

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Joann Flower at 9:00 a.m. on February 17, 1998, in Room 423-S of the Capitol.

All members were present except: Representative Compton - excused
Representative Lloyd - excused
Representative Phelps - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Gordon Self, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee: Representative Kent Glasscock
Representative Tom Sloan

Others attending: See attached list

Chairperson Flower asked committee members to review the minutes of February 9, 10, and 11. If there were corrections or additions, members were asked to contact the committee secretary before 5:00 p.m. or they will stand approved as presented.

Representative Kent Glasscock, Chairman of the House Environment Subcommittee on Confined Animal Feeding Operations, discussed the focus and goals of the subcommittee appointed two and one-half weeks ago. He reported that after approximately 50 hours of review, analysis and deliberation, the subcommittee should have a bill draft to present to the full committee for public hearings and consideration by the end of this week. He stated that the focus of the subcommittee was to spend enough time to become immersed in the issues through testimony from KDHE and expert witnesses to truly understand the environmental issues that surround confined animal feeding operations.

Representative Glasscock reported that he used the Sierra Club's Issue Outline as the framework for committee discussion. He said the ten issues the Sierra Club were concerned about with regard to the environment were used as topics of conversation for each meeting, then expert testimony was taken with regard to each of those issues. He provided copies of the National Environmental Dialogue on Pork Production's "Comprehensive Environmental Framework for Pork Production Operations" and a Comparison of the National Environmental Dialogue on Pork Production Recommendations with Current and Draft KDHE Requirements prepared by Raney Gilliland, Legislative Research Department. (Attachments 1 and 2, respectively)

He said the subcommittee will begin the process of working on a bill draft this afternoon using a balloon provided by Representative Sloan as the basis of a bill that will be substituted for **HB 2950**. He emphasized that a strong effort has been made for this bill to be nonpartisan and not highly charged with emotion; they have tried to stick to the facts, learn what they are, and deal forthrightly and candidly with the issues. He hopes to have a strong environmental bill that protects the public health without unduly damaging the agricultural economy in Kansas. He said there will not be a moratorium in the subcommittee bill.

Representative Tom Sloan discussed the various issues the subcommittee studied in depth. Representative Sloan and Representative Glasscock answered committee questions.

The meeting adjourned at 9:30 a.m. The next meeting is scheduled for February 18, 1998.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 17, 1998

NAME	REPRESENTING
Rich McFee	KLA
Peranka Mitchell	Ks. Dept. of Agriculture
Tom Bruno	Allen & Assoc.
Mike Jensen	Ks Park Council
Jim Allen	Sea board
Jeff Arpin	Division of the Budget
Kerri Ebert	Ks Dairy Assoc.
Jamie Clover Adams	Governor's office
Don Brun	KDHE
Bill Fuller	Kansas Farm Bureau
Tedd Thompson	Intern for Tom Sloan
Leslie Kaufman	Ks Farm Bureau
Marty Vanier	Ks Ag Alliance
Charles Benjamin	KNRC / Ks Sierra Club

**The Recommendations of the
National Environmental Dialogue on
Pork Production**

**COMPREHENSIVE
ENVIRONMENTAL FRAMEWORK
FOR PORK PRODUCTION
OPERATIONS**

December 16, 1997

*House Agriculture Committee
February 17, 1998
Attachment 1*

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NATIONAL ENVIRONMENTAL DIALOGUE ON PORK PRODUCTION

COMPREHENSIVE ENVIRONMENTAL FRAMEWORK FOR PORK PRODUCTION OPERATIONS

NARRATIVE SUMMARY

The National Environmental Dialogue on Pork Production was convened early in 1997 by America's Clean Water Foundation (ACWF) to address environmental concerns and issues associated with pork production. The Dialogue met on eight occasions (24 Days) to visit farms and research institutions, to share their experiences and perspectives, and to hear from concerned citizens and scientific experts.

On December 17, 1997, the Dialogue participants -- Federal officials from the U.S. Environmental Protection Agency and U.S. Department of Agriculture, heads of regulatory agencies from six States, and five pork producers (see attached member and alternates list) -- issued this Comprehensive Environmental Framework for Pork Production Operations. This narrative summarizes the major recommendations and the supporting rationale.

PURPOSE

The Dialogue's recommendations are intended to provide a comprehensive environmental framework to promote sound environmental performance by the pork production industry. The Dialogue endeavored to construct a framework to 1) ensure that the environment is protected and enhanced and 2) provide pork producers with more certainty and consistency in regulatory programs. This framework can be used by regulatory authorities at Federal, State, and Local levels to create more comprehensive and consistent regulatory and environmental protection programs across the United States. This framework was developed from a clean slate, as if no regulatory or environmental protection programs were currently in place. However, it is understood that any regulatory authority that proceeds to implement this framework will likely fit these recommendations into existing regulations and policies. It is also understood that additional resources will be needed to implement these recommendations.

This framework is designed to be an effective, affordable, and scientifically-based set of standards and procedures that would apply to all aspects of pork production operations in the United States. The Dialogue expects that, if these recommendations were to be implemented through Federal, State, and Local regulatory and environmental protection programs, they would 1) broaden and strengthen existing Federal regulations, 2) establish more protective, and consistent State regulatory programs, and 3) ensure a constructive role for Local government. The goal of the framework is to promote the protection of the environment, public health and welfare and preserve the sustainability of the pork production industry.

PRINCIPLES

In constructing this recommended framework, six guiding principles were followed:

1. Regulatory requirements must be environmentally protective and economically viable.
2. Recommendations must be based on science and facts and must be focused on real problems and solutions that actually work: but scientific certainty is not necessary prior to regulatory action.
3. Regulatory requirements should encourage consistency while providing reasonable flexibility to accommodate Local needs and site specific conditions.
4. Requirements should be clearly articulated and concisely explained so that producers know how to comply, regulators know what to enforce, and the public knows what to expect.
5. Accountability for environmental results is the responsibility of the producers to government and government to the public.
6. Regulations should not be a barrier to incentive-based programs or to technical innovation.

RECOMMENDATIONS

Overview

This framework calls for review and approval, by the appropriate regulatory authority, of all pork production operations, regardless of size. This framework proposes:

- Full public participation and access to documents, as a part of the approval process of all new or expanded operations;
- Location recommendations, including setbacks for lagoons and other facilities where manure is stored and for areas where manure is applied to land;
- Standards for the design, construction, and operation of all facilities;
- Restrictions on land application rates and methods, including recommendations on soil and manure testing, to prepare nutrient utilization plans, and in certain circumstances, to employ a phosphorous-based standard;
- Certification of operators and training of personnel;
- Emergency response planning;
- Provision of financial guarantees by operators;
- Record keeping and inspections;
- Civil and criminal enforcement, with stringent penalties for "bad actors";
- Closure recommendations for manure and wastewater storage facilities;
- Various forms of financial and technical assistance to enable pork producers to conform with the framework's recommendations, and;

- Additional research on certain environmental and public health questions which Dialogue participants believe have not yet been adequately answered.

Some of the Dialogues' recommendations were drawn from existing requirements (e.g., the United States Environmental Protection Agency Region VI General Permit for Concentrated Animal Feeding Operations (CAFOs), State laws, and other sources). This framework, however, also includes recommendations to fill gaps in, or to establish more effective approaches than may be provided by, existing programs. Many of these new recommendations reflect emerging technology and research results that were presented to the Dialogue by university scientists, government agency personnel and private sector professionals.

A summary of the recommendations and supporting rationale is outlined below:

Scope

Recommendation: The environmental framework should apply to all commercial pork production operations, regardless of the size of the operation. It is not the intent of the Dialogue that this framework apply to youth projects, pets and/or other noncommercial activities.

Rationale: All pork producers, regardless of size, have a responsibility to protect the environment. Further, no direct correlation between the size of a pork production operation and its environmental impact has been clearly identified. Small, poorly located and poorly managed operations can have significant environmental effects while large, well located and properly managed operations can have negligible effects. Expert witnesses repeatedly emphasized the need to account for the cumulative effects of all pork production (and other livestock) operations in a watershed. It is understood that regulatory authorities will have to seriously consider the cost and feasibility of implementing a regulatory program. If a regulatory authority decides to establish a threshold, based on size of an operation, it is recommended that the authority apply this framework to (1) any operation that is covered by existing Federal, State, or Local environmental laws, (2) any operation that is an actual or potential contributor of pollutants, and (3) any operation that expands above its established size threshold.

Recommendation: The framework should be applied immediately to all new or expanded pork production operations. Existing operations should have five years to meet all the recommendations of this framework, and should undertake certain interim facility registration, compliance planning, and reporting steps before that time.

Rationale: New or expanded operations are the most able to meet the recommendations of this framework through the prior planning and investment in the operations. Existing operations, however, will need time to adjust to the recommendations. In some cases, requiring existing facilities to meet these recommendations immediately could put producers out of business. Faster action may be needed in cases where a serious environmental problem exists. Deadlines recommended here should be adjusted if there is an existing watershed plan in place that stipulates schedules for action as agreed to by stakeholders.

Recommendation: Regulatory authorities should have the discretion to waive any of the specific recommendations of the framework, if alternative approaches or innovative technologies will achieve equivalent levels of environmental protection. The regulatory authorities should also have the discretion to waive recommendations or extend time periods for existing operations based on hardships that may render conformance impracticable.

