

SENATE BILL No. 245

By Committee on Utilities

2-6

AN ACT concerning confined feeding facility for swine; relating to separation distances; amending K.S.A. 2000 Supp. 65-171d and 65-1,180 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 65-171d is hereby amended to read as follows: 65-171d. (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 beneficial 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 reservoirs of hydrocarbons and liquid petroleum 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 beneficial uses.

(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. 2000 Supp. 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 beneficial uses; or (B) such discharge as will or is likely to exceed state effluent standards

1 predicated upon technologically based effluent limitations.

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

6 (3) “Animal unit” means a unit of measurement calculated by adding
7 the following numbers: The number of beef cattle weighing more than
8 700 pounds multiplied by 1.0; plus the number of cattle weighing less
9 than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle
10 multiplied by 1.4; plus the number of swine weighing more than 55
11 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds
12 or less multiplied by 0.1; plus the number of sheep or lambs multiplied
13 by 0.1; plus the number of horses multiplied by 2.0; plus the number of
14 turkeys multiplied by 0.018; plus the number of laying hens or broilers,
15 if the facility has continuous overflow watering, multiplied by 0.01; plus
16 the number of laying hens or broilers, if the facility has a liquid manure
17 system, multiplied by 0.033; plus the number of ducks multiplied by 0.2.
18 However, each head of cattle will be counted as one full animal unit for
19 the purpose of determining the need for a federal permit. “Animal unit”
20 also includes the number of swine weighing 55 pounds or less multiplied
21 by 0.1 for the purpose of determining applicable requirements for new
22 construction of a confined feeding facility for which a permit or registra-
23 tion has not been issued before January 1, 1998, and for which an appli-
24 cation for a permit or registration and plans have not been filed with the
25 secretary of health and environment before January 1, 1998, or for the
26 purpose of determining applicable requirements for expansion of such
27 facility. However, each head of swine weighing 55 pounds or less shall be
28 counted as 0.0 animal unit for the purpose of determining the need for
29 a federal permit.

30 (4) “Animal unit capacity” means the maximum number of animal
31 units which a confined feeding facility is designed to accommodate at any
32 one time.

33 (5) “Habitable structure” means any of the following structures which
34 is occupied or maintained in a condition which may be occupied and
35 which, in the case of a confined feeding facility for swine, is owned by a
36 person other than the operator of such facility: A dwelling, church, school,
37 adult care home, medical care facility, child care facility, library, com-
38 munity center, public building, office building or licensed food service or
39 lodging establishment.

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

43 (d) In adopting rules and regulations, the secretary of health and en-

1 vironment, taking into account the varying conditions that are probable
2 for each source of sewage and its possible place of disposal, discharge or
3 escape, may provide for varying the control measures required in each
4 case to those the secretary finds to be necessary to prevent pollution. If
5 a freshwater reservoir or farm pond is privately owned and where com-
6 plete ownership of land bordering the reservoir or pond is under common
7 private ownership, such freshwater reservoir or farm pond shall be ex-
8 empt from water quality standards except as it relates to water discharge
9 or seepage from the reservoir or pond to waters of the state, either surface
10 or groundwater, or as it relates to the public health of persons using the
11 reservoir or pond or waters therefrom.

12 (e) (1) Whenever the secretary of health and environment or the
13 secretary's duly authorized agents find that the soil or waters of the state
14 are not being protected from pollution resulting from underground stor-
15 age reservoirs of hydrocarbons and liquid petroleum gas or that storage
16 or disposal of salt water not regulated by the state corporation commission
17 or refuse in any surface pond is causing or is likely to cause pollution of
18 soil or waters of the state, the secretary or the secretary's duly authorized
19 agents shall issue an order prohibiting such underground storage reservoir
20 or surface pond. Any person aggrieved by such order may within 15 days
21 of service of the order request in writing a hearing on the order.

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

25 (3) Any action of the secretary pursuant to this subsection is subject
26 to review in accordance with the act for judicial review and civil enforce-
27 ment of agency actions.

28 (f) The secretary may adopt rules and regulations establishing fees
29 for the following services:

30 (1) Plan approval, monitoring and inspecting underground or buried
31 petroleum products storage tanks, for which the annual fee shall not ex-
32 ceed \$5 for each tank in place;

33 (2) permitting, monitoring and inspecting salt solution mining oper-
34 ators, for which the annual fee shall not exceed \$1,950 per company; and

35 (3) permitting, monitoring and inspecting hydrocarbon storage wells
36 and well systems, for which the annual fee shall not exceed \$1,875 per
37 company.

