

Approved: 3-18-98
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 February 27, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. Steve Lloyd - excused
Rep. Richard Alldritt - excused
Rep. Dennis McKinney - excused

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

Conferees appearing before the committee:

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 9:30 a.m. in room 521-S. She announced that a public hearing is scheduled on Substitute for HB2950 for proponents on March 4, 1998 and for opponents on March 5, 1998 in room 313-S. She asked if there was a motion to approve minutes for February 2, 3, 4, and 5 meetings.

Rep. Kent Glasscock made a motion the minutes be approved for February 2, 3, 4, and 5 meetings. Rep. Becky Hutchins seconded the motion. Motion carried.

Raney Gilliland, Legislative Research Department and Mary Torrence, Revisor of Statutes continued staff briefing on Substitute for HB2950.

Substitute for HB2950: **An act concerning livestock ; relating to regulation of confined animal feeding facilities; imposing restrictions on construction, operation and expansion of certain facilities; relating to disposal of certain dead animals; providing for certain income tax credits.**

A corrected copy of the substitute bill was distributed. (See attachment 1) Staff briefing continued. Questions and discussion followed.

Raney Gilliland, Legislative Research Department, announced that the bill was entered on the Legislative Administrative Internet "Home Page". He also distributed an unproofed draft which explains changes in the substitute bill. (See attachment 2)

Mr. Don Carlson, Chief of Industrial Programs, Kansas Department of Health and Environment, was in attendance and answered questions by the committee.

Chairperson Freeborn thanked the sub-committee for their work and the committee for their attention.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 4, 1998.

Proposed Substitute for HOUSE BILL NO. 2950

By Committee on Environment

1 AN ACT concerning livestock; relating to regulation of confined
2 animal feeding facilities; imposing restrictions on
3 construction, operation and expansion of certain facilities;
4 relating to disposal of certain dead animals; providing for
5 certain income tax credits; amending K.S.A. 2-3302, 2-3305,
6 2-3307 and 79-32,117 and K.S.A. 1997 Supp. 47-1219 and
7 65-171d and repealing the existing sections; also reviving
8 K.S.A. 2-3302, 2-3305, 2-3307 and 79-32,117 and K.S.A. 1997
9 Supp. 65-171d and repealing K.S.A. 2-3302, as amended by
10 section 20 of this act, 2-3305, as amended by section 22 of
11 this act, 2-3307, as amended by section 23 of this act, and
12 79-32,117, as amended by section 26 of this act, and K.S.A.
13 1997 Supp. 47-1219, as amended by section 24 of this act,
14 and 65-171d, as amended by section 1 of this act.

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

16 Section 1. K.S.A. 1997 Supp. 65-171d is hereby amended to
17 read as follows: 65-171d. (a) For the purpose of preventing
18 surface and subsurface water pollution and soil pollution
19 detrimental to public health or to the plant, animal and aquatic
20 life of the state, and to protect beneficial uses of the waters
21 of the state and to require the treatment of sewage predicated
22 upon technologically based effluent limitations, the secretary of
23 health and environment shall make such rules and regulations,
24 including registration of potential sources of pollution, as may
25 in the secretary's judgment be necessary to: (1) Protect the soil
26 and waters of the state from pollution resulting from underground
27 storage reservoirs of hydrocarbons and liquid petroleum gas; (2)
28 control the disposal, discharge or escape of sewage as defined in
29 K.S.A. 65-164 and amendments thereto, by or from municipalities,
30 corporations, companies, institutions, state agencies, federal

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Attachment 1*

1 agencies or individuals and any plants, works or facilities owned
2 or operated, or both, by them; and (3) establish water quality
3 standards for the waters of the state to protect their beneficial
4 uses.