Rationale: Technical innovation and experimentation will be critical, in the long-term, to harmonize pork production with the environment. It is essential that any regulatory framework encourage, reward, and support such technical innovation. Because this framework applies to all operations, regulatory authorities, upon accepting these recommendations, will need to adjust requirements to a broad range of operations. It is a concern of the Dialogue that very small or economically marginal existing operations could face serious economic hardship if all elements of the framework were applied.

Registration

Recommendation: Any existing pork production operation should register its existing manure and wastewater facilities with the appropriate regulatory authority within two years.

Rationale: Expert witnesses have stressed the importance of considering the cumulative impacts of the siting and approving of individual pork production (and other livestock) operations within a watershed. An inventory of operations will be needed to consider such cumulative impacts. Registration is a simple and straight forward way to complete such an inventory. It is recommended that all such operations register so that regulatory decisions can be made with more complete knowledge of the extent of pork production within the watershed.

Location

Recommendation: Any new pork production operation and any new manure and wastewater storage facility at an expanded operation should be located based on an evaluation of the cumulative effects of site specific environmental factors and the presence of neighboring pork production operations.

Rationale: Expert witness have repeatedly stressed the importance of making location and permitting decisions in a watershed context, rather than solely on a case by case basis. This because the concentration of pork production, in a particular watershed, can overwhelm that watershed's capacity to absorb and buffer nutrients, pathogens, or other potential pollutants generated by pork production operations. The Dialogue has found that technologies are being developed and improved that can be employed to assess cumulative risks on a scientific and consistent basis. These models can provide effective and workable tools for assessing cumulative impacts and could be used to make better informed decisions on the proper location of pork production operations.

Recommendation: Setbacks from waterbodies, residences, schools, health facilities, or churches should be used 1) to locate new manure and wastewater storage facilities of new or expanded pork production operations and 2) for land application of manure from all pork production operations to reduce odors and prevent water pollution. Existing operations should carry out protective measures for existing facilities, but need not relocate these facilities in order to meet the setback recommendations of this framework.

Rationale: The setbacks proposed are generally consistent with existing State setbacks for water quality. The framework also proposes setbacks to minimize odor problems. It recommends that those odor setbacks be computed on a site-specific basis using the best available scientific methods. Such methods exist and will be available in the future. Application of these new tools should provide a more scientific and consistent basis for recommended setbacks to minimize odor problems.

Recommendation: Construction of new residences, schools, health facilities, or churches adjacent to existing pork production operations should follow setback recommendations comparable to those imposed on the siting of new and expanded pork production operations.

Rationale: Location of new residences, schools, health facilities, or churches immediately adjacent to existing pork production operations may create conflicts, particularly related to odor, that did not exist before. Existing pork producers deserve the same protections that the framework provides for existing residences, schools, health facilities, and churches.

Public Participation

Recommendation: Public notice, prior to approval or disapproval of a new or expanded pork production operation, should be given to Local residents and others in the community. The public should be invited to comment on the proposed pork production operation and the appropriate regulatory authority should have the discretion to hold public hearings regarding the proposed operation.

Rationale: An informed public is essential to making informed decisions. The recommendations proposed for public participation in decisions regarding siting of new or expanded pork production operations parallel processes already used in many States. The Dialogue is seeking an informed decision making process that involves citizens early and that provides regulators the opportunity to have issues of merit raised that were overlooked in application documents.

Operation, Design, Construction and Management

Recommendation: Each new manure and wastewater storage facility on any new or expanded pork production operation should be consistent with the engineering standards and specifications provided by the Natural Resources Conservation Service (NRCS) or the American Society of Agricultural Engineers (ASAE). These facilities should be designed to have sufficient storage capacity to meet their utilization schedule or handle 6 months of waste, and to accommodate a 25-year, 24-hour or a 10 year, 10 day precipitation event, whichever is greater.

Rationale: These recommendations are based on well understood and researched standards and specifications for facility construction provided through NRCS or ASAE engineering standards. The framework recommends facility design and operations that reduce the risk of spills or contamination and provide the means to manage catastrophic events. New or expanded lagoons or earthen basins should have emergency spillways and vegetated buffer areas, or secondary containment basins.

Recommendation: Existing manure and wastewater storage facilities which receive only the amount of manure and wastewater for which they are designed, 2) are properly maintained, and 3) exhibit no signs of loss of structural integrity, should be considered to meet the standards proposed in this framework.

Rationale: New or expanded pork production operations should immediately meet the facility design standards proposed in this framework. Existing facilities, however, could be subject to severe hardship if required to meet these standards. Existing operations with manure and wastewater storage facilities constructed prior to the adoption of this framework should not have to meet these new standards 1) if they receive only the amount of manure and wastewater they were designed for, 2) are properly maintained, and 3) show no loss of structural integrity. This is an effective compromise between environmental protection and economic hardship.

Land Application

Recommendation: Manure should be applied only to lands with adequate soil sampling and nutrient testing and approved nutrient utilization plans.

Rationale: Full protection of the environment cannot be achieved in the absence of good management of manure and the land to which the manure is applied. In most cases, land application has more potential to pollute water than do manure and wastewater storage facilities. Under the proposed framework any new or expanded operation should conduct soil tests and manure nutrient tests every two years and prepare a nutrient utilization plan for all land application areas. Existing operations should have two years after the proposed framework is adopted to complete its plans. Soil and manure testing, coupled with good nutrient utilization planning, is a good business practice and essential for environmental protection.

Recommendation: Acceptable rates of land application of manure should be based on phosphorus rather than nitrogen requirements of crops where soil tests indicate that soil phosphorus has accumulated to levels that are environmentally unsound.

Rationale: Expert witnesses have made it clear that the differing potential for phosphorus to build up in various soils must be acknowledged in establishing acceptable rates of land application of manure. Build up of soil phosphorus can lead to situations in which the land can no longer buffer additional applications of manure without an unacceptable risk of

runoff of phosphorus to waterbodies. The framework proposes that the U.S. Department of Agriculture, in cooperation with State land grant colleges, establish the maximum, or threshold, phosphorus levels for all major soils based on their capacity to retain applications of phosphorus. If soil tests show that these phosphorus thresholds are exceeded, additional applications of manure should not be made to these lands, beyond the amount that can be taken up annually by the crop or other plants. If soils do not exceed the established phosphorus thresholds, then manure may be applied based on the nitrogen requirements of the crop or other plants growing on the land on which manure is applied.

Recommendation: When soil phosphorous thresholds are established, all operations should have two years to evaluate their soil test results for possible exceedence of the appropriate thresholds. If exceedence, or the likelihood of exceedence within a two year period is observed, new or expanded operations should immediately employ the phosphorous standards to those soils. Existing operations should be given an additional five years to make the adjustments needed to conform with the phosphorus threshold standard.

Rationale: The framework recommends that the U.S. Department of Agriculture, in cooperation with State land grant colleges and universities, establish soil-specific phosphorus thresholds. New or expanded operations should restrict applications of manure to soils that exceed phosphorus thresholds as soon as those thresholds are established. Existing operations, however, may need to make costly adjustments, including the acquisition or rental of new lands for application of manure, to meet a phosphorus-based land application standard. Five years should be sufficient for most existing operations to make a transition to basing land application of manure on phosphorus standards, if their soils exceed phosphorus standards.

Emergency Response

Recommendation: All pork production operations should prepare and keep current an emergency response plan.

Rationale: Even the best designed operations are subject to accidents or weather events that can lead to spills. Planning ahead to avert or manage emergency or catastrophic events is a good business practice and an effective way to protect the environment. New or expanded operations should, under this framework, prepare emergency response plans immediately. Existing operations should have the plan in place within one year.

Record Keeping

Recommendation: Each pork production operation should keep records for the operation of facilities, manure management plans, nutrient utilization plans, and emergency response plans, for a period of three years.

Rationale: Keeping adequate records of performance is a good business practice and is needed to ensure accountability with the elements of this framework.

Operator Certification and Training

Recommendation: The operator and contractors of each pork production operation should be certified and should train employees that are involved in management of facilities, land application of manure, and emergency responses.

Rationale: Even the best designed facilities or nutrient utilization plans can fail if they are not maintained, operated, or implemented properly. Better trained operators and staff mean better environmental performance. Certification of operators and training of employees and contractors are a good business practice, as well as sound environmental management. New or expanded operations should meet the recommendations for certification and training immediately. Existing operations should have two years to meet the certification and training recommendations.

Closure

Recommendation: Permanent abandonment of a lagoon or earthen basin by a pork production operation should be prohibited. Any pork production operation that ceases operation should close all lagoons, basins, and other manure and wastewater storage facilities, as established by NRCS standards. An Industry derived, third party-managed program should be developed for new or expanded pork production operations to provide assurances of financial responsibility sufficient to meet the cost of closure, within five years of the framework's adoption.

Rationale: Producers should bear the cost of closing facilities, not the communities in which those facilities are located. If this framework were implemented, recommended closure standards should apply to new, expanding, and existing operations immediately.

Inspections, Enforcement, and Nuisance Defense

Recommendation: Pork production operations should be inspected periodically.

Rationale: Periodic inspection of pork production operations and records is an effective way to maintain accountability and ensure the public that the environment is being protected.

