of salt water not regulated by the state corporation commission or refuse in any surface pond not regulated by the state corporation commission is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such storage or disposal of salt water or refuse. Any person aggrieved by such order may within 15 days of service of the order request in writing a hearing on the order.

(2) Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(3) Any action of the secretary pursuant to this subsection is subject to review in accordance with the Kansas judicial review act.

(f) The secretary may adopt rules and regulations establishing fees for plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place.

(g)

(1) Prior to any new construction of a confined feeding facility with an animal unit capacity of 300 or more, such facility shall register with the secretary of health and environment. Such registration shall be accompanied by a \$25 fee. The secretary shall acknowledge the receipt of the registration in a form as designated by the secretary and publish a notice of such receipt.

(2) Such registration shall indicate that the proposed construction will occur within the prescribed tract of land and that the separation distances from the tract boundaries or proposed facility footprint comply with the requirements described in subsections (j), (l) and (m) or exceptions described in (k).

(3) Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential or separation distance violations pursuant to subsection (j).

(A)

(i) If the proposed facility has an animal unit capacity of 1,000 or more, or if a significant water pollution potential is identified for a facility of less than 1,000 but more than 300, such facility shall be required to obtain a permit from the secretary.

(ii) If there is no identified water pollution potential posed by a facility with an animal unit capacity of 300 or more but less than 1,000, the secretary shall certify that no permit is required.

(B) If the secretary certifies that no permit is necessary pursuant to subsection (g)(3)(A)(ii), the secretary shall take the following action in regard to separation distances of such facility:

(i) If the separation distances comply with the requirements for separation distances, the secretary shall certify the registration; or

(ii) if the separation distances do not comply with the requirements for separation distances, the secretary:

(a) May reduce the separation distance requirements pursuant to subsection (k) and certify the registration based on such reduction of separation distances; or

(b) shall report the conditions necessary to receive certification to the registrant.

(h)

(1) Facilities with a capacity of less than 300 animal units may register with the secretary of health and environment. Such registration shall be accompanied by a \$25 fee.

(2) Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential. If there is identified a significant water pollution potential, such facility shall be required to obtain a permit from the secretary. If there is no water pollution potential posed by such facility, the secretary may certify that no permit is required.

(i)

(1) If a facility requires a permit pursuant to subsection (g)(3) or (h)(2), the registrant shall submit an application for such permit not later than 18 months after the date of receipt of registration or the registration shall expire.

(2) Upon petition by the registrant, the secretary may extend the application period, by no more than an additional 18 months, if the secretary believes such an extension is reasonable under the circumstances.

(3) Within 30 days of receipt of an application, the secretary shall notify the registrant of whether the application is complete or incomplete. If the application is incomplete, such notice shall state the reasons why such application is incomplete. Once such registrant submits an application properly addressing each reason listed as a basis for the determination that the application is incomplete, the secretary shall issue an acknowledgment of receipt of the completed application within 30 days of properly addressing such reasons.

(4) Upon expiration of the application period or any extension thereof, the secretary shall not accept any further registrations pertaining to the same location for a period of not less than 180 days.

(j)

(1) Any new construction or new expansion of a confined feeding facility, other than a confined feeding facility for swine, shall meet or exceed the following requirements in separation distances from any habitable structure in existence when the registration is received:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999; and

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 or more.

(2) A confined feeding facility for swine shall meet or exceed the following requirements in separation distances from any habitable structure or city, county, state or federal park in existence when the registration is received:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999;

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 to 3,724;

(C) 4,000 feet for expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion is within the perimeter from which separation distances are determined pursuant to subsection (m) for the existing facility; and

(D) 5,000 feet for: (i) Construction of new facilities with an animal unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion extends outside the perimeter from which separation distances are determined pursuant to subsection (m) for the existing facility.

(3) Any construction of new confined feeding facilities for swine shall meet or exceed the following requirements in separation distances from any wildlife refuge:

(A) 10,000 feet for facilities with an animal unit capacity of 1,000 to 3,724; and

(B) 16,000 feet for facilities with an animal unit capacity of 3,725 or more.

(k)

(1) The separation distance requirements of subsections (j)(1) and (2) shall not apply if the registrant obtains a written agreement from all owners of habitable structures that are within the separation distance stating such owners are aware of the construction or expansion and have no objections to such construction or expansion. The written agreement shall be filed in the register of deeds office of the county in which the habitable structure is located.

(2)

(A) The secretary may reduce the separation distance requirements of subsection (j)(1) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances.

(B) The secretary may reduce the separation distance requirements of subsection (j)(2)(A) or (B) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (n); (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances; or (iii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(C) The secretary may reduce the separation distance requirements of subsection (j)(2)(C) or (D) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (l); or (ii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(l)

(1) The separation distances required pursuant to subsection (j)(1) shall not apply to:

(A) Confined feeding facilities that were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities that existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility, including any expansion for which an application was pending on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(2) The separation distances required pursuant to subsections (j)(2)(A) and (B) shall not apply to:

(A) Confined feeding facilities for swine which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities for swine which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility which existed on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(3) The separation distances required pursuant to subsections (j)(2)(C) and (D) and (h)(3) shall not apply to the following, as determined in accordance with subsections K.S.A. 65-1,178(a), (e) and (f), and amendments thereto:

(A) Expansion of an existing confined feeding facility for swine if an application for such expansion has been received by the department before March 1, 1998; and

(B) construction of a new confined feeding facility for swine if an application for such facility has been received by the department before March 1, 1998.

(m) The separation distances required by this section for confined feeding facilities for swine shall be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine, any swine waste retention lagoons or ponds or other manure or waste-water storage structures and any additional areas designated by the registrant for future expansion. Such separation distances shall not apply to offices, dwellings and feed production facilities of a confined feeding facility for swine.

(n) The registrant shall give the notice required by subsections (k)(2)(B) and (C) by certified mail, return receipt requested, to all owners of habitable structures within the separation distance. The registrant shall submit to the department evidence, satisfactory to the department, that such notice has been given.

(o) All plans and specifications submitted to the department for new construction or new expansion of confined feeding facilities may be, but are not required to be, prepared by a professional engineer or a consultant, as approved by the department. Before approval by the department, any consultant preparing such plans and specifications shall submit to the department evidence, satisfactory to the department, of adequate general commercial liability insurance coverage.