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

11 (c) For the purposes of this act, including K.S.A. 65-161
12 through 65-171h and sections 2 through 20, and amendments
13 thereto, and rules and regulations adopted pursuant thereto:

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

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

28 (3) "Animal unit" means a unit of measurement calculated by
29 adding the following numbers: The number of beef cattle weighing
30 more than 700 pounds multiplied by 1.0; plus the number of cattle
31 weighing less than 700 pounds multiplied by 0.5; plus the number
32 of mature dairy cattle multiplied by 1.4; plus the number of
33 swine weighing more than 55 pounds multiplied by 0.4; plus the
34 number of swine weighing 55 pounds or less multiplied by 0.1;
35 plus the number of sheep or lambs multiplied by 0.1; plus the

1 number of horses multiplied by 2.0; plus the number of turkeys
2 multiplied by 0.018; plus the number of laying hens or broilers,
3 if the facility has continuous overflow watering, multiplied by
4 0.01; plus the number of laying hens or broilers, if the facility
5 has a liquid manure system, multiplied by 0.033; plus the number
6 of ducks multiplied by 0.2. However, each head of cattle will be
7 counted as one full animal unit for the purpose of determining
8 the need for a federal permit. "Animal unit" also includes the
9 number of swine weighing 55 pounds or less multiplied by 0.1 for
10 the purpose of determining applicable requirements for new
11 construction of a confined feeding facility for which a permit or
12 registration has not been issued before January 1, 1998, and for
13 which an application for a permit or registration and plans have
14 not been filed with the secretary of health and environment
15 before January 1, 1998, or for the purpose of determining
16 applicable requirements for expansion of such facility. However,
17 each head of swine weighing 55 pounds or less shall be counted as
18 0.0 animal unit for the purpose of determining the need for a
19 federal permit.

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

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

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

34 (d) In adopting rules and regulations, the secretary of
35 health and environment, taking into account the varying

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

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

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

28 (3) Any action of the secretary pursuant to this subsection
29 is subject to review in accordance with the act for judicial
30 review and civil enforcement of agency actions.

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

33 (1) Plan approval, monitoring and inspecting underground or
34 buried petroleum products storage tanks, for which the annual fee
35 shall not exceed \$5 for each tank in place;

1 (2) permitting, monitoring and inspecting salt solution
2 mining operators, for which the annual fee shall not exceed
3 \$1,950 per company; and

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

7 (g) Prior to any new construction of a confined feeding
8 facility with an animal unit capacity of 300 to 999, such
9 facility shall register with the secretary of health and
10 environment. Facilities with a capacity of less than 300 animal
11 units may register with the secretary. Any such registration
12 shall be accompanied by a \$25 fee. Within 30 days of receipt of
13 such registration, the department of health and environment shall
14 identify any significant water pollution potential or separation
15 distance violations pursuant to subsection (h). If there is
16 identified a significant water pollution potential, such facility
17 shall be required to obtain a permit from the secretary. If
18 there is no water pollution potential posed by a facility with an
19 animal unit capacity of less than 300, the secretary may certify
20 that no permit is required. If there is no water pollution
21 potential nor any violation of separation distances posed by a
22 facility, other than a facility for swine, with an animal unit
23 capacity of 300 to 999, the secretary shall certify that no
24 permit is required and that there are no certification conditions
25 pertaining to separation distances. If a separation distance
26 violation is identified, the secretary may reduce the separation
27 distance in accordance with subsection (i) and shall certify any
28 such reduction of separation distances.

29 (h) (1) Any new construction or new expansion of a confined
30 feeding facility, other than a confined feeding facility for
31 swine, shall meet or exceed the following requirements in
32 separation distances from any habitable structure in existence
33 when the application for a permit is submitted:

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

1 ~~(2)---4000~~ (B) 4,000 feet for facilities with an animal unit
2 capacity of 1,000 or more.

3 (2) Any new construction or new expansion of a confined
4 feeding facility for swine shall meet or exceed the following
5 requirements in separation distances from any habitable
6 structure, wildlife refuge or county, state or federal park in
7 existence when the application for a permit is submitted:

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

10 (B) 4,000 feet for facilities with an animal unit capacity
11 of 1,000 to 4,499;

12 (C) 4,000 feet for expansion of existing facilities to an
13 animal unit capacity of 4,500 or more if such expansion is within
14 the perimeter from which separation distances are determined
15 pursuant to subsection (k) for the existing facility; and

16 (D) 5,000 feet for: (i) Construction of new facilities with
17 an animal unit capacity of 4,500 or more; or (ii) expansion of
18 existing facilities to an animal unit capacity of 4,500 or more
19 if such expansion extends outside the perimeter from which
20 separation distances are determined pursuant to subsection (k)
21 for the existing facility.