Recommendation: If a regulatory authority chooses to implement the framework through an existing regulatory program, it should use the enforcement procedures of that program. Otherwise, regulatory authorities should establish an administrative, civil, and criminal enforcement program. This program should include stringent enforcement against the "bad actor" (e.g., pork production operations which engage in a course of conduct that results in repeated, material violations of the requirements of the regulatory authority). Sufficient national disincentives should be provided to prevent or discourage movement of "bad actors" from one jurisdiction to the other.

Rationale: Regulatory authorities should assure the public that the environment is being protected. "Bad actors" can negate the environmental protection achieved through the efforts of most pork producers who endeavor to be good stewards of the land and of the environment.

Recommendation: Pork producers that implement all the recommendations of this proposed framework should be shielded from nuisance suits, unless the pork production operation unreasonably and continuously interferes with the use and enjoyment of a person's property and the injury or damage is proximately caused by a negligent operation.

Rationale: Pork producers that follow all the recommendations of the proposed framework, should be protected from frivolous nuisance suits. The framework is intended to allow nuisance suits only where serious nuisances occur, but otherwise to protect those producers who are following good environmental practices.

Financial and Technical Assistance

Recommendation: Federal and State agencies should strive to provide financial and technical assistance to pork producers to adopt practices needed to comply with the recommendations of this framework.

Rationale: The framework should not impede the use of incentive-based strategies for achieving environmental protection. These recommendations will impose significant costs on pork producers which could be partially attenuated by aggressive, effective financial and technical assistance.

Research

Recommendation: Public research institutions and the pork production industry should encourage and support research on (1) measurement and control of odor, (2) atmospheric deposition of pathogens and nitrogenous compounds, (3) manure and wastewater storage facility improvements, (4) improved monitoring technologies, and (5) determination of soil nutrient threshold capacities.

Rationale: Improving the science basis on which regulatory decisions are made, facilities are designed, and management systems are developed is critical to enhancing the environmental performance of pork production operations in the long run.

COMPREHENSIVE ENVIRONMENTAL FRAMEWORK FOR PORK PRODUCTION OPERATIONS

I. PURPOSE

This document provides a national framework designed to improve the environmental performance of pork production operations. It is the Dialogue's expectation that the recommendations in this framework serve as guidance to regulatory authorities in the development of environmental regulatory programs to abate pollution. However, the Dialogue recognizes that regulatory authorities need to consider their professional, technical and fiscal resources when addressing the recommendations of this framework.

The Dialogue believes that the issues addressed in and the resolutions provided by these recommendations warrant the commitment of necessary resources for regulatory authorities.

II. SCOPE

A. APPLICABILITY

1. General: This comprehensive environmental framework should apply to all commercial pork production operations regardless of the size of the operation. To the extent that a regulatory authority decides not to apply the framework to certain pork production operations, the Dialogue recommends that it should apply the framework to:

- Any operation required to be regulated by existing federal, state, or local environmental laws, or
- Any operation that the regulatory authority determines to be an actual or potential significant contributor of pollutants.

2. Threshold: If the regulatory authority does establish a threshold for application of this framework, any commercial pork production operation below the threshold should describe to the regulatory authority the location, size of operation, the facilities and practices of the operation, and any environmental protection efforts that have been or are expected to be undertaken at the operation. The framework should apply, however, to any operation below the threshold if it expands above the threshold.

B. TIMING

If a regulatory authority implements this framework, it should immediately apply the framework's recommendations to any new pork production operation or the expansion of any existing pork production operation. In addition, the regulatory authority should allow existing pork production operations 5 years to comply with the recommendations of the framework. Existing pork production operations should submit to the regulatory authority, within two years, a plan describing any changes necessary to meet the framework's recommendations, with deadlines by which the changes would be made during the remaining 3 year period. The framework also contains a few deadlines for existing operations prior to the end of the 5 year period. Additionally,

there may be instances where less time than the framework's deadlines will be necessary. For example:

- The existing pork production operation causes or contributes to a demonstrated water quality problem, as determined by the appropriate regulatory authority, or
- The existing pork production operation is located in an area included within a comprehensive watershed and/or basinwide plan with different deadlines applicable to the operation, or
- The regulatory authority has already established deadlines under current regulations, and decides to retain those deadlines.

C. FLEXIBILITY

1. Alternative Approaches: The appropriate regulatory authority should have the discretion to waive certain recommendations of this framework for any pork production operation, upon demonstration by the operation which is acceptable to the authority, that an alternate approach will achieve at least the same substantive level of protection recommended by the framework.
2. Hardships: The appropriate regulatory authority should have the discretion to extend any specific compliance period or waive any specific recommendation for an existing pork production operation, upon demonstration by the operation which is acceptable to the authority, that a hardship exists which makes accomplishment of a framework recommendation impracticable, and the appropriate regulatory authority finds the extension or waiver of the recommendation will not impose a substantial risk to public health or the environment.
3. Acts of God: The appropriate regulatory authority should have a procedure to facilitate prompt responses by pork production operations to emergencies resulting from Acts of God.

III. REGISTRATION

A. REGISTRATION OF MANURE AND WASTEWATER STORAGE FACILITIES

Any existing pork production operation should register existing manure and wastewater facilities with the appropriate regulatory authority within two years from the date of adoption of this framework.

B. CONTENTS

The registration should include the name(s) and address(es) and phone number(s) of the owner of the livestock, operator of the manure and wastewater storage facility, and owner of the land on which the facility is located, and a description of the facility.

IV. LOCATION CONSIDERATIONS

A. GENERAL RECOMMENDATIONS

1. All Operations: All pork production operations should:

- Maintain protective measures around drinking water wells, sink holes, springs, abandoned wells and agricultural drainage wells on the land in which the operation is located or the manure and wastewater are to be applied, and
- Keep animals confined in a pork production operation from coming into direct contact with surface waters, such as lakes, rivers, and streams.

2. New or Expanded Operations: Any new or expanded pork production operation should:

- Locate in a manner so as to prevent impairment of surface waters, except where consistent with the recommendations in VI., and
- Not locate manure and wastewater storage facilities in a 100-year flood plain, unless procedures and precautions are employed to flood-proof the facilities.

3. Cumulative Effects: In approving a new or expanded pork production operation, the appropriate regulatory authority should assess the potential for significant environmental risk from cumulative effects by evaluating site-specific factors such as distance to surface waters, slope of the land, depth to ground water, soil permeability, animal population density in neighboring pork production operations, and location relative to an impaired water body.

B. SETBACKS

To control odor problems and to protect surface and ground water, pork production operations should be located consistent with the setback recommendations of this section.

1. Facility Setbacks: Any new manure and wastewater facility at a new or expanded pork production operation should:

- Be located no less than 500 feet from the facility to any surface water;
- Be located no less than 250 feet down slope from the facility to any private drinking water well which is in active use and not located on the property of the operation;
- Be located no less than 1000 feet from the facility to any publicly-owned drinking water well which is in active use, or as required by any federal or state requirements; and
- Maintain a distance for odor control, computed on a site-specific basis, from the facility to any occupied residence (that is not on the property of the operation), school, health facility, church, or any significant natural or manmade feature on the property of that residence, school, health facility, or church that is used by the residents or occupants for a significant portion of time on a continual basis. This distance should be computed using best scientific methods that would provide specific location distances in eight compass directions from the facility, considering such factors as prevailing wind direction and frequency, land topography, number and age of pigs, type of feed, manure management practices (including ventilation systems), and odor control technologies used.

2. Facility Setback Exemptions: The appropriate regulatory authority could grant a reduction from the facility setback recommendations above if petitioned by the pork production operation, and:

- The operation has negotiated written and notarized setback waivers or reductions with the owners or occupants of affected occupied residences, schools, health facilities, and churches located within that portion of the setback area to be removed by the proposed waivers, and copies of such waivers are filed with the appropriate governmental entity; or
- Innovative best management practices (BMPs) or odor abatement technologies that provide at least the same substantive level of protection as the setback approved by the appropriate regulatory authority and incorporated in the operation.

3. Land Application Setbacks: All pork production operations should apply manure and wastewater consistent with the following setback recommendations:

- No manure and wastewater should be applied by any process other than incorporation into the soil within the same day within 1000 feet of any occupied residence (that is not on the property of the operation), school, health facility or church, unless:
 - The manure and wastewater have previously been subjected to physical, biological or biochemical treatment or other treatment method approved for odor reduction, or
 - The manure and wastewater are applied with innovative treatment or application BMPs, or other technology approved by the appropriate regulatory authority, or
 - The owner of the occupied residence, school, health facility or church, has provided a written waiver.
- No manure and wastewater should be applied by any process other than incorporation into the soil within the same day within 100 feet of any occupied residence (that is not on the property of the operation), school, health facility or church, unless:
 - The manure and wastewater are applied with innovative treatment or application BMPs, or other technology approved by the appropriate regulatory authority, or
 - The owner of the occupied residence, school, health facility or church, has provided a written waiver.

4. Reverse Setbacks: Where a pork production operation already exists, new construction of residences, schools, health facilities, or churches within the setback distance recommended in this section would be permitted only with the full knowledge and understanding that:

- Agricultural sights, sounds, odors and other characteristics of farming may constitute an "agricultural easement" upon the non-farm construction site, and
- That the manure and wastewater storage facility and land application setbacks would not apply to the site.

