Approved: 2-18-98
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Vice-Chairperson Joann Freeborn at 3:30 p.m. on January 28, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. Steve Lloyd - excused
Rep. Vaughn Flora - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Hank Avila, Legislative Research Department
Mary Torrence, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Gary R. Mitchell, Secretary, Department Health and Environment, 900 SW Jackson, 6th Floor, Rm 620, Topeka, KS, 66612-1290

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She recognized Rep. Peggy Palmer, who introduced her intern for this session, Mark Lowlor, a graduate of Kansas University and a first year law student at Washburn University.

The Chairperson reviewed the agenda for tomorrow's meeting, January 29. Added to the agenda is a presentation and discussion on Siltation and Water Quality Issues in Kansas Reservoirs and bill requests. She announced since **HB 2419** has been put into a sub-committee, it will not have discussion and possible action tomorrow.

Chairperson Freeborn welcomed Gary Mitchell, Secretary of KS Department of Health and Environment. He appeared to do a summary on Proposed Livestock Waste Management Regulations by the Department and to discuss other issues that are of importance to the Environment committee. He distributed a packet of materials to be reviewed, (See attachment 1) and discussed KS Department of Health and Environment Management Issues. (See section A of attachment 1) These include inventory, accounts receivable, payment of Agency bills, year 2000 problems, and Federal status reports to EPA. Secondly, he discussed reorganization of KDHE. (See section B of attachment 1) This is part of a renewed effort to improve efficiency at KDHE and the changes are designed to enhance customer service. Secretary Mitchell introduced Karl Mueldener, Bureau of Water, KDHE, and Don Carlson, Bureau of Water, who were in attendance to answer questions by the committee. The Secretary showed and discussed overviews of maps of Confined Animal Feeding Operations in Kansas. He also presented information on penalties and enforcement. (See section C of Attachment 1) He presented data on Kansas Farm Facts and North Carolina Agricultural Statistics and discussed the differences between the two states. Questions and discussion followed.

Secretary Mitchell answered questions concerning lagoons and monitoring wells, and regulations regarding them. He was asked if the regulations are completed. He replied they are not and that the Department is taking public comment on the draft regulations at this time.

Chairperson Freeborn announced that she has reviewed the numerous informational hearings regarding the management of confined animal feeding operations, waste lagoons and possible impacts to the environment which have been presented to the committee. She feels it is clear that there are numerous opinions as to what, if any, legislation is needed. She appointed a sub-committee to work to narrow the scope of the discussions and to, if necessary, draft legislation to assure that Kansas law adequately protects the environment. The sub-committee will be comprised of Rep. Kent Glasscock, Chairman; Rep. Sharon Schwartz, Rep. Tom Sloan, Rep. Laura McClure and Rep. Dennis McKinney. The sub-committee will meet Friday, January 30, 1998.

The Chairperson thanked Secretary Mitchell and staff for their presentation and the committee and audience for their attention.

The meeting adjourned at 5:30 p.m.

The next meeting is scheduled for January 29, 1998.

# HOUSE ENVIRONMENT COMMITTEE COMMITTEE
# GUEST LIST

DATE: 1-28-98

| NAME | REPRESENTING |
|---|---|
| Donald Carlson | Ks. Dept. of Health & Environment |
| Jim Allen | Seaboard |
| Erika Lindhauer | Self. |
| Rich McKee | KLA |
| Brad Harrelson | KLA |
| Carole Jordan | Ks Dept of Ag |
| Derenda Mitchell | " " " " |
| Mike Beam | Ks Lvstk. Assn. |
| Hank Ernst | Kansas Farmer |
| Charles Benjamin | KNRC/KS Sierra Club |
| Craig Volland | Spectrum Technologists |
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# KANSAS
## DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary


Testimony Presented to

House Environment Committee

January 28, 1998

by

Gary R. Mitchell
Secretary of Health and Environment

Overview of environmental issues

**1.) KDHE Management Issues (Attachement A)**

Inventory
Accounts Receivable
Payment of Agency bills
Year 2000 problem
FSR Reports to EPA

**2.) Philosophy as Secretary:**

Follow the law, investigate the problem and follow up with recommendations for change.

Should work with citizens to achieve a higher level of environmental compliance.

EPA measures their success by the number of fines and number of criminal proceedings--not appropriate.

Will take enforcement actions if our efforts to work with some citizens is being ignored.

House Environment
1-28-98


900 SW Jackson, Suite 620
(785) 296-6917





Topeka, KS 66612-1290
FAX (785) 368-6368


Attachment 1

**3.) Reorganization - Division of Environment (Attachment B)**

Last session the Legislature mandated KDHE undertake a reorganization of the Division of Environment.

Eliminated the Office of Science and Support and sent the function of that office to the Bureau of Water and the newly created Bureau of Environmental Field Services, which supports our district offices.

Since becoming Secretary, I have personally visited every district office and believe that concept is fundamentally sound-regulatory decisions made closest to the people are best.

**4.) Environmental Issues**

A. Air Quality

Two items of Good news:

Kansas was dropped from the OTAG last summer-means we won't be caught up in the North East Acid Rain situation.

Fee we use to fund our air quality and monitoring program--we reduced it again. We have one of the lower fees in the region.

Bad News-Carol Browner is stilling plowing ahead with her new standards-will need to monitor that in terms of its impact on the state-particularly agriculture.

B. Water Quality

1. 2368 Commission-issued its preliminary report-our agency has been supporting the work of that Commission.

2. Settled the TMDL Lawsuit-lawsuit brought by the Sierra Club.

3. Settlement calls for KDHE to submit TMDL to EPA but we (the State of Kansas not EPA) are still in control of the process.

4. Stream Use Designations

5. Governors Water Quality Initiative and budget proposal $800,000 buffer initiative

6. Confined Animal Feeding Operations (CAFO's)

a. Legislative Post Audit-January, 1997-used that as my Bible or blue print to re-shape the program.

b. New CAFO Inspectors
1997 budget request was for 9 additional employees; 4 new inspectors, 5 new clerical. The Legislature gave me 3 inspector positions, no clerical. I have re-programed resources added two more inspectors, for a total of 5 new inspectors since May, 1998.

c. New management

d. Proposed new regulations.

e. Penalties and enforcement **(Attachment C)**

f. KSU Research Activities

**KANSAS**
**DEPARTMENT OF HEALTH & ENVIRONMENT**
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary

For Immediate Release
November 10, 1997
Contact: Don Brown
(785) 296-1529

## Secretary Announces Reorganization at KDHE

As part of a renewed effort to improve efficiency at the Kansas Department of Health and Environment (KDHE), Secretary Gary R. Mitchell has announced several organizational improvements. The changes are designed to enhance customer service.

"Some of these changes come as a result of input from the Kansas Legislature," Mitchell said. "All of the changes represent the Graves Administration's vision for a better, more responsive, and user-friendly Kansas Department of Health and Environment."

A reorganization is underway in the Division of Environment. The Office of Science and Support will merge with the Bureau of District Operations to become the new Bureau of Environmental Field Services. Water quality certification activities formerly handled by the Office of Science and Support will be transferred to the Bureau of Water. And finally, a planning and communication unit will be created in the Division of Environment to enhance planning and to provide assistance to the various programs within the division.

"I believe these changes will improve the efficiency of our Division of Environment," Mitchell said. "As we implement the new organizational structure, we have a goal of improving our service to both the general public and the regulated communities we serve."

-more-

The Office of the Secretary at KDHE is also changing. The 1997 Kansas Legislature authorized Mitchell to transfer up to four existing positions to the secretary's office. As a result, Mitchell has hired three assistants to help him in the day to day management and operation of the agency. Carolyn Duwe is the Assistant to the Secretary for Health Policy. Barry Greis is the Assistant to the Secretary for Internal Management. And Jim Murphy joins the team as Assistant to the Secretary for Fiscal Management.

"With an agency as diverse as KDHE, it's important to have a strong management team in place," Mitchell said. "These new assistants will help me and Assistant Secretary/General Counsel Linda Fund make sure KDHE is working in the best interests of the people of Kansas."

With a renewed focus on customer service and a strong leadership team at the helm, Mitchell is committed to continued improvements at KDHE. "We are a regulatory agency dealing with thousands of customers daily. The decisions we make can literally affect millions of people. I will constantly review and, if necessary, revise the way we do business to make sure KDHE is efficient and effective."

-30-

9353.wpd

A

# KANSAS
## DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary

1. **INVENTORY MANAGEMENT**

Over 975 employees
4 buildings in Shawnee County
No inventory of capital equipment in 4 years

$160 million budget
6 district and 2 satellite offices

Problems: Equipment purchased and discarded without ever being inventoried
Equip. Purchased with Federal dollars - Only Div. of Environment has internally inventoried items (due to EPA funding)

Solutions: Computer hardware/applications inventory initiated 7/97 [Year 2000 Project]
Complete inventory initiated for all capital outlay acquisitions (1992 - 1997)
Note: Some capital equipment has been discarded

2. **PAYMENT OF AGENCY BILLS**

Example of Problems:

- Department of Administration has complained we take up to 150 days to pay our telecommunications bills;
- As of September 15, 1997, KDHE had not paid its June 1997 motor pool bill, inhibiting the Department of Administration from closing out the fiscal year;
- Secretary received notices from the Turnpike Authority for unpaid K-Tag bills (several months).