22 (i) (1) The separation distance requirements of subsection
23 ~~(h)~~ subsections (h)(1) and (2) shall not apply if ~~such--person~~
24 ~~newly-constructing-or-newly-expanding-a-confined-feeding-facility~~
25 the applicant for a permit obtains a written agreement from all
26 owners of habitable structures which are within the separation
27 distance stating such owners are aware of ~~such~~ the construction
28 or expansion and have no objections to such construction or
29 expansion. The written agreement shall be filed in the register
30 of deeds office of the county in which the habitable structure is
31 located.

32 (2) (A) The secretary may reduce the separation distance
33 requirements ~~if--(1)~~ of subsection (h)(1) if: (i) No substantial
34 objection from owners of habitable structures within the
35 separation distance is received in response to public notice; or

1 †2) (ii) the board of county commissioners of the county where
 2 the confined feeding facility is located submits a written
 3 request seeking a reduction of separation distances.

4 (B) The secretary may reduce the separation distance
 5 requirements of subsection (h)(2)(A) or (B) if: (i) No
 6 substantial objection from owners of habitable structures within
 7 the separation distance is received in response to notice given
 8 in accordance with subsection (1); (ii) the board of county
 9 commissioners of the county where the confined feeding facility
 10 is located submits a written request seeking a reduction of
 11 separation distances; or (iii) the secretary determines that
 12 technology exists that meets or exceeds the effect of the
 13 required separation distance and the facility will be using such
 14 technology.

15 (C) The secretary may reduce the separation distance
 16 requirements of subsection (h)(2)(C) or (D) if: (i) No
 17 substantial objection from owners of habitable structures within
 18 the separation distance is received in response to notice given
 19 in accordance with subsection (1); or (ii) the secretary
 20 determines that technology exists that meets or exceeds the
 21 effect of the required separation distance and the facility will
 22 be using such technology.

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

25 †1) (A) Confined feeding facilities which ~~are~~ were permitted
 26 or certified by the secretary on ~~the effective date of this act~~
 27 July 1, 1994;

28 †2) (B) confined feeding facilities which ~~exist on the~~
 29 ~~effective date of this act and register~~ existed on July 1, 1994,
 30 and registered with the secretary before July 1, 1996; or

31 †3) (C) expansion of a confined feeding facility, including
 32 any expansion for which an application ~~is pending on the~~
 33 ~~effective date of this act, if: (A)~~ was pending on July 1, 1994,
 34 if: (i) In the case of a facility with an animal unit capacity of
 35 1,000 or more prior to ~~the effective date of this act~~ July 1,

1 1994, the expansion is located at a distance not less than the
2 distance between the facility and the nearest habitable structure
3 prior to the expansion; or ~~(B)~~ (ii) in the case of a facility
4 with an animal unit capacity of less than 1,000 prior to the
5 ~~effective--date--of--this--act--and~~ July 1, 1994, the expansion is
6 located at a distance not less than the distance between the
7 facility and the nearest habitable structure prior to the
8 expansion and the animal unit capacity of the facility after
9 expansion does not exceed 2,000.

10 (2) The separation distances required pursuant to subsection
11 (h)(2) shall not apply to:

12 (A) Confined feeding facilities for swine which are
13 permitted or certified by the secretary on the effective date of
14 this act; and

15 (B) expansion of a confined feeding facility to an animal
16 unit capacity of less than 4,500, including any such expansion
17 for which an application is pending on the effective date of this
18 act, if: (i) In the case of a facility with an animal unit
19 capacity of 1,000 or more prior to the effective date of this
20 act, the expansion is located at a distance not less than the
21 distance between the facility and the nearest habitable structure
22 prior to the expansion; or (ii) in the case of a facility with an
23 animal unit capacity of less than 1,000 prior to the effective
24 date of this act, the expansion is located at a distance not less
25 than the distance between the facility and the nearest habitable
26 structure prior to the expansion and the animal unit capacity of
27 the facility after expansion does not exceed 2,000.

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

1 facility for swine.

2 (1) The applicant shall give the notice required by
3 subsections (i)(2)(B) and (C) by certified mail, return receipt
4 requested, to all owners of habitable structures within the
5 separation distance. The applicant shall submit to the
6 department evidence, satisfactory to the department, that such
7 notice has been given.

8 ~~(*)~~ (m) All plans and specifications submitted to the
9 department for new construction or new expansion of confined
10 feeding facilities ~~may be, but are not required to be,~~ must be
11 prepared certified by a licensed professional engineer ~~or a~~
12 consultant.