A signed acknowledgment to this easement from the owner of each new residence, school, health facility, or church that would be constructed within the setback distance recommended by this section should be filed with the appropriate government entity.

V. OPERATION APPROVAL AND PUBLIC PARTICIPATION

A. OPERATION APPROVAL

The appropriate regulatory authority should approve any new or expanded pork production operation before its construction, and any existing pork production operation at the end of the five year period recommended in II.

B. INFORMATION NEEDS

1. Information from Pork Production Operations: When the appropriate regulatory authority initiates the approval process, the pork production operation should provide to the authority, consistent with the recommendations of the framework:

- The designs for any manure and wastewater storage facilities, showing consistency with the recommended engineering standards and specifications;
- A manure management plan;
- A nutrient utilization plan, if applicable;
- An emergency response plan; and
- Documentation of operator certification.

2. Information Prepared by the Appropriate Regulatory Authority: If a regulatory authority chooses to implement the framework through an existing regulatory program, it should use the public participation procedures of that program. Otherwise, when the appropriate regulatory authority initiates an approval process for a new or expanded operation, it should prepare:

- A document containing all the requirements which the pork production operation must meet upon approval by the authority; and
- A fact sheet for the general public that provides:
 - A brief explanation of the express statutory or regulatory provisions on which the requirements are based;
 - Any determinations or other necessary explanations of derivations from specific requirements, including a citation to the applicable guideline, development document or standard provision and reasons why it is applicable, or an explanation of how any alternate requirements were developed;
 - A detailed description of the location of the operation, including its latitude and longitude, showing consistency with any applicable comprehensive land use plan, including zoning provisions, etc.;
 - Where appropriate, a map showing wells located on the operation's property, landmarks, and nearby watercourses; and

- The name and telephone number of a person who can provide additional information.

C. PROCEDURES

1. Public Notice: If a regulatory authority chooses to implement the framework through an existing regulatory program, it should use the public participation procedures of that program. Otherwise, when the appropriate regulatory authority initiates an approval process for a new or expanded operation, it should issue public notice of the pending decision. Notice could be provided through publication in a newspaper in general circulation in the county where the operation is located, direct notification of residents in the proximity of the operation, or notification of local government officials.
2. Contents of Public Notice: The public notice should contain the following information:
 - The name, address, and telephone number of the official at the regulatory authority responsible for processing the request for approval and the places where further information and copies of documents can be obtained;
 - The name(s) and address(es) of the operator of the facility and the owner of the property where the operation is located;
 - A statement of the tentative determination to approve or disapprove the operation;
 - A brief description of the procedures for making the final approval or disapproval determination;
 - A request for public comment on the tentative determination to approve or disapprove the operation and the requirements for the operation described in the document required by B.2. above; and
 - A description of the procedure or procedures for providing the requested public comment.
3. Comment Period: The appropriate regulatory authority should provide a period of 30 days from the date of the public notice for submission of public comments.
4. Public Hearing: The appropriate regulatory authority should have the discretion to hold a public meeting or hearing within 15 days of the conclusion of the comment period to discuss the tentative determination if significant environmental or technical concerns or issues are raised during the comment period.
5. Final Decision Date: The regulatory authority should approve or disapprove the new or expanded pork production operation within 30 days of the end of the public comment period or a public hearing and respond to any significant public comments.
6. Appeal: The regulatory authority should provide for a process for the pork production operation or any interested party to appeal the approval or disapproval of the operation within 30 days of the final determination.
7. Public Access to Information: The information submitted by the new or expanded pork production operation and the documents prepared by the regulatory authority should be made available by the authority to the public for inspection and copying at the county level.

VI. OPERATION DESIGN, CONSTRUCTION, AND MANAGEMENT

A. FACILITY DESIGN AND CONSTRUCTION

1. New Facilities: Any new or expanded pork production operation should:

- Design its new manure and wastewater storage facilities consistent with the engineering standards and specifications for such facilities provided by the U.S. Department of Agriculture/ Natural Resources Conservation Service (NRCS) or the American Society of Agricultural Engineers (ASAE), or with a site-specific design submitted to and approved by an appropriate regulatory authority. The engineering standards and specifications would include standards and specifications for overall construction, foundations, liners, emergency spillways, volume, loading and unloading procedures. All new manure and wastewater storage facilities should be designed to have storage capacity to meet their nutrient utilization schedule, or storage capacity for 180 days' manure and wastewater accumulation, plus the expected rainfall and contaminated runoff from a 25-year, 24-hour precipitation event or a 10-year, 10-day precipitation event, whichever is greater ("design precipitation event");
- Construct and maintain all new basins, lagoons, pits and buildings to prevent seepage, leaks, or spills which could contaminate ground water or surface water: and
- Utilize an emergency spillway designed to release stormwater flow in excess of that from the design precipitation event. The capacity of the spillway should be sufficient to maintain the structural integrity of the lagoon or basin as determined by the regulatory agency. A vegetated filter buffer area or secondary containment basin below the outfall of the spillway is recommended to filter or capture any overflow of manure and wastewater before it can leave the property of the operation.

2. Existing Facilities: Any existing manure and wastewater storage facility which was: 1) constructed prior to the adoption of the framework, 2) receives only the amount of manure and wastewater for which it was designed, 3) is properly maintained, and 4) exhibits no signs of loss of structural integrity, should be considered to be properly constructed. Any pork production operation that has an existing manure and wastewater storage facility with adequate design capacity to store manure and wastewater, as certified by any existing regulatory procedure, for more animals than the operation currently supports could increase the number of animals at the operation up to the design capacity, provided the additional manure and wastewater will be managed in accordance with an approved plan for utilization of manure and wastewater.

3. All Facilities: All pork production operations should:

- not expand in size or number of animals beyond the design capacity to store manure and wastewater generated in the operation prior to:
 - Adding or enlarging manure and wastewater storage facilities to accommodate any additional manure and wastewater generated by the expansion; and
 - Amending their manure and wastewater operating procedures, and nutrient utilization plans if applicable, and emergency response plans to ensure management of the additional manure and wastewater generated by the expansion;

- Have electric or mechanical shut-off equipment in any manure wastewater flush systems to prevent overflow in case of pipe stoppage or back-flow; and
- Protect manure and wastewater facilities, to the extent practicable, from uncontaminated stormwater by ditches, dikes, berms, or gutters capable of carrying peak flows from the design precipitation event.

B. FACILITY MANAGEMENT

1. Normal Capacity: Pork production operations should maintain and operate each manure and wastewater storage facility consistent with its design and the recommendations of this framework.
2. Temporary Solids Storage: The pork production operation should use appropriate precautions and procedures to divert runoff from any temporary storage piles of solids, sludge, or manure into a manure and wastewater storage facility or otherwise retain it on site.
3. Preventative Maintenance: Each pork production operation should implement an effective preventative maintenance program, including inspections and maintenance of the manure and wastewater storage facilities, other facilities, and equipment.
4. Record Keeping: All pork production operations should maintain records of:
 - Routine measurement of the freeboard in each open manure and wastewater storage facility above the 80% containment level;
 - Any release of contained manure and wastewater, or instances when the emergency spillway was used;
 - Precipitation at operations with open manure and wastewater storage facilities; and
 - Inspections and maintenance of facilities and equipment.
5. Dead Animals: Any hog carcass should be removed from the pork production operation for rendering, or cremated, buried, or composted, as prescribed by the appropriate regulatory agency, within 72 hours of discovery of the carcass.

VII. MANURE MANAGEMENT

A. MANURE MANAGEMENT PLANS

1. New or Expanded Operations: Each new or expanded pork production operation should prepare a manure management plan prior to the approval of the operation by the appropriate regulatory authority, and follow the plan thereafter.
2. Existing Operations: Each existing pork production operation should prepare a manure management plan within one year of the date of adoption of the framework, and follow that plan for the five period recommended in II.
3. Contents: Each manure management plan should describe the methods for, and account for, the disposal of all manure and wastewater generated by the pork production operation. If the methods of disposal include land application of manure and wastewater, the operation should also prepare a nutrient utilization plan, as described in B.

4. Accountability: A contractual arrangement should be required between the owner of the livestock and the operator of the pork production operation, if they are not the same, to specify responsibility for manure management and nutrient utilization.

5. Third-Party Use: Whenever manure and wastewater from a pork production operation is sold or given to persons not employed by the operation, (or otherwise disposed of by means consistent with applicable government requirements) other than application in areas covered by the nutrient utilization plan of the operation, the operation should also maintain a log of removal of the manure and wastewater from the operation, the name and address of the hauler, the date of removal, and the volume of removed manure and wastewater. When the removed manure and wastewater are to be land applied, the operator should make available to the hauler the most recent manure nutrient analysis.

B. NUTRIENT UTILIZATION PLANS

1. New or Expanded Operations: If the manure management plan provides for land application of manure and wastewater, the pork production operation should develop a nutrient utilization plan consistent with the recommendations of this section prior to the approval of the operation by the appropriate regulatory authority, and follow the plan thereafter.

2. Existing Operations: If the manure management plan provides for land application of manure and wastewater, the operation should develop a nutrient utilization plan consistent with the recommendations of this section within two years of the date of adoption of this framework, and follow the plan for the five year period recommended in II.