3. **AGENCY ACCOUNTS RECEIVABLES**

Example of Problems:

- Under K.S.A. 65-2409a(e) KDHE is required to collect a $4 birth registration fee.
  Since 1994: KDHE collected $15,200 - $35,600 per year
  Owed approximately $92,500 - $109,500 per year
- Takes agency up to 90 days deposit checks.

Solutions for Payments and Accounts Receivables:

- Full review of internal controls by an outside audit firm may be necessary.
- KQM team initiated to review our check handling policies.
- General Services has been decentralized, and is now under the direct supervision of my new Assistant for Internal Management, Barry Greis.

4. **REPORTS**

Most Federal grants require a Financial Status Report (FSR) of how the money was spent; FSRs due within 90 days of the close of the Federal Fiscal Year.

- As of today, FSRs on environment have not been submitted for Federal Fiscal Year 1996, and EPA has initiated an audit of KDHE; they will return for a week-long audit in January.
- Failure to timely file the Air Quality FSR with EPA resulted in the loss of KDHE's ability to carry over $90,000 and not allowing KDHE access this federal fiscal year's grant money which would have inflicted a hardship on Shawnee and Johnson County and prohibited their immediate access to $76,000 of grant money due this year.

  Note: This FSR has now been filed.

**5. MISJUDGEMENT WITH REGARD TO YEAR 2000 COMPUTER ASSESSMENT AND REPAIR COSTS**

Assistant Secretary/General Counsel Linda Fund has been given supervision of the Information Systems (IS) section of KDHE.

Problems prior to her leadership of IS:

- Director of IS alienated DISC, failed to follow the CIA's requests and KIRC policies and was an obstruction to acceptance of new technology.
- Department of Administration asked IS Director to request enough money last year to assess and repair Year 2000 computer software applications and computer system problems.
- Requested was only $180,000: $70,000 short of the amount needed simply to assess computer systems and applications.
- Estimates now indicate KDHE may need $2.6 million to repair or replace systems which are not Year 2000 compliant.
- KDHE did not request that money last legislative session when given opportunity to "piggy-back" on DISC's request.

Note: Director of IS responsible for these problems and the budget director who supervised him are no longer serving in these roles.

**OTHER ISSUES REQUIRING ASSISTANCE:**

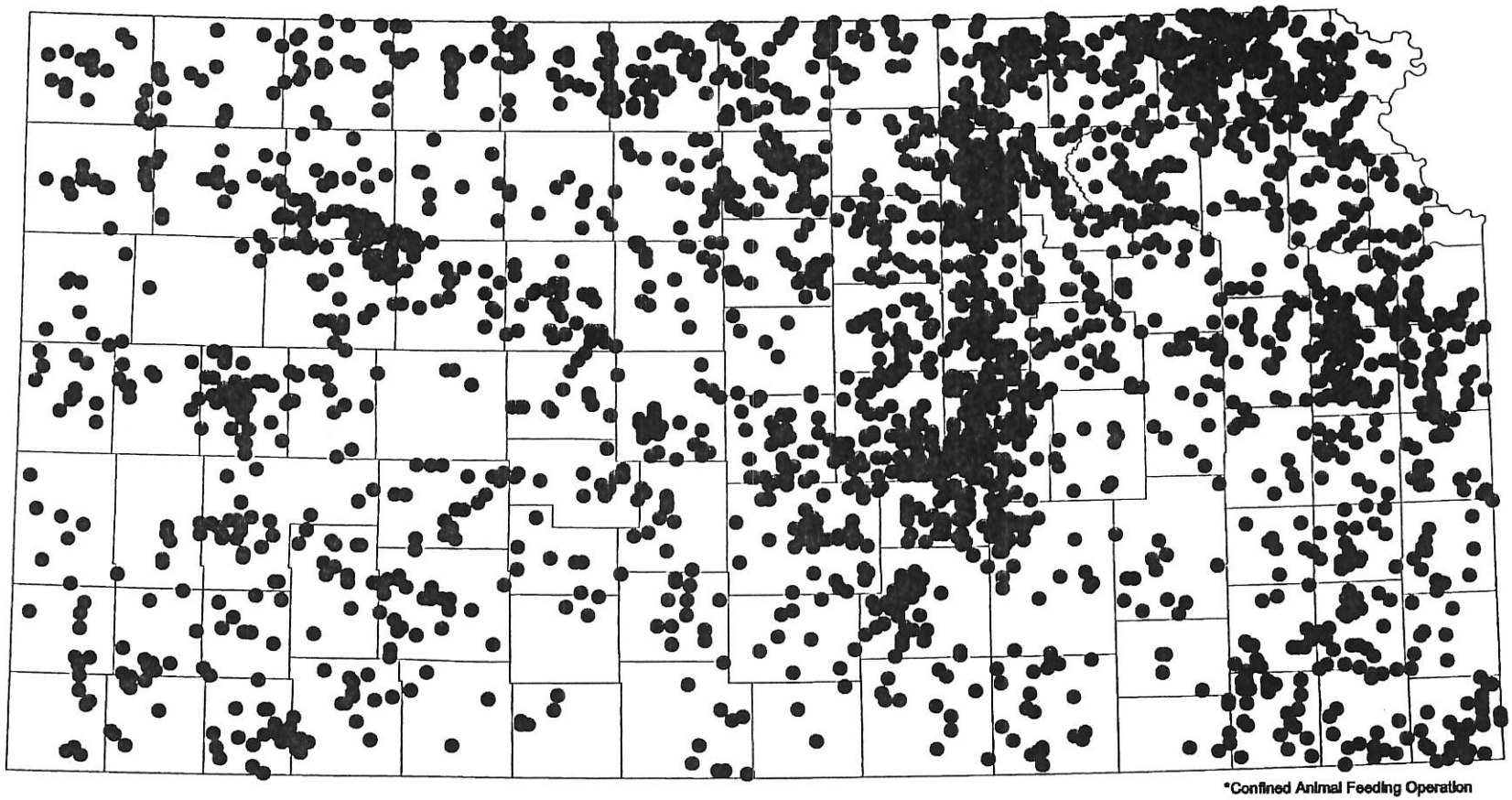
"Under-funded" mandates for regulatory programs - Public health priorities for inspection of:

- Nursing Homes/Assisted Living Facilities
- Home Health Agencies
- Child Care Providers
- Food and Lodging establishments
- Confined Animal Feeding Operations

I appreciate your assistance and patience as I move through these difficult issues.

A:\LEGIS2.WPD

# ALL CAFO* FACILITIES



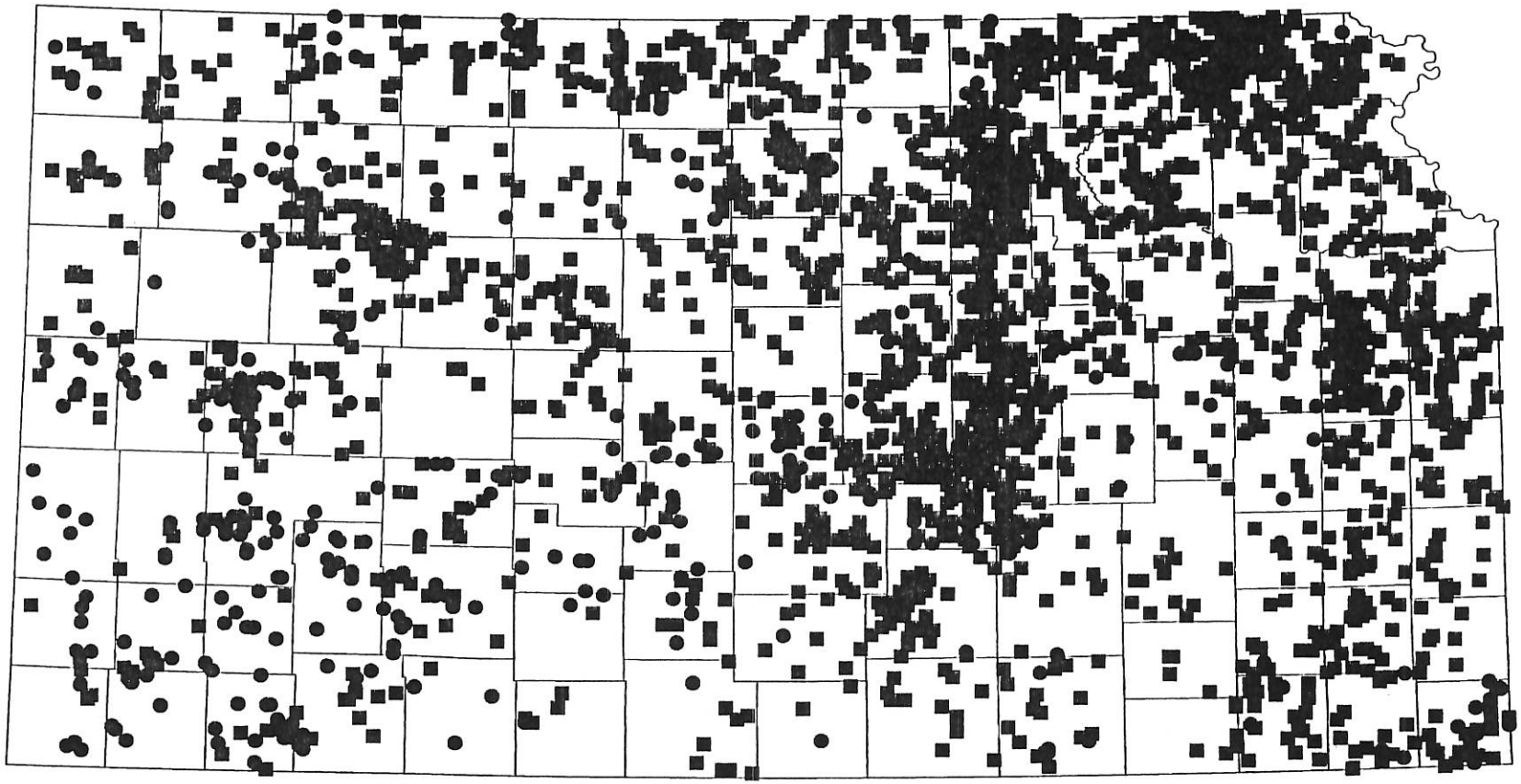
*Confined Animal Feeding Operation

DATA SOURCES:

Feedlots: KDHE (11/97)
Political boundaries: KCDB/KGS

KDHE BEFS/OIS Nov. 1997 DRAFT

# ALL CAFO* FACILITIES



DATA SOURCES:

Feedlots: KDHE (11/97)
Political boundaries: KCDB/KGS

KDHE BEFS/OIS Nov. 1997 DRAFT

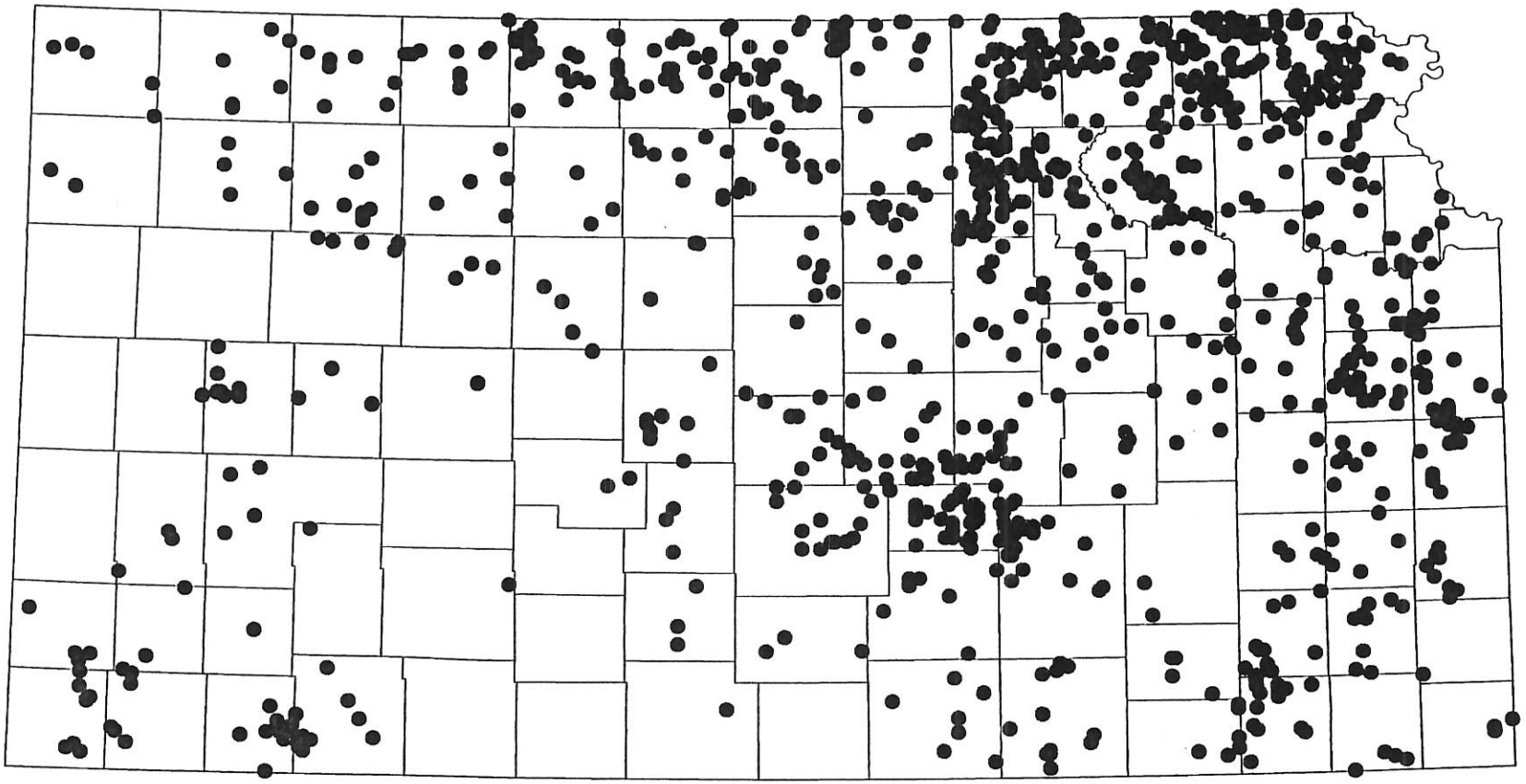
N

- state permitted/certified
- NPDES** permitted
- County boundary

*Confined Animal Feeding Operation

**National Pollutant Discharge Elimination System

# PERMITTED HOG FACILITIES

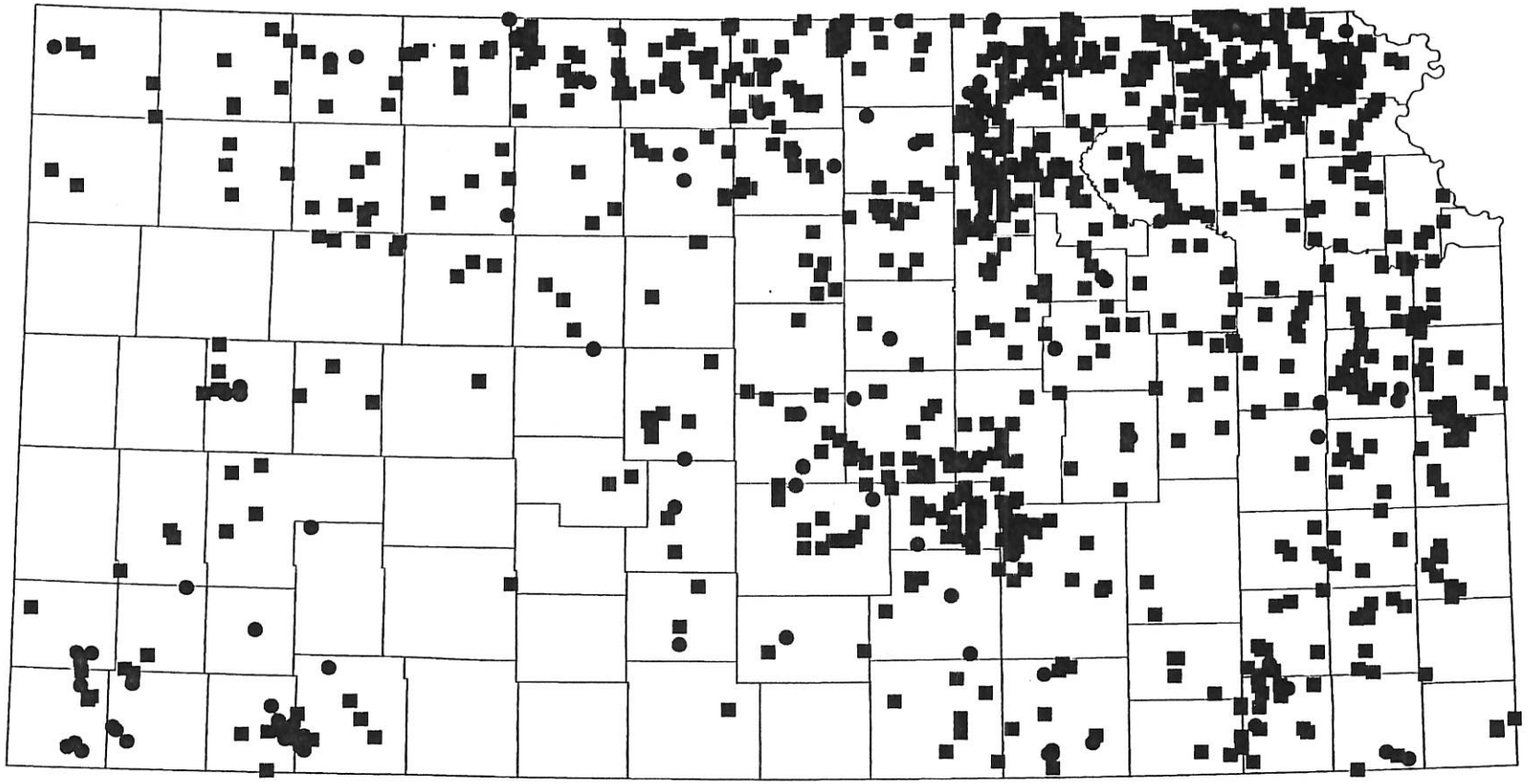


DATA SOURCES:

Feedlots: KDHE (11/97)
Political boundaries: KCDB/KGS

KDHE BEFS/OIS Nov. 1997 DRAFT

# PERMITTED HOG FACILITIES



DATA SOURCES:

Feedlots: KDHE (11/97)
Political boundaries: KCDB/KGS

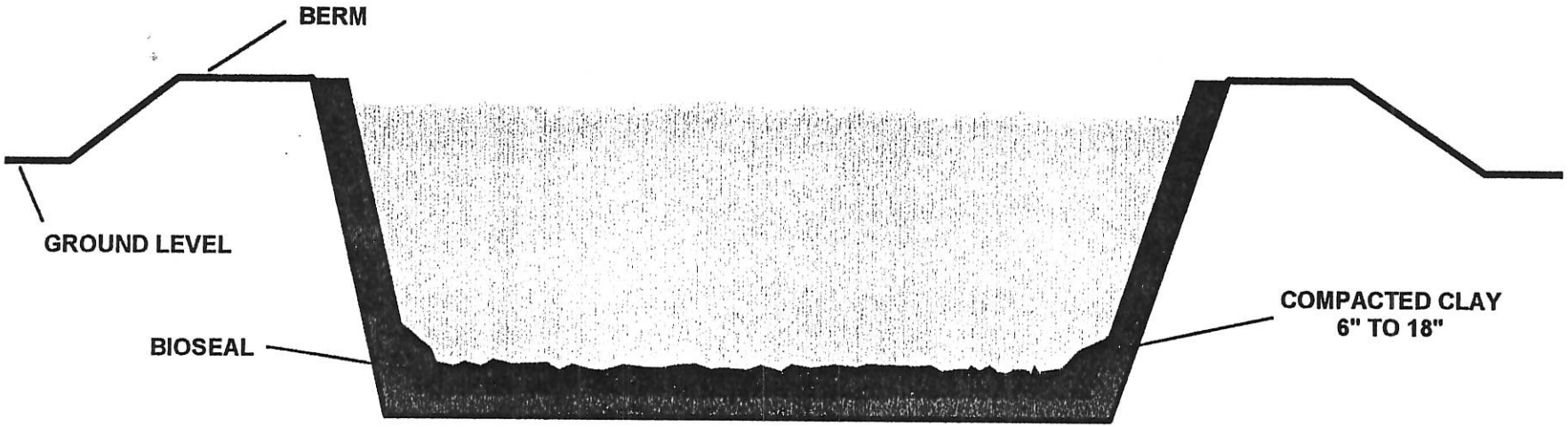
KDHE BEFS/OIS Nov. 1997 DRAFT

Swine feedlots:
- ■ state permitted/certified (under 1,000 AU)
- ● NPDES* permitted (over 1,000 AU)
- ▭ County boundary

N

*National Pollution Discharge Elimination System

# LIVESTOCK WASTE CONTAINMENT FACILITY




## SAFETY FEATURES

1. water level 2' down from top of berm
2. capacity for 25 year rainfall event
3. management plan to drawdown prior to rainy season

# KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT

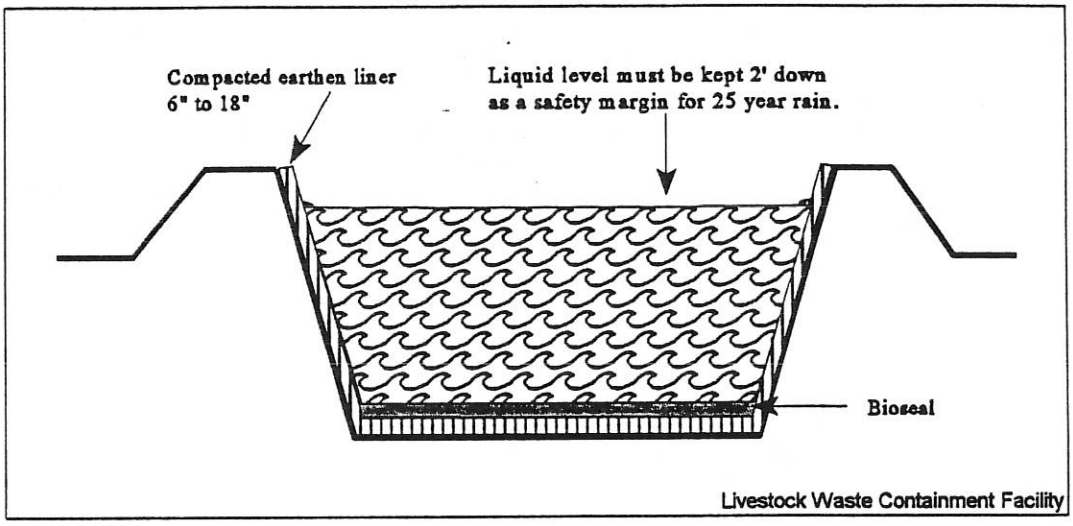
# Confined Animal Feeding Operations

## Background Information

### Preface

The confined animal feeding industry has significantly expanded in Kansas from about seven million head in 1967 to over 20 million head today without widespread negative impact on the environment. Wastewater control operations typically are designed not to discharge to the waters of the state.

However, today's heightened environmental awareness and expectations, combined with animal feeding industry growth make it prudent for KDHE to evaluate program successes and needs for improvement. A recent Legislative Post Audit confirmed many of the department's own findings. KDHE is working to correct program deficiencies as well as develop sound data and information upon which to base revisions to the state's combined livestock feeding wastewater control design and operating criteria.



Livestock Waste Containment Facility

Water quality monitoring locations are established to monitor water quality on a watershed basis, and are not sited to monitor individual livestock activity locations. Because of the nature of the monitoring system and the protections afforded by the constructed livestock pollution controls, surface water quality data is more apt to detect nonpoint source pollution impacts. Because confined animal feeding operations or CAFOs are considered point sources, permits typically prevent the release or discharge of wastewater to surface waters.

### History

The Kansas Board of Health was created in April 1885 for the purpose of protecting the health of Kansans. Over the years, the agency's mission was expanded to include environmental protection. Legislation, enacted in 1907 charged the agency with the responsibility for the investigation, evaluation, and authority to order the abatement of water pollution incidents. In 1974, the Board of Health was reorganized into a cabinet level agency and renamed the Kansas Department of Health and Environment (KDHE) whose mission remains the protection of both public health and the environment.

KDHE's livestock waste management program resulted from technical advancements in the agricultural sector brought about by significant development of large commercial livestock feeding facilities in the 1960's. These developments, in Kansas, centered on the cattle industry. Along with this development came environmental problems. Extensive fish kills and water pollution incidents occurred on our streams and lakes. At one time the Cottonwood River below Strong City was so badly polluted with feedlot runoff it was considered the "Kansas sewer". West of Dodge City, problems developed with drifts of manure accumulating on the highway following rainfall events which would have to be graded off before traffic could resume. These extreme nuisance occurrences and similar but not so severe water problems called for a comprehensive regulatory feedlot program.

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address the problems referenced above and the development of large commercial confined livestock feeding operations, the agency developed regulations specifically addressing livestock operations in 1968. These regulations required the registration of livestock operations greater than 300 head in size. Where found to present a water pollution potential, livestock operations were required to install pollution controls and be permitted. The need for water pollution control facilities was based on the size and makeup of the livestock operation, the surface drainage characteristics of the facility, the operations waste management and disposal practices, and direct observations by the agency's field staff.

In 1972, Congress authored changes to the Federal Water Pollution Control Act which necessitated modification to the agency's livestock waste management program. The 1972 Federal Water Pollution Control Act Amendments established a federal water pollution control permit program named the National Pollutant Discharge Elimination System (NPDES). The U.S. Environmental Protection Agency (EPA) was charged with the responsibility for implementing the federal program requirements. To enable KDHE to administer the federal program on behalf of EPA in Kansas, legislative action resulted in a fee based permit program, permits developed and issued on a performance basis (technical design, monitoring, and reporting), and permits which require renewal every five years.

EPA authorized KDHE to adminster the NPDES program in June 1974. In February 1974, EPA promulgated national technology based standards for confined animal feeding operations. In developing these standards, EPA evaluated several state livestock waste management programs, including the Kansas program. A number of provisions in the federal standards reflect state program elements from Kansas. With the NPDES program delegation to KDHE, the federal permit program requirements were merged and consolidated with the state livestock waste management permit program requirements.

While the state and federal program requirements contained many similarities, there were and remain a number of significant differences between the state and federal program requirements:

- State registration criteria is 300 AUs for state permits vs. 1,000 AUs requirement for federal permits.
- State requires the submission and approval of waste management plans and construction plans while there are no federal requirements.
- State approval of construction required before placing the pollution controls into service while there is no federal requirements.
- State developed design standards vs. typically no federal design requirements (exception is the 25-year, 24-hour containment requirement).
- State requirements for the disposal of liquid wastes [illegible] manures in an agronomic manner while there are no federal requirements.
- State separation distance requirements to provide a buffer area between the facility and area residents while there are no similar federal requirements.
- Siting and design considerations specifically targeted at protecting groundwater vs. no similar federal requirements.

In 1994, the Legislature enacted a number of changes which impacted the livestock waste management program in Kansas. One bill dealt with the corporate farming laws which resulted in several large dairy operations and a significant influx of swine operations locating in Kansas. While the change in corporate farming laws did not directly impact KDHE's program regulations, another bill affected KDHE's livestock waste management program statutes and regulations. This Legislative action, commonly referred to as Senate Bill 800, resulted in the following changes:

- Adopted, with one minor change, the EPA definition of an "animal unit". The exception is for beef cattle less than 700 pounds in size the factor used to calculate the number of animal units is 0.5 rather than 1.0.
- Registration criteria modified from 300 head to 300 animal units.
- Permitting criteria for facilities less than 1,000 animal units in size, addresses only those where a significant water pollution potential exists.
- Established in statute, separation distance requirements for new facilities:
  - Maximum design capacity of 300 - 999 AUs - 1,320 feet, and
  - Maximum design capacity of 1,000 AUs or more - 4,000 feet.