13 New Sec. 2. As used in sections 2 through 20, and amendments
14 thereto, except as the context otherwise requires:

15 (a) "Best available technology for swine facilities" means
16 the best available technology for swine facilities, as determined
17 by the department in consultation with Kansas state university,
18 owners and operators of swine facilities and other appropriate
19 persons, entities and state and federal agencies.

20 (b) "Best management practices for swine facilities" means
21 those schedules of activities, maintenance procedures and other
22 management practices of a swine facility that are designed to
23 minimize or prevent pollution of the air, water or soil or to
24 control odor, flies, rodents and other pests, as determined by
25 the department in consultation with Kansas state university and
26 swine producers.

27 (c) "Department" means the department of health and
28 environment.

29 (d) "Permit" means a water pollution control permit for a
30 swine facility pursuant to K.S.A. 65-166a and 65-171d, and
31 amendments thereto.

32 (e) "Secretary" means the secretary of health and
33 environment.

34 (f) "Significant water pollution potential" means any
35 significant potential for pollution of groundwater or surface

1 waters as defined by rules and regulations adopted by the
2 secretary.

3 (g) "Swine facility" means a confined feeding facility for
4 swine.

5 (h) "Swine waste management system" means all constructed,
6 excavated or natural receptacles used for the collection,
7 conveyance, storage or treatment of manure or wastewater, or
8 both, from a swine facility, including swine containment
9 buildings.

10 (i) "Swine waste retention lagoon or pond" means an
11 excavated or diked structure, or a natural depression, provided
12 for or used by a swine facility for the purpose of containing or
13 detaining animal wastes or other wastes generated in the
14 production of animals.

15 New Sec. 3. (a) After receipt of an application for a permit
16 for construction of a new swine facility or expansion of an
17 existing swine facility, the department shall prepare and publish
18 in the Kansas register:

19 (1) A document containing all the requirements with which
20 the swine facility must comply upon approval by the department
21 and a brief explanation of the statutory or regulatory provisions
22 on which the requirements are based;

23 (2) any determinations of, and explanations for, departures
24 from any requirements otherwise applicable to the facility,
25 including citations to the applicable guidelines, development
26 documents or authorities for the departures; and

27 (3) a fact sheet containing the following information
28 required in the application:

29 (A) A detailed description of the location of the facility,
30 including the section, township and range, with reference to any
31 applicable comprehensive land use plan or zoning requirements;

32 (B) a map showing water wells located on the facility's
33 property, landmarks in the vicinity and nearby streams and bodies
34 of water;

35 (C) a description of the facility, including the swine waste

1 management system and facilities and any areas designated by the
2 applicant for future expansion as provided for by subsection (k)
3 of K.S.A. 65-171d and amendments thereto;

4 (D) a nutrient application plan, if required by section 6,
5 including base-line soil tests for a new facility or new field to
6 which wastes will be applied, and a crop rotation plan; and

7 (E) a statement that the applicant will consult with the
8 county extension agent or a qualified soil scientist or
9 agronomist to ensure that correct agronomic rates of application
10 are used and records of those consultations will be maintained by
11 the applicant.

12 (b) The department shall establish by rules and regulations
13 the form of public notice that is required for receipt of a
14 completed application for a permit for construction of a new
15 swine facility or expansion of an existing swine facility. Such
16 notice shall be by publication in a newspaper of general
17 circulation in the county where the facility is or will be
18 located, direct notification of residents in the vicinity of the
19 facility and notification of local government officials.

20 (d) The public notice required by subsection (b) shall
21 contain the following:

22 (1) The name, address and telephone number of the official
23 at the department who is responsible for processing the
24 application and the locations where further information and
25 copies of documents can be reviewed, which locations shall be in
26 the county where the facility is or will be located;

27 (2) the names and addresses of the operator of the facility
28 and the owner of the property where the facility is or will be
29 located;

30 (3) a statement of the tentative determination of the
31 department to approve the issuance of the permit;

32 (4) a brief description of the procedures and schedule for
33 making the final determination of approval or disapproval;

34 (5) notice of availability of the document and fact sheet
35 prepared pursuant to subsection (a);

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1 (6) a request for public comment on the tentative decision
2 to approve the issuance of the permit and the requirements for
3 the facility described in the document prepared pursuant to
4 subsection (a)(1); and

5 (7) a description of the procedures for providing public
6 comment.