3. Contents: Each nutrient utilization plan should address site-specific conditions for land application of manure, wastewater and other nutrient sources, and meet the recommendations of this framework including:

- A site map of all land application areas;
- Crop rotations on the land application areas;
- All records of soil tests, manure nutrient analyses, and calculations;
- Nutrient budgets for the land application areas;
- Historic and future yield goals for the land application areas;
- Records of inspections and preventative maintenance of equipment used in the land application of manure and wastewater;
- Planned rates, methods, frequency and timing of application of manure, wastewater, and other nutrient sources to the land application areas;
- Actual rates, methods, and dates of application of manure, wastewater, and other nutrient sources to the land application areas;
- The amounts of Nitrogen and phosphorus applied to the land application areas;

- Precipitation records;
- Appropriate references to an emergency response plan;
- Copies of all landowner agreements for land scheduled to receive manure and wastewater that is not owned by the pork production operation;
- Names of employees and contractors identified by the operator of the pork production who supervise the transfer of manure and wastewater to land application equipment and the land application itself; and
- Records of training of all personnel who supervise and conduct land application of manure and wastewater.

4. Updating Plans: All pork production operations should improve or otherwise amend their nutrient utilization plan if changes in the operation or other conditions affecting the operation warrant the amendment.

C. NUTRIENT SAMPLING AND TESTING

1. Soil Tests: If the manure management plan provides for land application of manure and wastewater, the operation should conduct soil tests at least every two years on all lands that receive swine-derived nutrients from the operation ("land application areas") or as often as required by best available soil science and standards relative to the soils and crops to be grown.

2. Manure Nutrient Analysis: Each pork production operation should conduct manure nutrient tests of manure and wastewater in each of its manure and wastewater storage facilities at least every two years.

3. Application Rates: Each pork production operation which applies manure and wastewater to land should compare the current analyses of the nutrient content of manure and wastewater with the current soil tests to determine needed fertility and application rates for pasture production or crop target yields on the land application areas.

4. Record Keeping: Each pork production operation which conducts land application of manure and wastewater should maintain in the nutrient utilization plan records of all soil tests, manure nutrient analyses, calculations, application rates, utilized acreage, and yields.

D. NUTRIENT BASIS FOR LAND APPLICATION

1. Threshold Phosphorus Holding Capacity: The U.S. Department of Agriculture, in cooperation with state land grant colleges, should establish the threshold phosphorus holding capacities for all major soil types based on the specific capacity of individual soils to adsorb phosphorus without unacceptable risk of water quality impairment.

2. Default Nutrient Basis for Land Application: Except as outlined in 3. below or when the appropriate regulatory authority determines otherwise, pork production operations may use Nitrogen as the basis to determine plant nutrient requirements, nutrient application rates, and required acreage for nutrient utilization plans.

3. Phosphorus Basis for Land Application: Once threshold phosphorus holding capacities are determined for the soil types in the land application areas for a pork production operation, the operator should compare the current soil tests and manure nutrient analyses to those threshold

phosphorus holding capacities to determine whether the soils of its land application areas exceed, or are projected to exceed within two years, those threshold levels. If the operation does not yet have the soil tests and nutrient analyses recommended in 2., the operation should make the comparison once it completes the tests and analyses.

- Pork production operations could apply manure and wastewater on their land application areas at rates exceeding the agronomic phosphorus needs of the crops or pasture, but not above the respective Nitrogen needs, as long as:
 - The operation uses appropriate soil conservation practices, erosion prevention, and best management practices (BMPs) to minimize off-site movement of soil-adsorbed phosphorus or dissolved phosphorus, and
 - Reliable soil tests demonstrate phosphorus levels are or will be consistently below the threshold phosphorus holding capacities for the soils onto which the nutrients are applied.
- Pork production operations should apply manure and wastewater on their land application areas at rates within the agronomic phosphorus needs of the crops or pasture, if the soil tests demonstrate phosphorus levels exceed, or are projected to exceed within two years, the phosphorus holding capacity of the soils to which the manure and wastewater are applied. This recommendation should become effective:
 - Upon start of new or expanded operations, and
 - For existing operations, five years after soil phosphorus levels are determined to exceed, or projected to exceed within two years, the appropriate threshold phosphorus holding capacity of the soils in the land application areas. During this five year period, the operation should apply manure and wastewater at the Nitrogen based application rate, and should implement appropriate Best Management Practices to minimize movement of excess phosphorus off the land application areas, obtain access to any additional land required, or make other adjustments needed to comply with the phosphorus standard.
- If a pork production operation finds that its soil tests indicate the phosphorus holding capacity for soils in the land application areas may be exceeded within five years, the operation should begin to obtain access to additional cropland or make other adjustments necessary to comply with the phosphorus standards once the phosphorus holding capacities of soils in the land application areas are exceeded.
- The appropriate regulatory authority may require a pork production operation to apply manure and wastewater on its land application areas at a rate that is within the agronomic phosphorus needs of the crops or pasture, or the soil phosphorus holding capacity, in less than five years, if the regulatory authority finds that the actions of an operation are substantially contributing to the impairment of a surface or ground water.

E. LAND APPLICATION

1. Site and Timing Limitations: Pork production operations should not apply manure and wastewater:

- To highly erodible land, except where soil conservation practices are used to control erosion and runoff to meet the recommendations of this framework;

- During rain storms, except where soil conservation practices are used to control runoff to meet the recommendations of this framework;
 - To frozen or saturated soil, except where soil conservation practices are used to control runoff to meet the recommendations of this framework; and
 - To any areas within land application setbacks recommended by this framework.
2. Water Quality Protection: Pork production operations utilizing cropland for the application of manure and wastewater should follow procedures and precautions to prevent discharge of pollutants to ground water and surface water due to excess infiltration, penetration of drainage tile lines, introduction into tile inlets, or surface runoff. Pork production operations should follow appropriate soil conservation practices to protect surface water from runoff carrying eroded soil and manure particles.
 3. Wastewater Irrigation: All wastewater irrigation by a pork production operation should be conducted when soil moisture conditions are suitable to allow all wastewater to soak into the soil. The operation should use procedures and precautions to avoid spray drift from the land application areas to roads, ditches, or adjacent property. The operation should install and maintain mechanical or electronic shut-off systems on spray irrigation equipment to prevent discharges in the case of upset or breakage of lines, valves, or other equipment.
 4. Equipment Maintenance and Monitoring: Each pork production operation should ensure that any equipment used in land application of manure and wastewater is properly maintained and calibrated, and monitor use of the equipment so that any malfunction that develops during land application is detected and the application process ceases until the malfunction is corrected.
 5. Supervision: The operator of each pork production operation conducting land application of manure and wastewater should identify, train, and keep current the training of employees and contractors who supervise the transfer of manure and wastewater to land application equipment and the land application itself.
 6. Training: The operator of each pork production operation conducting land application of manure and wastewater should train, and keep current the training of, all employees and contractors conducting land application of manure and wastewater.

VIII. EMERGENCY RESPONSE

A. PLANS

1. New or Expanded Operations: Each new or expanded pork production operation should prepare an emergency response plan consistent with the recommendations of this section prior to the approval of the operation by the appropriate regulatory authority, and follow the plan thereafter.
2. Existing Operations: Each existing pork production operation should prepare an emergency response plan consistent with the recommendations of this section within one year of the date of adoption of this framework, and to follow the plan as soon thereafter as the training and other recommendations of this section can be met.

3. Content: The emergency response plan should include:

-
- Procedures to be followed in an emergency, including actions to contain or manage any unauthorized discharge of manure or wastewater, to notify the proper authorities, and to mitigate any adverse effects of an emergency;
- The names of employees or contractors who are identified by the operator as responsible for implementing the plan;
- The methods and procedures which the operation should undertake to train the employees or contractors to implement the plan;
- Records of the training conducted; and
- Records of any emergency response undertaken by the operation, including a description of the consistency of the response to the procedures described in the plan.

4. Location of Plan: The emergency response plan should be located in one location at the operation convenient to all emergency-response employees.

B. EMPLOYEE AND CONTRACTOR TRAINING

The operator of each pork production operation should train, and keep current the training of, the employees and contractors responsible for implementing the emergency response plan.

C. NOTIFICATION

1. Initial Notification: If any emergency results in an unauthorized discharge of manure and wastewater to any surface or ground water or a discharge in excess of a design precipitation event, the operator of the pork production operation should notify the appropriate regulatory authority as soon as possible, but orally no later than 24 hours after the event becomes known to the operator.

2. Written Notification: When the information is available, the operation should provide written notification disclosing the cause of the discharge, extent of the discharge, actions taken in response to the discharge, and what changes should be made in the emergency response plan to prevent similar future discharges.

3. Receipt Notice: The appropriate regulatory authority should provide an emergency notification telephone number available at all times for the notification of emergencies, and should acknowledge receipt of notification by the operations.

IX. RECORD KEEPING

A. RECORDS

Each pork production operation should keep the following records at the operation's site office:

- The records for facility management regarding manure and wastewater storage outlined in this framework;

- The manure management plan recommended in VII.A.;
- If applicable, a nutrient utilization plan recommended in VII.B.; and
- The emergency response plan recommended in VIII.

B. CONDITIONS

All pork production operations should keep the records cited above for the last three years at the operation's site office.