  KDHE can reduce the separation distance but can not expand the required separation distance criteria.
- Established provisions under which waivers of the separation distance criteria could be granted.
- Established provisions under which existing facilities are exempted from the separation distance criteria. Provided an inducement for facilities not already in KDHE's livestock waste management program to register with KDHE.
- Established registration fees and and an upper limit for permit fees.

In 1997, the Kansas Legislature modified the definition of "animal unit" by adding provisions for an animal unit

sion factor for swine weighing less than 55 pounds. The Legislature also added provisions noting that engineering reports, construction plans, and specifications may be submitted by a professional engineer or consultant.

Under the current program, a facility is required to have a permit if:

- The facility, regardless of size, is determined by KDHE to present a significant water pollution potential including but not limited to the following:
  - All livestock operations that utilize wastewater control facilities i.e., manure pits, ponds, lagoons, or other devices.
  - Open lots located across or adjacent to creeks, streams, intermittent waterways, or other conveying channel or device.
  - Any operation which cannot retain or control wastewater or waste solids upon the operators property.
  - Any operation observed to practice improper disposal of livestock wastes (liquids or solids) which has the potential to degrade or impair the quality of any waters of the State (surface and groundwater).
  - Any facility that generates wastewater and releases it on a daily or more frequent basis. (Dairy parlors, uncontrolled releases from watering systems, etc.)
- Any confined animal feeding facility with a designed animal unit capacity of 300 or more **AND** a significant water pollution potential.
- All facilities with design animal unit capacities of 1,000 or more, regardless of pollution potential.
- Sale barns and collection centers with an average capacity greater than 300 animal units or utilized more than once a week.
- All livestock truck wash facilities.
- Any other animal feeding operation whose operator elects to come under these statutes and regulations.

The issuance of a water pollution control permit does not approve, condone, or otherwise protect the livestock operator from environmental control responsibilities within the area of air pollution, public health, or aesthetics.

Facilities with design capacities less than 1,000 AUs found not to be in violation of separation distance requirements and which do not represent a significant water pollution potential can receive a certification from KDHE that a permit is not required.

SB 800 provisions maks no changes to the federal (EPA) pollution control requirements administered by KDHE.

KDHE has received about 1,400 registrations related to the July 1, 1996 registration deadline of SB 800.

KDHE's current inventory of permitted or certified facilities, as of January 1, 1997, includes:

| | |
|---|---|
| NPDES Permits (≥ 1,000 AUs in size) | 347 |
| State Permits (< 1,000 AUs in size) | 1,493 |
| State Certifications (Active facilities) | 877 |
| Permits / Certifications (Pending) | 1,432 |
| Inactive Facilities | 1,200 |
| Total Active Facilities In KDHE's Inventory | 4,149 |
| Total Facilities In Inventory (active & inactive) | 5,349 |

## Procedures For New Facilities Obtaining a Permit

- The producer needs to develop a conceptual plan of the facilities they want to build and operate i.e., animal types, head count, location and size of the lots and/or buildings, types of waste controls, and the amount and location of the land application areas.

| | |
|---|---|
| Salina | (785) 827-9639 |
| Lawrence | (785) 842-4600 |
| Hays | (785) 625-5663 |
| Wichita | (316) 337-6020 |
| Chanute | (316) 431-2390 |
| Dodge City | (316) 225-0596 |

- Submit a registration to the KDHE District Office serving the county where the facility will be located.
- Upon registration, KDHE will conduct a site appraisal. For those facilities proposing design capacities ≥ 1,000 AUs, the site will be evaluated for environmental concerns and compliance with separation distance requirements. For facilities with proposed design capacities < 1,000 AUs, the site appraisal is made to determine whether the conceptual plan or specific site conditions present a significant pollution potential and/or violate separation distance requirements.
- If the proposed design capacity is ≥ 1,000 AUs a permit must be obtained.
- If the proposed design capacity is less than 1,000 AUs, and KDHE determines the conceptual plan or site specific conditions do not represent a significant pollution potential and do not violate separation distance requirements, then upon documentation of the conceptual plan, KDHE will issue a certification indicating a permit will not be required.
- Regardless of the facility design capacity, if KDHE determines there is a significant pollution potential, a permit

ust be obtained.

- Acquire any needed separation distance releases or waivers.

- If a permit is required, the producer is to develop detailed construction plans and specifications for the proposed project. While not a regulatory requirement, KDHE recommends the producer utilize the services of a professional consulting engineer or have the Natural Resource Conservation Service (NRCS) develop the construction plans and specifications.

- Develop an operational plan describing how wastes will be stored and recycled to prevent pollution.

- Submit the construction plans and specifications, operational plan, and annual permit fee to the KDHE District Office.

- KDHE reviews the project information submitted for conformance with laws, regulations, and design standards. KDHE approves, requires modification, or denies approval of the construction plans, specifications, and operational plan.

- If the construction plans, specifications, and operational plan approved, KDHE develops a draft water pollution control permit.

- KDHE places the draft permit on public notice for a period of 30 days for comment by both the public and the producer. The public notice is published in the Kansas Register, and mailed to the producer, to individuals identified as being located within one mile of the facility, to the county commissioners of the county where the facility is to be located, to the U.S. Post Office serving the immediate area of the proposed livestock facility, and to individuals on KDHE's mailing list which have requested copies of the public notices.

- Following completion of the 30-day public notice period, KDHE reviews any comments received. KDHE may determine whether to issue, require modification of and then issue, or deny issuance of the permit.

- Based on comments received during the public notice period, KDHE may determine it is desirable to hold a public hearing to obtain additional information prior to making a decision whether to issue, require modification of and then issue, or deny issuance of the permit.

- A permit is issued for a maximum 5-year period. All permits are subject to periodic review and may be reopened for cause.

- KDHE is to be notified of the completion of construction. When a consultant or NRCS develops the design, KDHE requests they certify the facility construction was completed in accordance with the KDHE approved plans and specifications. Upon approval by KDHE, the facility may be placed into service.

## Administrative Oversight of Issued Permits

Permit Renewal:

- Permit renewals involve the submission of an application, the development of a draft permit and the public notice/ public hearing process previously referenced if conditions have remained unchanged.

  If there have been significant changes made or the permittee proposes to make significant changes in the permitted operation, the facility may be required to satisfy all the previously referenced procedures as if it were a new facility.

Inspections:

- Facilities are scheduled for a routine inspection depending whether the facility is permitted or certified, the size of the facility, the potential for pollution problems, compliance history, and type of pollution controls utilized. Special inspections are performed in response to complaints.

Enforcement:

- KDHE has the capability of issuing fines in the amount of $10,000 per violation per day where every day the violation continues is considered a separate violation. KDHE, under certain provisions, can levy fines up to $25,000 per day for each day the offense is maintained.

Investigation:

- When the Secretary of KDHE has reason to believe that any waters of the State are being polluted in a manner prejudicial to the health of any of the inhabitants of the State, the Secretary may initiate an investigation of such pollution.

## KDHE Livestock Waste Management Program Administration

The KDHE livestock waste management program is currently staffed by engineers in the Topeka and district offices; environmental technicians and district environmental administrators in the district offices. Legislation proposed by Governor Graves and approved by the 1997 Legislature established a satellite office in Ulysses to oversee large livestock operations in southwest Kansas.

### More Information

The Kansas Department of Health and Environment is always willing to provide more information about health and environmental issues. Call the Office of Public Information at (785) 296-1529 for assistance.

C


# KANSAS
## DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary


For Immediate Release
December 12, 1997
Contact: Don Brown
(785) 296-1529

## Monfort Inc. Fined $200,000

The Kansas Department of Health and Environment (KDHE) has issued an administrative order assessing a $200,000 fine against Monfort Inc., for violating conditions of the company's Water Pollution Control Permit at its Garden City meat packing facility.

Based upon inspection records at KDHE and communications with Monfort Inc., the Secretary of Health and Environment has determined that the facility violated terms and conditions of the permit by,

1) failing to comply with a schedule of compliance to clean an anaerobic lagoon;
2) failing to maintain adaquate freeboard in the wastewater lagoons;
3) applying wastewater to farm land in excess of agronomic plant nutrient requirements;
4) failing to maintain records as required by the permit.

The department determined that conditions at the facility posed a risk to the environment and public health. Under these circumstances, state law authorizes the department to issue civil penalties.

KDHE inspectors continue to monitor the facility to ensure compliance with the permit. The order is subject to appeal to the Secretary of Health and Environment.

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Note to reporters: A copy of the administrative order is enclosed.


900 SW Jackson, Room 1051-S
(785) 296-1529
E-mail: gcrawfor@kdhe.state.ks.us





Topeka, KS 66612-1290
FAX (785) 296-6231
Home page: www.state.ks.us/public/kdhe/

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF: CASE NO. 97-E-0064

CON AGRA d.b.a.
MONFORT, INC. - GARDEN CITY, KS
KANSAS WATER POLLUTION CONTROL PERMIT NO. I-UA14-NP04

PROCEEDING UNDER K.S.A. 65-164 AND 65-170d

## ADMINISTRATIVE ORDER

The following FINDINGS are made and ADMINISTRATIVE ORDER (Order) issued pursuant to the authority vested in the Secretary of the Kansas Department of Health and Environment (KDHE) and the Director of the Division of Environment (Director) by the above-referenced statutes.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Kansas Department of Health and Environment, KDHE, issued Kansas Water Pollution Control Permit Number I-UA14-NP04 (Permit) to Con Agra, d.b.a. Monfort, Inc. (Permittee), P. O. Box G, Greeley, Colorado 80632, for water pollution control facilities located at Garden City, Kansas. The Permit has an effective date of April 1, 1996 and an expiration date of January 31, 2001.