7 (e) The department shall provide a period of 30 days from
8 the date of the public notice required by subsection (b) for
9 submission of public comments.

10 (f) The department, in its discretion, may hold a public
11 meeting or hearing within 30 days after the conclusion of the
12 comment period required by subsection (e) to receive further
13 public comment if the department determines that significant
14 environmental or technical concerns or issues have been raised
15 during the comment period. Public meetings and hearings scheduled
16 by the department shall address only those matters for which the
17 secretary has authority.

18 (g) The department shall not make a determination to approve
19 the issuance of a permit until completion of the procedures
20 required by this section. The department may disapprove at any
21 time the issuance of a permit without completing the procedures
22 required by this section.

23 New Sec. 4. (a) The department shall not approve a permit
24 for construction of a new swine facility or expansion of an
25 existing swine facility unless the swine waste management system
26 for the facility:

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

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

33 (3) except in the case of a water impoundment that is
34 constructed rather than natural, is located wholly within the
35 boundaries of and under common private ownership and is entirely

1 isolated from other surface water is located: (A) Not less than
2 500 feet from any surface water if the facility has an animal
3 unit capacity of 4,500 or more; (B) not less than 250 feet from
4 any surface water if the facility has an animal unit capacity of
5 1,000 to 4,499; or (C) not less than 100 feet from any surface
6 water if the facility has an animal unit capacity of under 1,000;

7 (4) is located not less than 250 feet from any private
8 drinking water well, other than the facility operator's well,
9 that is in active use; and

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

12 (b) The separation distances required pursuant to subsection
13 (a) shall not apply to:

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

16 (2) swine facilities for which an application for a permit
17 is pending on the effective date of this act; or

18 (3) expansion of a swine facility if an application for a
19 permit for the expansion is pending on the effective date of this
20 act.

21 (c) If the swine waste management of a swine facility having
22 an animal unit capacity of 4,500 or more is located less than 250
23 feet from the facility operator's private drinking water well
24 that is in active use, the facility operation shall test waters
25 from such well and annually report the test results to the
26 department.

27 New Sec. 5. (a) Each applicant for a permit for construction
28 of a new swine facility having an animal unit capacity of 1,000
29 or more or expansion of an existing swine facility to an animal
30 unit capacity of 1,000 or more shall submit with the application
31 for a permit a manure management plan and shall comply with the
32 plan when the permit is issued by the department.

33 (b) Each existing swine facility that has an animal unit
34 capacity of 1,000 or more on the effective date of this act shall
35 submit to the department, within one year after the effective

1 date of this act, a manure management plan for approval by the
2 department and shall comply with the plan as soon thereafter as
3 practicable.

4 (c) Each manure management plan required by this section
5 shall describe the methods for, and account for, the disposal of
6 all manure and wastewater generated by the swine facility. If the
7 methods of disposal of the manure and wastewater include land
8 application, the facility also shall prepare a nutrient
9 utilization plan, as required by subsection (b) of section 6, and
10 amendments thereto.

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

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

19 (f) Each swine facility that is required by this section to
20 have a manure management plan shall maintain such plan in
21 accordance with section 9, and amendments thereto.

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

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

35 (1) The facility shall maintain a log of removal of the

1 manure or wastewater from the facility and such log shall contain
2 the following:

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

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

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

8 (2) the facility shall provide to the hauler of the removed
9 manure or wastewater the most recent manure nutrient analysis
10 conducted pursuant to subsection (c) of section 6 and amendments
11 thereto, if the removed manure or wastewater are to be land
12 applied.

13 (i) (1) Except as provided by subsections (i)(2), (3) and
14 (4), the sides and bottom of any swine waste retention lagoon or
15 pond utilized by a swine facility that has an animal unit
16 capacity of 4,500 or more and located where the groundwater is at
17 a depth of 25 feet or less under the surface of the lagoon or
18 pond shall be lined with:

19 (A) A compacted soil liner of 3.6×10^{-6} cm/sec permeability
20 at 95% standard proctor density plus 2% optimum moisture; or

21 (B) a synthetic liner having a thickness of 40 mil on top of
22 a compacted soil liner of 7.3×10^{-6} cm/sec permeability at 95%
23 standard proctor density plus 2% optimum moisture.