X. OPERATOR CERTIFICATION AND TRAINING

A. CERTIFICATION

1. Operator Certification: The operator of each pork production operation should be certified by the appropriate regulatory authority, or by a third party approved by the authority, as to the operator's knowledge of management of manure and wastewater, nutrient utilization planning and implementation, emergency response planning and implementation, and other recommendations of this framework.

2. Common Materials and Programs: The U.S. Department of Agriculture, U.S. Environmental Protection Agency, and state regulatory authorities should develop and update common certified pork management training materials and certification programs (e.g., Certified Crop Advisors Program administered by the American Society of Agronomy).

B. TRAINING

Each pork production operator should:

- Identify, train, and keep current the training of employees and contractors who supervise the transfer of manure and wastewater to land application equipment and the land application of manure and wastewater, and to keep records of the training with the nutrient utilization plan;
- Train and keep current the training of all employees and contractors who conduct land application of manure and wastewater, and to keep records of the training with the nutrient utilization plan; and
- Identify, train and keep current the training of all employees and contractors responsible for implementing the emergency response plan, and to keep records of the training with the emergency response plan.

XI. CLOSURE OF MANURE AND WASTEWATER STORAGE FACILITIES

A. CLOSURE PROCEDURES FOR LAGOONS AND EARTHEN BASINS

1. Abandonment Prohibition: No pork production operation should be allowed to permanently abandon a lagoon or earthen basin.

2. Continual Maintenance Required: Pork production operations should maintain at all times all lagoons and earthen basins until those facilities are certified to comply fully with the closure recommendations in this section.

3. Closure: Any pork production operation that ceases to operate should close all lagoons and earthen basins at the operation in accordance with the recommendations of this section. Any lagoon or earthen basin that is not in use for a period of twelve consecutive months should be closed in accordance with the recommendations of this section, unless the pork production operation is viable, the operator intends to restore use of the lagoon or earthen basin at a later date, and the operator:

- Maintains the lagoon or earthen basin as though it were actively used, adding fresh water to replace water lost in evaporation and preventing loss or compromise of structural integrity; or
- Removes all manure and wastewater and refills the lagoon or earthen basin with clean water to preserve the integrity of the synthetic or earthen liner.

In either case, the operator should notify the appropriate regulatory authority of the action taken and conduct routine inspections, maintenance and record keeping as though the lagoon or earthen basin were in use. Prior to restoration of use of the lagoon or earthen basin, the operator should notify the appropriate regulatory authority and provide the opportunity for inspection of the lagoon or earthen basin.

4. Removal of Manure and Wastewater: To close any lagoon or earthen basin, a pork production operation should remove all manure and wastewater, as well as all associated appurtenances and conveyance structures, from the lagoon or earthen basin and dispose of the manure and wastewater in accordance with the manure management recommendations of this framework, or, if the operator requests, as determined otherwise by the appropriate regulatory authority.

5. Site Use: The appropriate regulatory authority should establish standards and procedures for demolition or conversion of any lagoon or earthen basin to another use, such as a farm pond.

6. Certification of Closure: The appropriate regulatory authority should inspect any closed lagoon or earthen basin, and certify whether the closure complies with legal requirements. The surety for a lagoon or earthen basin posted by the operator under C. below should not be released until the pork production operation obtains the certification of proper closure from the regulatory authority.

7. Closure deadlines: The appropriate regulatory authority should establish the standard maximum period or periods for completion of all closure activities for lagoons and earthen basins from the date of the cessation of operation of a lagoon or earthen basin to completion of its closure.

B. PROCEDURES FOR OTHER MANURE AND WASTEWATER FACILITIES

No pork production operation should be allowed to abandon other manure and wastewater facilities. Closure of all other manure and wastewater facilities should occur whenever the pork production operation ceases to operate. To close each manure and wastewater facility, the pork production operation should remove and dispose of all manure and wastewater consistent with this section.

C. FINANCIAL RESPONSIBILITY

Within five years of adoption of this framework, pork production operations with new or expanded lagoons or earthen basins should provide financial surety to cover the costs of closure of

the lagoons or earthen basins through participation in an industry-developed financial instrument. Existing lagoons or earthen basins should be subject to the financial surety recommendation upon a change in ownership. The financial instrument should be sufficiently funded to provide closure costs. If the operation chooses to provide an alternative source of financial surety, such as a commercial instrument or cash assets, it should provide a level of assurance equal to the anticipated cost of closure.

XII. INSPECTIONS, ENFORCEMENT AND NUISANCE DEFENSE

A. INSPECTIONS

1. **Frequency:** The appropriate regulatory authority should conduct periodic inspections of pork production operations and should review the records maintained by the operations.
2. **Access:** Each pork production operation should grant access at reasonable times to the operation, with appropriate safeguards for biosecurity, for any inspection by the appropriate regulatory authority.
3. **Biosecurity:** Any inspection of swine containment facilities at a pork production operation should comply with the biosecurity protocol of the operation so long as the protocol does not inhibit reasonable access.
4. **Costs:** Costs associated with the periodic inspections should not be assessed against the pork production operations, including as a requirement for approval, unless they are incurred in an inspection associated with an emergency that results in a discharge of manure and wastewater to surface or ground water, or any inspection associated with a pork production operation that engages in a course of conduct that results in repeated, material violations of the regulatory authority.

B. ENFORCEMENT

If a regulatory authority chooses to implement the framework through an existing regulatory program, it should use the enforcement procedures of that program. Otherwise, regulatory authorities should establish an administrative, civil, and criminal enforcement program. That program should include stringent enforcement against “bad actor” operators who engage in a course of conduct that results in repeated, material violations of the requirements of the regulatory authority. Sufficient national disincentives should be provided to prevent or discourage movement of bad actors from the jurisdiction of one regulatory authority to the jurisdiction of another.

C. NUISANCE DEFENSE

1. **Framework Shield:** A pork production operation that is meeting the recommendations of this framework and applicable environmental laws should be presumed not to be a nuisance unless a person bringing a nuisance lawsuit (or any other cause of action alleging continuous interference with use and enjoyment of the person’s property) can establish by clear and convincing evidence that:
 - The operation unreasonably and continuously interferes with the person’s use and enjoyment of the person’s property; and
 - The injury or damage alleged by the person is proximately caused by the negligent operation of the pork production operation.
2. **Common Law Standard:** A pork production operation that is meeting the recommendations of this framework and applicable environmental laws should be deemed to meet any common law requirements regarding the standard of a normal person living in the locality of the operation.

XIII. FINANCIAL AND TECHNICAL ASSISTANCE

A. SOURCES

The appropriate regulatory authorities and other federal or state agencies should endeavor to provide financial and technical assistance to pork production operations to adopt practices necessary to meet the recommendations of this framework, including the construction of stormwater diversion structures, vegetated filter buffer areas, secondary containment basins, grassed waterways, wastewater wetlands, emergency spillways, odor and insect controls, or the construction or improvement of manure and wastewater storage facilities.

B. PROGRAMS:

Eligible pork production operations may seek financial or technical assistance to adopt practices necessary to meet the recommendations of this framework. Examples include the following sources:

1. Conservation programs administered through the U.S. Department of Agriculture including, but not limited to the:

- Environmental Quality Incentives Program;
- Conservation Reserve Program;
- Wildlife Habitat Incentives Program;
- Wetland Reserve Program;
- Conservation Farm Option;
- Conservation Technical Assistance; and
- Small Watershed and Flood Protection Program.

2. Programs administered by the States under delegation from U.S. Environmental Protection Agency:

- Section 319 program of the Clean Water Act; and
- Source Water Protection Program of the Safe Drinking Water Act.

3. State assistance programs

XIV. RESEARCH AND OTHER RECOMMENDATIONS

A. RESEARCH

1. Research Subjects: Government, academia and the pork production industry should encourage and support research on at least the following subjects:

Odor measurement and control:

- development and validation of prediction models for off-site odor transmission;
- validation of electronic nose technologies to evaluate methods for odor reduction;
- development of precision land application machinery to meet odor and nutrient objectives;
- development of odor abatement products and methods for swine containment facilities, manure and wastewater storage facilities, and land application areas;
- evaluation of release and dispersion of volatile organic compounds and trace gases from manure and wastewater storage facilities;
- development of covers for swine manure and wastewater storage facilities to reduce odor;
- measurement of odors from manure and wastewater storage facilities under various facility management regimes and climatic conditions;
- evaluation of animal diet manipulation and bacterial treatment of manure and wastewater storage facilities to reduce odorous compounds in swine manure and wastewater; and
- odor and dust reduction in ventilation exhausts from swine confinement buildings.

Atmospheric deposition of pathogens and nitrogenous compounds:

- measurement of volatilization of nitrogen-based compounds from swine containment facilities, manure and wastewater storage facilities, and during land application of manure and wastewater by irrigation and other methods;
- evaluation of water quality impacts of atmospheric deposition of nitrogenous compounds;
- development and validation of prediction models for atmospheric deposition of nitrogenous compounds; and
- measurement of distribution distance and patterns of pathogens and dust from ventilation exhausts of swine confinement buildings.

Manure and wastewater storage facility improvements:

- evaluation of advanced materials and technologies for lagoon construction and performance; and
- evaluation of alternatives to lagoons for storage and treatment of swine manure and wastewater.

Improved monitoring technologies:

- development of technologies to determine the origins of nutrients and pathogens; and
- development and validation of predictive models and analytical techniques for determining individual and cumulative impacts of various pollutants and pollutant sources on watershed impairment.