### Anaerobic Lagoons

2. The Permit contains a Schedule of Compliance which states, in part,

"A. Supplemental Condition B.6

1. The removal of sludge from the north anaerobic cell (Cell 1A) shall be completed by December 31, 1996.

2. The removal of sludge from the south anaerobic cell (Cell 1B) shall be completed by December 31, 1998."

3. In a December 4, 1996 letter to Karl Mueldener, Director, Bureau of Water, KDHE, Doug Pageler, Plant Manager, Monfort, Inc.- Garden City wrote:

"Due to circumstances and events beyond the control of Monfort, Monfort requests the replacement of language in items A.1. and A.2 in the compliance schedule with the following:

A. 1. Sludge and grease shall be removed from the north anaerobic lagoon as necessary within 365 days following final KDHE approval of the Land Application Plan and land application sites or disposal sites.

B. 2. Sludge and grease will be removed from the south anaerobic lagoon as necessary within 365 days following final KDHE approval of the Land Application Plan and land application sites or disposal sites."

Monfort cited, "1. Difficulties in obtaining KDHE approval of the Land Application Plan. 2. Limited access to agricultural land due to crop production and weather conditions.", as the circumstances and events beyond the control of Monfort.

4. In a February 27, 1997 letter to Monfort, KDHE denied Monfort's requested changes in the schedule of compliance. A review of KDHE's Monfort files show that the primary reason for the failure of Monfort to comply with the schedule of compliance was the failure of Monfort to start the project in a timely manner, adequately and timely address KDHE objections to the initial land application plan and to proceed with the project when KDHE approval was provided. The KDHE files show:

A. Monfort first proposed a December 1996 deadline for cleaning the south anaerobic lagoon in a June 27, 1995 letter to KDHE. In a December 14, 1995 letter to KDHE, Monfort proposed to change the requirement to the north anaerobic lagoon being cleaned by December 31, 1996 and the south lagoon being cleaned by December 31, 1998. The current Permit, issued March 18, 1996, included the requested changes.

B. In the Quarterly Summary Report dated July 15, 1996, Monfort stated, "A report prepared by Innovative Management Systems regarding the waste material and disposal of grease from the anaerobic lagoons at the plant has been prepared and will be presented to KDHE for comment on July 15, 1996. Monfort Inc. intends to meet the permit requirements for cleaning the anaerobic lagoons as required by the supplemental conditions of the permit."

C. The report, prepared by Innovative Management Systems (IMS) for Monfort, consisted of a one page preliminary plan for land application of grease only. At the July 15, 1996 meeting (as provided in a July 22, 1996 KDHE memorandum to file), KDHE indicated that previous attempts to land apply only grease have not been successful. Also, KDHE expressed concern about the upcoming December 31, 1996 deadline. Monfort indicated IMS had informed Monfort the grease could be removed in 30 working days. Bill McAllister, Bolton & Menk, Inc., consultant to Monfort, stated a plan would be submitted to KDHE before September 1, 1996, hopefully in mid-August.

D. In an August 5, 1996 certified letter from KDHE to Doug Pageler, KDHE stated:

"KDHE remains very concerned about the slow progress Monfort is making in correcting the problems with the wastewater treatment system. **KDHE expects Monfort to meet all Schedule of Compliance deadlines in the current permit."**

E. In an August 22, 1996 letter to KDHE from Monfort, Doug Pageler stated:

"5. Anaerobic Lagoons' Sludge and Grease Removal

Monfort management is now working directly with a consultant, Brown & Caldwell, to complete the plan for land application of grease and sludge solids. This plan will propose to land apply a mixture of lagoon grease and sludge..... According to our consultant, the updated schedule for submittal of this plan to KDHE is September 17, 1996.

F. In the October 15, 1996 Quarterly Summary Report, Monfort discussed delays in completing the anaerobic lagoon's grease/sludge removal report due to "contractual differences between IMS and Brown & Caldwell".

G. A Land Application Plan for anaerobic sludge was submitted to KDHE by Monfort on October 23, 1996.

H. In a November 20, 1996 letter to Monfort, KDHE conditionally approved Monfort's October 23, 1996 plan for land application of anaerobic sludge. The approval letter stated, "The plan is deficient in several areas. However, in an effort to expedite Monfort's cleaning of the anaerobic lagoon, KDHE is providing **conditional approval** of the plan. Attachment I lists the additional requirements that Monfort must meet during the implementation of the Land Application Plan."

I. In the January 13, 1997 Quarterly Summary Report, Monfort provided the following information:

"1. **Anaerobic Lagoons' Grease/Sludge Removal**

Brown & Caldwell submitted the Land Application Plan (dated October 22, 1996) to KDHE staff during an October 23, 1996 meeting. Based on preliminary comments from KDHE during the October 23 meeting, Brown & Caldwell submitted an Addendum (dated November 6, 1996) to the Land Application Plan. On November 20, 1996, KDHE issued a conditional approval of the Land Application Plan provided that Monfort meet additional requirements that were contained in the November 20, 1996 letter.

.....The [KDHE] December 9, 1996 letter indicates KDHE provided verbal [approval] of the Land Application Plan in a December 3, 1996 telephone conversation. Since receiving the conditional approval of the Land Application Plan, Monfort notified KDHE of its intent to commence activities in connection with the Land Application Plan."

The Quarterly Summary Report also stated, ".....Based on current projections,

Monfort expects to complete sludge and grease removal from the north anaerobic lagoon and related land application during Spring 1997."

J. In a July 2, 1997, Quarterly Summary Report from Monofort to Iona Branscum, Monfort wrote:

"7. Cleaning of North Anaerobic Lagoon

....The cleaning [of the North Anaerobic Lagoon] has ceased due [to] availability of crop ground of application. It was determined by Al Guernsey that the lagoon was not sufficiently cleaned."

K. On November 20, 1997, another consultant, Horizon Technology, Inc., submitted a new land application plan for Monfort to desludge the north and south anaerobic lagoons. The new plan proposed to apply up to 50 tons/acre of grease and sludge which is well in excess of agronomic rates. The proposed application rate is not acceptable to KDHE.

5. As of December 10, 1997, the north anaerobic cell had not been desludged as required by the Permit. The Director and Secretary find that the Permittee has violated the schedule of compliance in the Permit which required the removal of the sludge by December 31, 1996.

Freeboard Requirements

6. Supplemental Condition B.1 states, "All wastewater ponds and irrigation ponds shall maintain a minimum of three feet of freeboard."

7. On November 25, 1996, KDHE conducted a follow-up inspection of Monfort's wastewater treatment system. A December 5, 1996 memorandum to the KDHE file documents the following freeboard:

North anaerobic lagoon - "...was full, similar to conditions observed during my last visit"

South anaerobic lagoon - "...about 2 feet of freeboard."

Largest aerobic lagoon - "...slightly more than one foot of freeboard. However, the rip rap on the southern edge was iced over, indicating that previous wave action had caused wastewater to spill onto the dike."

Triangular, aerobic lagoon - "...about nine inches of freeboard."

In addition to the above, the December 5, 1996 memo states, "Both irrigation storage ponds were nearly brim full."

8. In a January 30, 1997 letter to Doug Pageler, Al Guernsey, KDHE Dodge City office, wrote:

"On January 17, 199[7] and subsequently on January 30, 1997, I reviewed the north aerobic lagoon at the plant site and the two wastewater storage reservoirs from which effluent is utilized for irrigation activities. Based upon these observations the nondischarge system is severely surcharged with less than 12 inches of freeboard present."

"The chronic noncompliance and surcharged condition impacts the integrity of the dikes. The potential for eminent release/discharge from the wastewater control system necessitates immediate action."

During a March 18, 1997 telephone conversation with Al Guernsey, Doug Pageler reported the lagoons freeboard levels were: Lagoon 1 @ 38", Lagoon 2 @ 24", Lagoon 3 @ 22", Lagoon 4 @ 14", Brookover East Storage @ 28" and Brookover West Storage @ 23".

In an August 20, 1997 memorandum from Susan Turner, KDHE Ulysses office, concerning an August 19, 1997 visit to Monfort, Ms. Turner provided the following lagoon freeboards: Lagoon 1 @ 45", Lagoon 2 @ 33", Lagoon 3 @ 49", Lagoon 4 @ 23", Brookover East Storage @ 31" and Brookover West Storage @ 41".

9. The Director and Secretary find that the Permittee has violated terms and conditions of the Permit by not maintaining adequate freeboard in the wastewater retention structures.

Over Application of Nutrients at Brookover Farms Sites

10. Supplemental Condition C.2 states in part, "Application rates shall not exceed the agronomical loadings for plant nutrient needs of agricultural farmland as specified in the Minimum Standards unless approved by KDHE."

11. Data from the Management Plans, submitted by Monfort, indicate wastewater and fertilizer are being, and have been, land applied at rates above the nutrient needs of the crops. Furthermore, the Management Plans have failed to outline how Monfort will come into compliance with the requirements of Supplemental Condition C.2.