24 (2) If the soil compaction requirements of subsection (i)(1)
25 cannot be met for one or more waste retention lagoons or ponds
26 utilized by a swine facility having an animal unit capacity of
27 4,500 or more:

28 (A) The sides and bottom of such lagoons or ponds shall be
29 lined with a synthetic liner having a thickness of 40 mil on top
30 of a soil liner compacted to the extent possible; and

31 (B) if the groundwater is at a depth of 150 feet or less at
32 the place where such lagoons or ponds are located, the facility
33 operator shall be required to install not fewer than one upstream
34 and two downstream groundwater monitoring wells, or employ
35 equivalent technology, as provided by rules and regulations of

1 the secretary.

2 (3) Any swine waste retention lagoons or ponds existing on
3 the effective date of this act and utilized by a swine facility
4 that has an animal unit capacity of 4,500 or more shall not be
5 required to meet the requirements of subsection (i)(1) and (2)
6 but must install not fewer than one upstream and two downstream
7 groundwater monitoring wells, or employ equivalent technology, as
8 provided by rules and regulations of the secretary, before
9 January 1, 2000, if the groundwater is at a depth of 150 feet or
10 less at the place where such lagoons or ponds are located.

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

16 (j) The secretary may require installation and sampling of
17 groundwater monitoring wells in the vicinity of any swine waste
18 retention lagoon or pond utilized by a swine facility that has an
19 animal unit capacity of 1,000 or more or when the department
20 determines necessary, or the secretary may allow the use of
21 equivalent technology, as provided by rules and regulations of
22 the secretary. The locations and design of such monitoring wells
23 shall be subject to approval by the secretary.

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

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

34 New Sec. 6. (a) The department of health and environment
35 shall not issue or renew a permit for any swine facility that has

1 an animal unit capacity of 1,000 or more and that applies manure
2 or wastewater to land unless:

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

5 (2) the nutrient utilization plan required by this section
6 is approved by the secretary of agriculture.

7 (b) (1) If the manure management plan prepared pursuant to
8 section 5 and amendments thereto provides for land application of
9 manure or wastewater:

10 (A) The applicant for a permit for construction of a new
11 swine facility having an animal unit capacity of 1,000 or more or
12 for expansion of an existing swine facility to an animal unit
13 capacity of 1,000 or more shall submit with the application for a
14 permit a nutrient utilization plan on a form prescribed by the
15 secretary of agriculture and shall comply with the plan when the
16 permit is issued by the department; and

17 (B) the operator of the existing swine facility that has an
18 animal unit capacity of 1,000 or more shall submit to the
19 department, within six months after the effective date of this
20 act, a nutrient utilization plan on a form prescribed by the
21 secretary of agriculture, for approval by the department of
22 agriculture, and shall comply with the plan by a date established
23 by the secretary of agriculture.

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

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

31 (B) crop rotations on the land application areas;

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

34 (D) nutrient budgets for the land application areas;

35 (E) rates, methods, frequency and timing of application of

1 manure, wastewater and other nutrient sources to the land
2 application areas;

3 (F) the amounts of nitrogen and phosphorous applied to the
4 land application areas;

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

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

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

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

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

19 (L) any other information required by the secretary of
20 agriculture to facilitate approval.

21 (3) (A) Each swine facility shall amend its nutrient
22 utilization plan whenever warranted by changes in the facility,
23 soil test results or other conditions affecting the facility.

24 (B) Amendments to the nutrient utilization plan must be
25 approved by the secretary of agriculture.

26 (4) Each swine facility shall maintain its nutrient
27 utilization plan in accordance with section 9 and amendments
28 thereto.

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

32 (A) Conduct soil tests, including but not limited to tests
33 for nitrogen, phosphates, chlorides, copper and zinc, on the land
34 application areas prior to preparation of the nutrient
35 utilization plan and at least annually thereafter, or as often as

1 required by best available soil science and standards relative to
2 the soils of, and crops to be grown on, the land application
3 areas or as required by the secretary of agriculture; and

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

6 (2) Each swine facility that has a manure management plan
7 that includes land application of manure or wastewater or sells
8 or gives manure or wastewater to third persons pursuant to
9 subsection (h) of section 5 and amendments thereto shall:

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

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

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

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

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

26 (d) If a swine facility finds that the soil tests required
27 pursuant to this act indicate that the phosphorous holding
28 capacity for any soils in the facility's land application areas
29 may be exceeded within five years, the facility shall promptly
30 initiate the process to obtain access to the additional land
31 application areas needed, or make other adjustments, to achieve
32 the capability to apply manure and wastewater at appropriate
33 agronomic rates.