Determination of soil nutrient threshold capacities:

- development for each major soil type of an understanding of the capacity to adsorb phosphorus and other key agronomic nutrients;

- determination and validation of predictive models of phosphorus threshold levels for each soil where adsorption capacity is exceeded and solubilization occurs;
- valuation of the impact of various management measures and land application techniques on off-site phosphorus movement on different soils, slopes and climatic conditions.

2. Innovative Technologies Center: The federal government should endeavor to establish a national authority to encourage the development of innovative technologies for pork production, to review research proposals, and to provide research and development grants.

B. INDUSTRY ACTIONS

In addition to complying with the recommendations of this framework, the pork production industry should accelerate industry education, technical assistance, and research, such as:

- The Environmental Assurance Program - provide environmental education and producer education and certification designed to provide site-specific manure management planning;
- The On-Farm Odor Assessment Program - conduct comprehensive on farm assessments of pork production operations to identify sources of odor and the solutions necessary to reduce these sources;
- The Environmental Stewards Program - identify and recognize individual pork producers who exemplify environmental protection leadership;
- The Odor Solutions Initiative - conduct a multimillion dollar initiative to stimulate research and development of products, management and technology for reduction of odors for all types of operations;
- Producer Out-reach Programs - develop and disseminate to the nation's pork producers education programs, satellite broadcasts, Internet "Ask the Experts" programs and seminars on environmental protection, using state organizations;
- Public-Private Partnerships - pursue partnerships for environmental protection among state/federal agencies, academic institutions, watershed stakeholders and others to translate the recommendations of this framework to on-the-ground initiatives; and
- Environmental Law Education Network - maintain a clearinghouse for pork producer questions on compliance with local, state and federal environmental statutes.

XV. DEFINITIONS

1. "Manure and wastewater storage facility" means all constructed, excavated or natural receptacles used for the collection, conveyance, storage, or treatment of manure and wastewater from a pork production operation, including swine confinement buildings.
2. "Wastewater" means any swine manure and urine, any liquid that comes in contact with swine manure or urine, litter, bedding, or any other raw material, or intermediate or final material or product used in or resulting from the production of swine, or directly or indirectly used in the operation of a pork production operation; any liquid used in flushing, cleaning or rinsing pens, barns, basins, gutters, pumps or manure pits; or liquid used in the washing or cooling of swine; and any liquid used in dust control at the operation.
3. "Best Management Practices" ("BMPs") means those schedules of activities, maintenance procedures, and other management practices of a pork production operation that are designed to minimize or prevent pollution of the air, water, or soil, or to control odor.

4. “Discharge” means any release of manure or wastewater from or by a pork production operation by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching, or any other means on or in land, surface water, or ground water. However, the term discharge does not include the discharge into an irrigation system for the purpose of land application of manure or wastewater to property, nor does it include volatilization of gases from manure and wastewater storage facilities or from land application of swine manure and wastewater.
5. “Expanded pork production operation” means an operation that adds any number of confined hogs so that the manure and wastewater produced exceeds the design capacity of the existing manure and wastewater storage facility or the operation’s nutrient utilization plan.
6. “Land application” means the application of manure and wastewater from a pork production operation to a land area by means of spraying, spreading, irrigation, or injection into the soil through injection, disking, or other approved technology.
7. “Occupied residence” means a house or other type of shelter that has running water and sanitation, is intended for human occupancy, and has been occupied by humans for more than six months in the last two years at that location.
8. “Runoff” means uncollected gravity flow overland of water from rain, melted snow, or agricultural or landscape irrigation.

COMPARISON OF NATIONAL ENVIRONMENTAL DIALOGUE ON PORK PRODUCTION RECOMMENDATIONS WITH CURRENT AND DRAFT KDHE REQUIREMENTS

National Environmental Dialogue Recommendation

Current Policy

Draft Policy

1. The environmental framework should apply to all commercial pork production operations, regardless of the size of the operation. It is not the intent of the Dialogue that this framework apply to youth projects, pets, and/or other noncommercial activities.
2. The framework should be applied immediately to all new or expanded pork production operations. Existing operations should have five years to meet all the recommendations of this framework, and should undertake certain interim facility registration, compliance planning, and reporting steps before that time.
3. Regulatory authorities should have the discretion to waive any of the specific recommendations of the framework, if alternative approaches or innovative technologies will achieve equivalent levels of environmental protection. The regulatory authorities should also have the discretion to waive recommendations or extend time periods for existing operations based on hardships that may render conformance impracticable.

The state requires the registration and a permit for confined feeding facilities with a capacity of 1,000 animal units or more. If the facility has a capacity of 300 to 999 animal units and there is a water pollution potential then a permit is required. (Current regulations refer to the number of head and not the number of animal units.) These facilities (300-999) and others with lower animal units capacities may be issued a certificate from KDHE that no water pollution potential exists. If KDHE determines that a water pollution threat exists, then the water pollution control facilities are issued a permit. See K.A.R. 28-18-2.

The current Kansas policy applies only to those entities covered under existing provisions of law and rules and regulations. There is no provision which requires compliance in a specific time frame.

Current regulations do not address the issue of a waiver of the standards of design construction or any other aspect of law or rule or regulation. KDHE believes that with the exception of some specific statutory requirements, the Secretary is given discretionary authority.

The draft regulations conform to the statutory requirement of permitting the number of animal units rather than the head capacity of the facility to be permitted.

The draft regulations and revised Design Standard do not change the requirements and thresholds, except that they are more specific and detailed. For example, "confined feeding" would now include fish. Also, specifically subject to regulation would be sale barns and livestock truck wash facilities. These entities were not specifically covered in current regulation. See draft regulation K.A.R. 28-18-2.

The draft regulations and Design Standards would apply to all existing, new, or expanded facilities when they become effective. There are no provisions for interim requirements. The draft rules and regulations and draft Design Guidelines do not require the permitting of all confined feeding facilities regardless of their size.

The draft regulations do contain a new regulation which, if adopted, would allow KDHE to grant a variance to the requirements under the draft regulations. Draft regulation 28-18-17 provides for a waiver from the standards under certain conditions.

Kansas Agriculture Committee
 February 17, 1998
 Attachment 2

National Environmental Dialogue
Recommendation

Current Policy

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4. Any existing pork production operation should register its existing manure and wastewater facilities with the appropriate regulatory authority within two years.

KDHE policy requires a permit for CAFOs with greater than 1,000 animal units. A permit also is required for CAFOs with animal unit capacities between 300 and 900 animal units which are determined to be a significant water pollution potential. A permit may be required of any CAFO regardless of size if it is determined to represent a significant water pollution potential. 1994 S.B. 800 gave a two-year grandfather registration period regarding separation distance requirements, although permits have been required since 1968. Further, any operator of a facility may ask to obtain a permit from KDHE. There is no policy to require registration of all facilities.

No change in policy is put forward by either the draft regulations or the draft Design Standards.

5. Any new pork production operation and any new manure and wastewater storage facility at an expanded operation should be located based on an evaluation of the cumulative effects of site specific environmental factors and the presence of neighboring pork production operations.

The current policy is contained in guidelines of KDHE (called the "Design Standards for Confined Livestock Feeding Operations," dated November, 1993). In general, the guidelines indicate that the site should be selected for confined livestock feeding operations and would be located such that animal waste and runoff can be controlled, stored, handled, and disposed of in a manner that does not result in degradation of land, air, or water resources. The guidelines indicate that all proposed sites for confined livestock feeding operations will be evaluated and appraised by KDHE personnel. (See pages 1-4 of current KDHE Design Standards.)

The draft guidelines have many of the same requirements, but are more specific and detailed. The draft guidelines would be adopted by reference under the draft regulations and therefore would have the force and effect of law.

National Environmental Dialogue Recommendation	Current Policy	Draft Policy
<p>6. Setbacks from water bodies, residences, schools, health facilities, or churches should be used:</p> <ul style="list-style-type: none">a. to locate new manure and wastewater storage facilities of new or expanded pork production operations; andb. for land application of manure from all pork production operations to reduce odors and prevent water pollution. Existing operations should carry out protective measures for existing facilities, but need not relocate these facilities in order to meet the setback recommendations of this framework.	<p>Current Kansas law contains setbacks for various sizes of facilities. (See K.S.A. 1997 Supp. 65-171d.) Under the same statute, the term "habitable structure" means 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. Current law "grandfathered in" facilities at the time of its passage. For odor, the current guidelines indicate that the separation distances are meant to be used as a general guideline and that KDHE may approve exceptions when justified. (See page 4 of current Design Standards.)</p>	<p>Proposed regulation K.A.R. 28-18-3 adopts the statutory setbacks. It also would establish how separation distances are to be measured. The Design Standards indicate that separation distances may be reduced under certain conditions. See page 7 of the draft Design Standards. (K.S.A. 65-171d does allow the Secretary to reduce separation distances under certain circumstances.) The draft Design Standards indicate that the agency uses the statutorily enacted separation distances to address the issue of odor. The draft document also indicates that good management can help, but not eliminate odor.</p>
<p>7. Construction of new residences, schools, health facilities, or churches adjacent to existing pork production operations should follow setback recommendations comparable to those imposed on the siting of new and expanded pork production operations.</p>	<p>Current Kansas law contains setbacks for various sizes of facilities. (See K.S.A. 1997 Supp. 65-171d.) Under the same statute, the term "habitable structure" means 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. There are no reverse setback provisions in current law, rules and regulations, or guidelines. Consideration of reverse setbacks did occur during the 1997 Legislative Session as amendments to S.B. 120 before the Senate Energy and Natural Resources Committee and House Agriculture Committee.</p>	<p>No policy is put forward in either the draft rules and regulations or the draft Design Standards which would establish reverse setbacks.</p>
<p>8. Public notice, prior to approval or disapproval of a new or expanded pork production operation, should be given to local residents and others in the community. The public should be invited to comment on the proposed pork production operation and the appropriate regulatory authority should have the discretion to hold public hearings regarding the proposed operation.</p>	<p>Public notice occurs under K.A.R. 28-16-61. Publication occurs in the <i>Kansas Register</i> not in the county newspaper.</p>	<p>Draft regulation K.A.R. 28-18-7 speaks to the new requirements for public notice of the intent to establish a confined animal feeding facility.</p>