38 (g) Prior to any new construction of a confined feeding facility with
39 an animal unit capacity of 300 to 999, such facility shall register with the
40 secretary of health and environment. Facilities with a capacity of less than
41 300 animal units may register with the secretary. Any such registration
42 shall be accompanied by a \$25 fee. Within 30 days of receipt of such
43 registration, the department of health and environment shall identify any

1 significant water pollution potential or separation distance violations pur-
2 suant to subsection (h). If there is identified a significant water pollution
3 potential, such facility shall be required to obtain a permit from the sec-
4 retary. If there is no water pollution potential posed by a facility with an
5 animal unit capacity of less than 300, the secretary may certify that no
6 permit is required. If there is no water pollution potential nor any viola-
7 tion of separation distances posed by a facility with an animal unit capacity
8 of 300 to 999, the secretary shall certify that no permit is required and
9 that there are no certification conditions pertaining to separation dis-
10 tances. If a separation distance violation is identified, the secretary may
11 reduce the separation distance in accordance with subsection (i) and shall
12 certify any such reduction of separation distances.

13 (h) (1) Any new construction or new expansion of a confined feeding
14 facility, other than a confined feeding facility for swine, shall meet or
15 exceed the following requirements in separation distances from any hab-
16 itable structure in existence when the application for a permit is
17 submitted:

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

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

22 (2) A confined feeding facility for swine shall meet or exceed the
23 following requirements in separation distances from any habitable struc-
24 ture or city, county, state or federal park in existence when the application
25 for a permit is submitted:

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

27 (B) ~~4,000~~ 10,000 feet for facilities with an animal unit capacity of
28 1,000 to 3,724;

29 (C) ~~4,000~~ 16,000 feet for expansion of existing facilities to an animal
30 unit capacity of 3,725 or more if such expansion is within the perimeter
31 from which separation distances are determined pursuant to subsection
32 (k) for the existing facility; and

33 (D) ~~5,000~~ 16,000 feet for: (i) Construction of new facilities with an
34 animal unit capacity of 3,725 or more; or (ii) expansion of existing facilities
35 to an animal unit capacity of 3,725 or more if such expansion extends
36 outside the perimeter from which separation distances are determined
37 pursuant to subsection (k) for the existing facility.

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

41 (A) 10,000 feet for facilities with an animal unit capacity of 1,000 to
42 3,724; and

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

1 more.

2 (i) (1) The separation distance requirements of subsections (h)(1)
3 and (2) shall not apply if the applicant for a permit obtains a written
4 agreement from all owners of habitable structures which are within the
5 separation distance stating such owners are aware of the construction or
6 expansion and have no objections to such construction or expansion. The
7 written agreement shall be filed in the register of deeds office of the
8 county in which the habitable structure is located.

9 (2) (A) The secretary may reduce the separation distance require-
10 ments of subsection (h)(1) if: (i) No substantial objection from owners of
11 habitable structures within the separation distance is received in response
12 to public notice; or (ii) the board of county commissioners of the county
13 where the confined feeding facility is located submits a written request
14 seeking a reduction of separation distances.

15 (B) The secretary may reduce the separation distance requirements
16 of subsection (h)(2)(A) or (B) if: (i) No substantial objection from owners
17 of habitable structures within the separation distance is received in re-
18 sponse to notice given in accordance with subsection (l); (ii) the board of
19 county commissioners of the county where the confined feeding facility
20 is located submits a written request seeking a reduction of separation
21 distances; or (iii) the secretary determines that technology exists that
22 meets or exceeds the effect of the required separation distance and the
23 facility will be using such technology.

24 (C) The secretary may reduce the separation distance requirements
25 of subsection (h)(2)(C) or (D) if: (i) No substantial objection from owners
26 of habitable structures within the separation distance is received in re-
27 sponse to notice given in accordance with subsection (l); or (ii) the sec-
28 retary determines that technology exists that meets or exceeds the effect
29 of the required separation distance and the facility will be using such
30 technology.

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

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

35 (B) confined feeding facilities which existed on July 1, 1994, and reg-
36 istered with the secretary before July 1, 1996; or

37 (C) expansion of a confined feeding facility, including any expansion
38 for which an application was pending on July 1, 1994, if: (i) In the case
39 of a facility with an animal unit capacity of 1,000 or more prior to July 1,
40 1994, the expansion is located at a distance not less than the distance
41 between the facility and the nearest habitable structure prior to the ex-
42 pansion; or (ii) in the case of a facility with an animal unit capacity of less
43 than 1,000 prior to July 1, 1994, the expansion is located at a distance not

1 less than the distance between the facility and the nearest habitable struc-
2 ture prior to the expansion and the animal unit capacity of the facility
3 after expansion does not exceed 2,000.