34 (e) The department of agriculture may require a swine
35 facility to apply manure and wastewater on all or a portion of

1 the facility's land application areas at a rate within the
2 agronomic phosphorous needs of the crops or pasture, or the soil
3 phosphorous holding capacity, in less than the time originally
4 allowed in the approved nutrient utilization plan if the
5 department of agriculture finds that the land application actions
6 of the facility are contributing to the impairment of groundwater
7 or surface water.

8 (f) (1) Each swine facility that has an animal unit capacity
9 of 1,000 or more and that land applies manure or wastewater shall
10 include in its nutrient utilization plan, and thereafter comply
11 with, the requirements that manure and wastewater shall not be
12 applied on bare ground by any process, other than incorporation
13 into the soil during the same day, within 1,000 feet of any
14 habitable structure, wildlife refuge or county, state or federal
15 park, unless:

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

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

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

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

35 (3) Swine facilities shall not apply manure or wastewater:

1 (A) To highly erodible land, except where soil conservation
2 practices to control erosion and runoff in compliance with the
3 requirements of this section are identified in the facility's
4 nutrient utilization plan and are followed by the facility;

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

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

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

15 (4) Swine facilities shall follow procedures and precautions
16 in the land application of manure and wastewater to prevent
17 discharge of pollutants to surface water and groundwater due to
18 excess infiltration, penetration of drainage tile lines,
19 introduction into tile inlets or surface runoff, including
20 appropriate soil conservation practices to protect surface water
21 from runoff carrying eroded soil and manure particles.

22 (5) Swine facilities that conduct wastewater irrigation
23 shall:

24 (A) Irrigate only when soil moisture conditions are suitable
25 to allow all wastewater to soak into the soil; and

26 (B) use procedures and precautions to avoid spray drift from
27 the land application areas to roads, ditches or adjacent
28 property.

29 (6) Each swine facility that land applies manure or
30 wastewater shall ensure that any equipment used in the land
31 application process is properly maintained and calibrated and
32 monitor the use of the equipment so that any malfunction that
33 develops during the land application process is detected and the
34 process ceases until the malfunction is corrected.

35 (7) The operator of each swine facility that land applies

1 manure or wastewater shall:

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

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

8 (g) Each swine facility required to have a nutrient
9 utilization plan shall file such plan and any amendments to such
10 plan with the department of health and environment and the
11 department shall forward such plan and any amendments to the
12 secretary of agriculture.

13 New Sec. 7. The secretary shall adopt rules and regulations
14 establishing:

15 (a) Standards for training and certifying, and for periodic
16 continuing education or recertification of, operators of swine
17 facilities maintaining or supervising the swine waste management
18 system of a swine facility; and

19 (b) procedures for notifying the department of failure of a
20 swine waste retention lagoon or pond or any unplanned release of
21 animal waste by a swine facility.

22 New Sec. 8. (a) The secretary shall establish by rules and
23 regulations the circumstances under which a swine facility shall
24 be required to develop an emergency response plan.

25 (b) Each swine facility that is required to develop an
26 emergency response plan shall maintain such plan:

27 (1) In a location at the facility that is readily accessible
28 to all employees or contractors who are responsible for
29 implementing the plan; and

30 (2) as otherwise required in section 9 and amendments
31 thereto.

32 (c) The operator of each swine facility that is required to
33 develop an emergency response plan shall train, and keep current
34 the training of, the employees and contractors who are
35 responsible for implementing such plan.

1 (d) Each swine facility that is required to develop an
2 emergency response plan shall amend such plan whenever warranted
3 by changes in the facility or in other conditions affecting the
4 facility.

5 New Sec. 9. (a) Each swine facility shall keep all records
6 and plans required by this act at the facility's site office in a
7 manner that is accessible to inspection by authorized
8 representatives of the department pursuant to section 14 and
9 amendments thereto.