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| 9. Each new manure and wastewater storage facility on any new or expanded pork production operation should be consistent with the engineering standards and specifications provided by the Natural Resources Conservation Service (NRCS) or the American Society of Agricultural Engineers (ASAE). These facilities should be designed to have sufficient storage capacity to meet their utilization schedule or handle six months of waste, and to accommodate a 25-year, 24-hour or a 10-year, 10-day precipitation event, whichever is greater. | Current guidelines (Design Standards) require a minimum of 120 days of storage for average dry weather wastewater flows. (See page 14 of Design Standards.) Also the guidelines call for additional storage to be provided for surface drainage from exposed contributing surface areas to retain the 10-year, 24-hour rainfall occurrence assuming no infiltration. The Design Standards also call for the construction of water pollution control facilities to be conducted in conformance with approved engineering practices. Materials and supplies are to be quality products that insure reasonable life of the control system and conform to ASAE, ASCE, ASME, SCS, or other widely accepted standards. | Proposed Design Standards require, generally, a minimum of 120 days of storage. (See page 16 of the draft guidelines.) The standard for runoff would be changed to a 25-year, 24-hour event. |
| 10. Existing manure and wastewater storage facilities which receive only the amount of manure and wastewater for which they are designed:

a. are properly maintained, and

b. exhibit no signs of loss of structural integrity, should be considered to meet the standards proposed in this framework. | New, expanding, and existing facilities must meet these requirements. The agency would have authority to require an operator to fix or correct a problem that may result in the potential to pollute. | No change in current policy in draft regulations or Design Standards. |
| 11. Manure should be applied only to lands with adequate soil sampling and nutrient testing and approved nutrient utilization plans. | Current guidelines require that the annual application of animal wastes and runoff should not apply nutrients or moisture in excess of that required for crop production. The guidelines indicate that soil testing should be routinely conducted on land receiving runoff accumulations and/or livestock wastes and the application of commercial fertilizer adjusted accordingly. | Waste management plans are proposed by the draft guidelines which will be adopted by reference through rules and regulations. See page 33 of the draft Design Standards.

These draft Standards also establish criteria for waste utilization. See pages 29, 28, and 30. |

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| 12. Acceptable rates of land application of manure should be based on phosphorus rather than nitrogen requirements of crops where soil tests indicate that soil phosphorus has accumulated to levels that are environmentally unsound. | There is no specific policy which would require that the land application of manure be based on phosphorus rather than nitrogen. Kansas guidelines suggest that soil testing should be conducted routinely and that the application of commercial fertilizer should be adjusted accordingly. Waste management plans are part of the draft guidelines. | While the draft Design Standards do not base the application of waste on the amount of phosphorus, they do set a limit for the amount that can be applied. See page 28 of the draft Design Standards. |
| 13. When soil phosphorus thresholds are established, all operations should have two years to evaluate their soil test results for possible exceedence of the appropriate thresholds. If exceedence, or the likelihood of exceedence within a two-year period is observed, new or expanded operations should immediately employ the phosphorus standards to those soils. Existing operations should be given an additional five years to make the adjustments needed to conform with the phosphorus threshold standard. | The phosphorus threshold is not a part of any current or draft requirement. | Waste management plans are part of the draft guidelines. The draft document accomplishes this by the establishment of requirements for waste management and through the development of waste management plans. No time frames are included in the draft documents. |
| 14. All pork production operations should prepare and keep current an emergency response plan. | There is no specific requirement for an emergency response plan in either existing Kansas policy or in the draft rules and regulations or in the new draft guidelines. | There is no specific requirement for an emergency response plan in either the draft regulations or the draft Design Standards. |
| 15. Each pork production operation should keep records for the operation of facilities, manure management plans, nutrient utilization plans, and emergency response plans, for a period of three years. | The current requirements for any kind of record keeping for confined animal feeding operations are contained in the Design Standards and relate to an operational log and require monthly monitoring reports. Also required is weekly measuring for available storage capacity within the wastewater retention structure. The agency also does require recordkeeping for the monitoring requirements in K.A.R. 28-16-60 and K.A.R. 28-16-63. | New draft guidelines require the establishment for a Narrative Plan which is to contain information regarding the operation of the system and the design of the system; an Operation and Maintenance Plan; a Waste Utilization Plan; and a Seeding Plan. An Emergency Response Plan is not a part of current or draft requirements. Certain records would be required under draft K.A.R. 28-18-8. |

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16. The operator and contractors of each pork production operation should be certified and should train employees that are involved in management of facilities, land application of manure, and emergency responses.
17. Permanent abandonment of a lagoon or earthen basin by a pork production operation should be prohibited. Any pork production operation that ceases operation should close all lagoons, basins, and other manure and wastewater storage facilities, as established by NRCS standards. An industry derived, third-party-managed program should be developed for new or expanded pork production operations to provide assurances of financial responsibility sufficient to meet the cost of closure, within five years of the framework's adoption.
18. Pork production operations should be inspected periodically.

There is no current policy for operator certification and training.

Kansas has no current specific requirements in statute, rule and regulation, or guideline which addresses the issue of closure. KDHE believes authority exists in K.S.A. 65-164 and 65-165.

Current statutory authority in K.S.A. 65-170b allows KDHE to enter and inspect facilities. No statute or rule or regulation sets out that inspection is to take place on a regular frequency.

The draft regulations would require this for operators of facilities with more than 1,000 animal units. See draft regulations 28-18-18 through 28-18-23.

The draft regulations do address facility closure and abandonment. See draft regulation 28-18-16.

The draft regulations and Design Standards do not contain any requirement for inspection of the facilities on a regular basis. Draft regulation 28-18-15 authorizes inspection. Spokespersons have indicated that KDHE plans on inspecting all large facilities (1,000 animal units or greater) in CY 1998 and once every two years thereafter. Smaller facilities will be inspected randomly according to KDHE officials.

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| <p>19. If a regulatory authority chooses to implement the framework through an existing regulatory program, it should use the enforcement procedures of that program. Otherwise, regulatory authorities should establish an administrative, civil, and criminal enforcement program. This program should include stringent enforcement against the "bad actor" (e.g., pork production operations which engage in a course of conduct that results in repeated, material violations of the requirements of the regulatory authority). Sufficient national disincentives should be provided to prevent or discourage movement of "bad actors" from one jurisdiction to the other.</p> | <p>KDHE has enforcement authority. K.S.A. 65-167 provides for a penalty of not less than \$2,500 and not more than \$25,000 and a further penalty of not more than \$25,000 per day for each day the offense is maintained. In addition, there are penalties for failing to furnish certain information and making a false statement on any documentation provided to the Secretary.</p> | <p>KDHE believes that it has addressed the "bad actor" situation in its draft regulations with respect to permit denial or revocation. See K.A.R. 28-18-4(g).</p> |
| <p>20. Pork producers that implement all the recommendations of this proposed framework should be shielded from nuisance suits, unless the pork production operation unreasonably and continuously interferes with the use and enjoyment of a person's property and the injury or damage is proximately caused by a negligent operation.</p> | <p>The Secretary of KDHE has the authority to abate nuisances. (See K.S.A. 65-159.) KDHE enforces this only when there is proven or potential public health impact. Kansas has had "Right to Farm" legislation since 1982. See K.S.A. 2-3201 <i>et seq.</i></p> | <p>KDHE is not proposing any changes which would shield livestock producers from nuisance lawsuits.</p> |
| <p>21. Federal and state agencies should strive to provide financial and technical assistance to pork producers to adopt practices needed to comply with the recommendations of this framework.</p> | <p>KDHE provides some assistance under Section 319 of the Clean Water Act and the Source Water Protection Program of the Safe Drinking Water Act.</p> | <p>The agency is not proposing any new initiatives involving financial or technical assistance to livestock producers to comply with any environmental requirements.</p> |

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22. Public research institutions and the pork production industry should encourage and support research on:
- a. measurement and control of odor;
 - b. atmospheric deposition of pathogens and nitrogenous compounds;
 - c. manure and wastewater storage facility improvements;
 - d. improved monitoring technologies; and
 - e. determination of soil nutrient threshold capacities.

KDHE does not conduct research in this area. It has contracted with KSU to conduct the lagoon studies.

KDHE does not propose to do any research under its draft regulations or guidelines.