12. The Director and Secretary find that the Permittee has violated terms and conditions of the Permit by applying nutrient loadings in excess of the agronomic needs of the crops being produced.

General Land Application Management Plan

13. Supplemental Condition D. states in part, "By July 28, 1996 the permittee shall submit to KDHE for approval a comprehensive land application management plan for the years 1996, 1997, 1998, 1999 and 2000. The plan shall address the handling practices of paunch

manure, process solids, sludges, holding pen manure and wastewater irrigation that are/will be implemented to prevent crop or soil damage, groundwater, stormwater or surface water contamination, and nuisance conditions (which include odor and insect propagation). The plan shall ensure the permittee has adequate land and application equipment to land apply the quality and quantity of wastewater and solids generated at this facility at agronomic rates.

14. The Director and Secretary find that Monfort has failed to provide an acceptable General Land Application Management Plan based upon the following:

A. Monfort submitted a Land Application Management Plan for wastewater and solids to KDHE on July 29, 1996.

B. In an August 5, 1996 certified letter to Doug Pageler, KDHE stated:

"Based upon my preliminary review of the plan, only about one third of the wastewater currently being generated by your facility can be applied to the identified land when considering the agronomical rate for nitrogen. Monfort must provide complete agronomical rate calculations for all parameters of concern to show that sufficient land is available based upon the quantity and quality of irrigation wastewater currently being generated. KDHE reminds Monfort that their Kansas Water Pollution Control Permit does not allow application rates above agronomical rates."

In addition, on August 8, 1996, Iona Branscum, KDHE, contacted Wes Potter, Con Agra, to provide verbal comments on the deficiencies of Monfort's Land Application Management Plan for wastewater and solids. (Ref: August 15, 1996 KDHE memo to file)

C. On September 27, 1996, Monfort resubmitted their Land Application Management Plan for wastewater and solids.

D. In an October 15, 1996 certified letter to Doug Pageler, KDHE stated:

"The Kansas Department of Health and Environment (KDHE) has received Monfort's second submittal of the Land Application Management Plan dated September 27, 1996. The body of the report has changed little from the original, unsatisfactory submittal on July 28, 1996.

Monfort's past efforts to come into compliance with the terms of the permit which was issued in March, 1996 have been unsatisfactory. Although Monfort has submitted reports and/or plans by the dates stated in the permit, the documents have failed to meet the requirements of the permit. **KDHE expects Monfort to meet all upcoming Schedule of Compliance deadlines in the current permit and expeditiously correct all unacceptable submittals to come into compliance with**

**the permit."**

E. On November 27, 1996, Monfort resubmitted their Land Application Management Plan for wastewater and solids.

F. In a February 27, 1997 letter, KDHE provided comments on Monfort's Land Application Management Plan. The letter states, "KDHE can not approve of the Plan. A significant deficiency of the Plan is the anticipated total potential contributions of nutrients .... applied to the majority of land application sites exceeds the estimated crop nutrient requirements .... of those sites."

15. In a September 22, 1997, document entitled "Engineering Report on Proposed Wastewater Irrigation Areas, dated September 19, 1997, Monfort proposed 5 additional sites on the Garden City packing plant property for irrigation consisting of approximately 100 acres. In a December 10, 1997 letter, KDHE disapproved these sites due to the shallow depth to groundwater, potential impact on existing contaminated groundwater and the monitoring well network plus incompatibility of this proposed land use with a nearby residential subdivision.

Wastewater Irrigation Records

16. Supplemental Condition D.6. states: "As part of the Land Application Plan/Annual Update Report, the permittee shall maintain records of the quantity of wastewater effluent, process solids, paunch manure, holding pen wastes and/or sludges applied to each land application site. This information shall include the date, application site and the type and quantity applied. These data shall be submitted annually to KDHE as outlined in Supplemental Condition A.2."

17. Monfort's quarterly status report dated January 13, 1997 stated, "During a November 14, 1996 meeting with Brookover Farms management, BMI [Bolton & Menk, Inc., Monfort's consultant] and Monfort discovered that the facilities at Brookover Farms are not adequate for monitoring the wastewater quantity to each existing irrigation site. Monfort management has received funding approval to install a flowmeter at each irrigation site that allows monitoring of each irrigation site. Monfort expects to install these flowmeters within 30 days." Installation should have been completed by February 13, 1997.

18. Monfort's quarterly status report dated June 17, 1997 stated, "By April 7, 1997, the water meters that had been ordered had arrived and been installed on each of the existing pivots at Brookover Farms."

Based upon these statements, the Director and Secretary find that Monfort is in violation of Supplemental Condition D.6 of the Permit, can not provide the information for the time period April 1, 1996 through June 1996 and will not be able to provide the required data from July 1996 - March 1997.

Brine Storage Ponds

19. Schedule of Compliance, Item C, Page 3 of the Permit states in part:

[Permittee shall] "Complete closure of both brine ponds and the concrete settling basin one year and six months after the effective date of this permit."

The Permittee did not meet the October 1, 1997 closure date required by the Permit. However, test results on the sludge in the brine ponds indicate the sludge may be hazardous. KDHE continues to work with the permittee concerning closure of these ponds. Because of the complications created by the potentially hazardous materials determination, penalty action on this requirement is not being pursued in this Order.

Findings

20. Based upon the above, the Secretary and Director find that the Permittee has violated terms and conditions of the Permit by 1) failing to comply with the schedule of compliance to clean the north anaerobic lagoon, 2) failing to maintain adequate freeboard in the wastewater lagoons, 3) applying wastewater such that the agronomic plant nutrient requirements were exceeded and repeatedly failing to provide a Land Application Management Plan approvable by KDHE, and 4) failing to maintain records as required by the Permit.

21. K.S.A. 65-170d states in pertinent part: "Any person who violates: (1) Any term or condition of any sewage discharge permit issued pursuant to K.S.A. 65-165 and amendments thereto;. . .shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to $10,000 for every violation, every day such violation continues shall, for the purpose of this act, be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a) may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed."

22. Nothing in this Order shall be construed as a waiver of the State's right to seek injunctive and/or any other relief prescribed by law.

**PROPOSED ORDER**

Based upon the above referenced Findings and pursuant to the authority vested in the Secretary, Kansas Department of Health and Environment under K.S.A. 65-164(d), it is hereby ordered:

A. Anaerobic Lagoons

By May 1, 1998, Permittee shall remove the grease and sludge from the north anaerobic lagoon according to the KDHE conditionally approved Land Application Plan for anaerobic sludge.

B. Freeboard Requirements

1. By May 1, 1998, Monfort shall consistently maintain a minimum of two feet of freeboard in all wastewater lagoons and irrigation storage ponds.

2. By December 31, 1998 and continuing thereafter, Monfort shall maintain a minimum of three feet of freeboard in all wastewater lagoons and irrigation storage ponds.

C. Groundwater Study at the Six Original Brookover Sites

Permittee shall complete a project to monitor the groundwater in and immediately around the six original Brookover Land Application Sites as identified in the Land Application Management Plan.

1. By February 1, 1998, Permittee shall obtain the services of an independent consultant knowledgeable and experienced in groundwater monitoring and in the design and construction of groundwater monitoring wells. Said consultant shall be engaged to review existing groundwater quality, flow data, location of existing wells and other available information to formulate a groundwater monitoring study.

2. By April 1, 1998, Permittee's consultant shall provide KDHE-BOW personnel a preliminary plan to meet the requirements of a groundwater monitoring study.

3. By June 1, 1998 or within 30 days following KDHE's written response to the preliminary plan, whichever is later, Permittee's consultant shall provide the final plan for the groundwater monitoring study to KDHE for KDHE's approval.

4. By June 1, 1998, Permittee shall advise KDHE of the name of the KDHE-licensed water well contractor hired to construct any monitoring wells contemplated by the final plan. The water well contractor shall be knowledgeable and experienced in the installation of groundwater monitoring wells. The wells shall be constructed in accordance with KDHE's "Standard Monitoring Well Design - KDHE 5/89".

5. By June 1, 1998, Permittee shall advise KDHE of the name of the independent contractor hired to sample the monitoring wells and other such wells as the final plan may consider. The independent contractor shall be knowledgeable and experienced in the sampling procedures used for obtaining samples from monitoring

wells, shall use KDHE-certified laboratories for the analyses and provide the Permittee and KDHE the test results within 30 days of sampling.

6. Testing shall be for ammonia (0.2 mg/l), nitrate (0.2 mg/l), nitrite (0.2 mg/l), chloride (10 mg/l) and sulfate (10 mg/l). Numbers in parentheses are minimum reportable detection limits acceptable to KDHE.

7. By August 1, 1998, the monitoring wells shall be properly constructed.

8. By September 1, 1998, Permittee's independent monitoring contractor shall have obtained the first set of samples. Sampling and analyses shall be conducted quarterly in 1998 (2 sampling events), quarterly in 1999, and semi-annually in 2000 - 2002.

9. By August 1, 1999, if the groundwater analyses from 1998 and the first two quarters of 1999 show excess nutrients have migrated into the water table; or if the soil analyses show the land application site(s) to contain excess nutrients more than twice the reasonably expected 1998 crop requirements, Permittee shall provide KDHE a short-term plan to immediately reduce the application of nutrients on the site(s) and a long-term plan to remove the excess nutrients through crop management including the possibility of the temporary abandonment of the land application site(s) for waste and wastewater disposal/re-use.