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

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

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

10 (C) expansion of a confined feeding facility which existed on July 1,
11 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000
12 or more prior to July 1, 1994, the expansion is located at a distance not
13 less than the distance between the facility and the nearest habitable struc-
14 ture prior to the expansion; or (ii) in the case of a facility with an animal
15 unit capacity of less than 1,000 prior to July 1, 1994, the expansion is
16 located at a distance not less than the distance between the facility and
17 the nearest habitable structure prior to the expansion and the animal unit
18 capacity of the facility after expansion does not exceed 2,000.

19 (3) The separation distances required pursuant to subsections
20 (h)(2)(C) and (D) and (h)(3) shall not apply to the following, as deter-
21 mined in accordance with subsections (a), (e) and (f) of K.S.A. 2000 Supp.
22 65-1,178 and amendments thereto:

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

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

29 (k) The separation distances required by this section for confined
30 feeding facilities for swine shall be determined from the exterior perim-
31 eter of any buildings utilized for housing swine, any lots containing swine,
32 any swine waste retention lagoons or ponds or other manure or waste-
33 water storage structures and any additional areas designated by the ap-
34 plicant for future expansion. Such separation distances shall not apply to
35 offices, dwellings and feed production facilities of a confined feeding fa-
36 cility for swine.

37 (l) The applicant shall give the notice required by subsections
38 (i)(2)(B) and (C) by certified mail, return receipt requested, to all owners
39 of habitable structures within the separation distance. The applicant shall
40 submit to the department evidence, satisfactory to the department, that
41 such notice has been given.

42 (m) All plans and specifications submitted to the department for new
43 construction or new expansion of confined feeding facilities may be, but

1 are not required to be, prepared by a professional engineer or a consult-
2 ant, as approved by the department. Before approval by the department,
3 any consultant preparing such plans and specifications shall submit to the
4 department evidence, satisfactory to the department, of adequate general
5 commercial liability insurance coverage.

6 Sec. 2. K.S.A. 2000 Supp. 65-1,180 is hereby amended to read as
7 follows: 65-1,180. (a) The department shall not approve a permit for con-
8 struction of a new swine facility or expansion of an existing swine facility
9 unless the swine waste management system for the facility:

10 (1) Is located in such a manner as to prevent impairment of surface
11 waters and groundwaters, except where consistent with the requirements
12 of this section;

13 (2) is located outside any 100-year flood plain unless procedures and
14 precautions are employed to flood-proof the facilities;

15 (3) except as provided by subsection (c), is located: (A) Not less than
16 500 feet from any surface water if the facility has an animal unit capacity
17 of 3,725 or more; (B) not less than 250 feet from any surface water if the
18 facility has an animal unit capacity of 1,000 to 3,724; or (C) not less than
19 100 feet from any surface water if the facility has an animal unit capacity
20 of under 1,000;

21 (4) except as provided by subsection (d), is located not less than 250
22 feet from any private drinking water well that is in active use; and

23 (5) is located not less than ~~1,000~~ 10,000 feet from any publicly owned
24 drinking water well that is in active use.

25 (b) The separation distances required pursuant to subsection (a) shall
26 not apply to:

27 (1) Any swine facility that, on the effective date of this act, holds a
28 valid permit issued by the secretary;

29 (2) swine facilities for which an application has been received before
30 the effective date of this act; or

31 (3) expansion of a swine facility if an application for the expansion
32 has been received before the effective date of this act.

33 (c) The separation distances required by subsection (a)(3) shall not
34 apply to any freshwater reservoir or farm pond that is privately owned if
35 complete ownership of land bordering the reservoir or pond is under
36 common private ownership. Such separation distances shall apply to any
37 waters that flow from such reservoir or pond. The secretary shall have
38 the authority provided by subsections (d) and (e) of K.S.A. 65-171d and
39 amendments thereto with respect to any such reservoir or pond as nec-
40 essary to protect the public health, the soils or waters of the state and
41 wildlife.

42 (d) The separation distance required by subsection (a)(4) shall not
43 apply to any private drinking water well that is located within the perim-

1 eter from which separation distances are determined pursuant to subsec-
2 tion (k) of K.S.A. 65-171d and amendments thereto but, if the facility has
3 an animal unit capacity of 3,725 or more, the facility operator shall test
4 waters from such well and annually report the test results to the
5 department.

6 Sec. 3. K.S.A. 2000 Supp. 65-171d and 65-1,180 are hereby repealed.

7 Sec. 4. This act shall take effect and be in force from and after its
8 publication in the statute book.

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