10. Within six months of completion of this study, Permittee shall provide KDHE prior notice of intent to abandon the monitoring wells, request abandonment procedures then in effect and, with KDHE approval, properly abandon the monitoring wells. Alternatively, KDHE and the Permittee may mutually agree to leave the monitoring wells in place.

11. The applicable portions of Paragraphs C1-10, above, shall be placed in wastewater treatment permit I-UA14-NP04, its successor(s) or another enforceable document, as necessary, and these requirements shall be enforceable under the conditions of the successor document after termination of this Order.

D. <u>General Land Application Management Plan</u>

1. By July 1, 1998, Permittee shall provide KDHE a KDHE-approvable General Land Application Management Plan that clearly shows, using reasonable assumptions, disposal/re-use of irrigation wastewater and solids at agronomical rates as required by Supplemental Condition C of the Permit. The Plan shall show compliance with agronomical application rates as soon as possible but not later than by December 31, 1998.

2. At an April 9, 1997 meeting, Monfort provided KDHE a plan to construct a new wastewater treatment facility that would upgrade the effluent to meet Kansas Surface Water Quality Standards for discharges to surface waters of the state. In an April 10, 1997 FAX, Stanley Wilkins, attorney for Monfort relayed to KDHE details of the proposed wastewater treatment facility. In a July 15, 1997 FAX, Stanley Wilkins requested the completion date for the new wastewater treatment facility be delayed to September 1, 1998. Monfort has provided KDHE various documents supporting the construction of a new wastewater treatment facility including a facility plan dated May 29, 1997, an engineering study data June 30, 1997, wastewater treatment design documents dated July 16 and August 14, 1997 and structural plans dated September 19, 1997. KDHE provided approval with comments of the design and structural plan documents in September 2, 1997 and October 2, 1997 letters, respectively. If Monfort chooses to construct a new wastewater treatment facility to resolve the wastewater disposal/storage problems discussed herein, Monfort shall comply with the following schedule:

New Wastewater Treatment Facility

1. Monfort has submitted to KDHE an application for a Kansas/NPDES wastewater treatment permit to discharge treated wastewater to waters of the state. KDHE does not agree to issue any permits, certifications or other approvals required for plant construction, operation or wastewater discharge unless all statutory and regulatory requirements for such actions are met by Monfort.

2. By February 1, 1998, Monfort shall provide KDHE with a schedule for construction and operation of a new 2.5 MGD (design) Sequencing Batch Reactor (SBR) system to treat the wastewater from the packing house plant. The facility shall be substantially complete and on-line by September 1, 1998.

3. KDHE understands at least three of the existing lagoons are to be used with the new facility. By February 1, 1998, Monfort shall provide KDHE a substantially complete plan and schedule for preparation and use of the portions of the existing wastewater treatment facility that will be tied in to the new facility.

4. Monfort shall provide KDHE quarterly reports describing the status of the Sequencing Batch Reactor project. The first report is due January 15, 1998 for the time period October 1-December 31, 1997. Subsequent reports are due April 15, 1998, July 15, 1998 and October 15, 1998 for the previous calendar quarter. Reports are to be sent to the Kansas Department of Health and Environment, Industrial Programs Section, Forbes Field-Bldg 283, Topeka, KS 66620.

E. Brine Ponds

By February 1, 1998, Permittee shall provide to KDHE a new KDHE-approvable Schedule of Compliance to complete closure of the Brine Ponds.

F. Interim Agreement to Initiate a Site Characterization of Potential Environmental Contamination of Soil and Groundwater at the Garden City, Kansas Site

Nothing in this Order shall interfere with nor delay the implementation of the Interim Agreement for Site Characterization signed by Monfort on September, 3, 1996.

## PENALTY

Based upon the above-referenced Findings of Facts and Conclusions of Law and pursuant to the authority vested in the Director, Division of Environment of the Kansas Department of Health and Environment under K.S.A. 65-170d, it is hereby ordered:

A. That within 30 days of the date of service of this order, Permittee shall remit to the State of Kansas a civil penalty of $200,000 for violations of the Permit conditions as cited in paragraph 20.

B. The civil penalty shall be paid by cashier's check or money order and sent to the Secretary, Kansas Department of Health and Environment, 900 SW Jackson, Suite 904, Topeka, Kansas 66612-1290.

## OPPORTUNITY FOR A HEARING

The Permittee may appeal the Order and Penalty by stating specifically in what way the Order and Penalty are unlawful or unreasonable, and by sending a written notice of appeal and request for a hearing to Susan Vogel, Administrative Appeals Coordinator, Kansas Department of Health and Environment, Mills Building, Suite 400D, 109 SW 9th Street, Topeka, Kansas 66612-1215.

**Notice of appeal must be received at KDHE within 30 days following the service of this Order. Service is effective upon mailing.**

**Failure to submit a timely notice of appeal will result in a waiver of the Permittee's right to a hearing and the Order and Penalty will become a Final Order and Penalty without further proceedings.**

It is so ordered by the Director of the Division of Environment on the 12th day of December, 1997.

Ronald F. Hammerschmidt, Director
Division of Environment
Kansas Department of Health and Environment

It is so ordered by the Secretary, Kansas Department of Health and Environment on the 11th day of December, 1997.

Gary R. Mitchell, Secretary
Kansas Department of Health and Environment

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of December, 1997, a true and correct copies of the above Order was mailed to the following by depositing same in an envelope, postage prepaid, in the U.S. Mail addressed to Con Agra, d.b.a. Monfort, Inc., P. O. Box G, Greeley, Colorado 80632 and Monfort, Inc., P. O. Box 957, Garden City, KS 67846 and Resident Agent: Prentice-Hall Corporation System, Kansas Inc., Suite 1108, 534 S. Kansas Ave., Topeka, KS 66603 and Stanley Wilkins, Turner and Boisseau, Chartered, 4575 W. 110th, Suite 216, Overland Park, KS 66210.

Staff Member

KANSAS/NORTH CAROLINA

| | Rainfall Inches/Year | Evaporation Rates* | 1996 Cropland Harvested | Total Head of Livestock | Total # of Farms |
|---|---|---|---|---|---|
| Kansas | 16" - 40" | 44" - 62" | 20,899,000 | 8,150,000 | 66,000 |
| North Carolina | 44" - 60" | 36" - 40" | 4,154,000 | 10,513,200 | 39,600 |

*Mean Annual Lake Evaporation

Reference Documents Include the Following:

Midwest Plan Service-Livestock Waste Facilities Handbook
1997 Kansas Farm Facts
1997 North Carolina Agricultural Statistics

KANSAS / NORTH CAROLINA

| | KANSAS | NORTH CAROLINA |
|---|---|---|
| Regulated CAFO Facilities:<br>NPDES<br>State<br>Certifications | <br>380<br>1482<br>1106 | <br>0<br>3800 permit by rule.<br>--- |
| Program initiated:<br>Federal<br>State | <br>1974<br>1968 | <br>---<br>Prior to 1995 permit by rule.<br>1996 - Permit swine ≥ 250 hd.<br>1997 - Permit livestock for swine ≥ 250 hd., cattle ≥ 100 hd., etc. |
| Size to register: | ≥ 300 AUs or any size with pollution potential | ≥ 250 hd. swine<br>≥ 100 hd. cattle |
| Size to permit:<br>Federal<br>State | <br>EPA criteria.<br>≥ 1000 AUs; 300-999 AUs and pollution potential;<br>Any size with pollution potential. | <br>---<br>≥ 250 hd. swine<br>≥ 100 hd. cattle |
| Public Notice:<br>Federal<br>State | <br>30 days<br>30 days | <br>---<br>Adjoining property owners of swine facilities only. |
| Site appraisal: | Yes | No |
| Post construction inspection: | Yes | Certified by non-department specialist i.e., NRCS or consultant. |
| Groundwater monitoring: | Yes | No |
| Groundwater separation distance: | 10 ft. | No standard. |
| Separation distance to homes: | ≥ 1000 AUs-4000 ft.<br>300 - 999 AUs - 1320 ft. | 1500 ft. |
| Minimum Standards of design: | Yes | Yes (NRCS) |
| Review/approve plans and specs: | Yes | No - Will start in 1998. |
| Lagoon Storage criteria (dry weather): | 120/180 days | 180 days |

# Current State and Federal Confined Animal Feeding Operations (CAFO) Programs

| | KANSAS | EPA |
|---|---|---|
| Program initiated: | 1968 - State<br>1974 - Federal | 1974 - Federal |
| Size to register: | ≥ 300 AUs or pollution potential | NPDES registration not required. |
| Size to permit: | ≥ 1000 AUs;<br>300 - 999 AUs with pollution potential;<br>Any size with pollution potential. | NPDES Permits not required.<br>≥ 1000 AUs;<br>300 - 999 with direct discharge or manmade conveyance; or any size with pollution potential |
| Public notice: | 30 days | 30 days - Individual permit.<br>No PN for general permit per facility. |
| Site appraisal: | Yes | No |
| Post construction inspections: | Yes | No |
| Groundwater monitoring: | Yes | No |
| Groundwater separation distances | Yes | No |
| Separation distances from homes | Yes | No |
| Minimum standards of design. | Yes | No |
| Review/Approval of construction plans. | Yes | No |
| Storage criteria | 120/180 days + 25 yr. - 24 hr. storm | No discharge from 25 yr. - 24 hr. storm. |