10 (b) Each swine facility shall retain at the location
11 required in subsection (a) the current and previous three years'
12 versions of the records and plans required by this act.

13 New Sec. 10. (a) (1) As a condition of issuance of a permit
14 for a swine facility, the operator of the facility shall be
15 certified by the department, or by a third party approved by the
16 department, as to the operator's knowledge of:

17 (A) Management of manure and wastewater;

18 (B) nutrient utilization planning and implementation;

19 (C) emergency response planning and implementation, if
20 required; and

21 (D) the other requirements of this act.

22 (2) If the department has not established or sanctioned an
23 operator certification program at the time that a swine facility
24 applies for a permit, or if a vacancy occurs in a certified
25 operator position, the department may issue a permit for the
26 facility without the operator certificate, and the operator shall
27 complete the certification program within six months after it is
28 established or sanctioned.

29 (b) The operator of each swine facility shall be responsible
30 for the training of employees or contractors required by
31 subsection (f)(7)(A) of section 6 and amendments thereto
32 (supervisors of land application), subsection (f)(7)(B) of
33 section 6 and amendments thereto (persons who conduct land
34 application) and subsection (c) of section 8 and amendments
35 thereto (persons responsible for implementing the emergency

1 response plan).

2 New Sec. 11. As a condition of issuance of a permit for a
3 swine facility, the department shall require the applicant to
4 submit a plan, approved by the department, for odor control if
5 the application is for:

6 (a) A permit for construction or expansion of a swine
7 facility that has an animal unit capacity of 4,500 or more;

8 (b) a permit for expansion of a swine facility to an animal
9 unit capacity of 4,500 or more; or

10 (c) renewal of a permit for a swine facility that has an
11 animal unit capacity of 4,500 or more.

12 New Sec. 12. (a) As a condition of issuance of a permit for
13 a swine facility, the department shall require the applicant to
14 submit a plan, approved by the department, for closure of the
15 facility if the application is for:

16 (1) A permit for construction or expansion of a swine
17 facility that has an animal unit capacity of 4,500 or more;

18 (2) a permit for expansion of a swine facility to an animal
19 unit capacity of 4,500 or more; or

20 (3) renewal of a permit for a swine facility that has an
21 animal unit capacity of 4,500 or more.

22 (b) The operator of each swine facility that has a capacity
23 of 4,500 animal units or more shall demonstrate annually to the
24 department evidence, satisfactory to the department, that the
25 operator has financial ability to cover the cost of closure of
26 the facility as required by the department.

27 New Sec. 13. (a) (1) Each swine facility that has a swine
28 waste retention lagoon or pond shall maintain the facility at all
29 times until it is certified to comply fully with the closure
30 requirements of this subsection (a).

31 (2) (A) Any swine facility that ceases to operate shall
32 close any swine waste retention lagoon or pond of the facility in
33 accordance with the requirements of this subsection (a).

34 (B) Any swine facility that has a swine waste retention
35 lagoon or pond that has not received manure or wastewater from

1 the facility for a period of 12 consecutive months shall close
2 the facility in accordance with the requirements of this
3 subsection (a), unless:

4 (i) The facility continues to operate;

5 (ii) the facility intends to restore use of the lagoon or
6 pond at a later date; and

7 (iii) the facility maintains the lagoon or pond as though it
8 were actively used, adding fresh water to replace water lost to
9 evaporation and preventing loss or compromise of structural
10 integrity or removes and disposes of all manure and wastewater in
11 accordance with the requirements of this act and refills the
12 lagoon or pond with clean water to preserve the integrity of the
13 synthetic or earthen liner.

14 (C) Any swine facility that chooses not to close a swine
15 waste retention lagoon or pond pursuant to subsection (a)(2)(B)
16 shall:

17 (i) Notify the department of the decision and the actions
18 taken to comply with the requirements of subsection (a)(2)(B);

19 (ii) conduct routine inspections, maintenance and record
20 keeping as though the facility were in use; and

21 (iii) prior to restoration of use of the lagoon or pond,
22 notify the department and provide the department with the
23 opportunity to inspect the facility to ensure that it complies
24 with the requirements of section 4 and amendments thereto.

25 (3) To close a swine waste retention lagoon or pond, a swine
26 facility shall remove all manure and wastewater, as well as all
27 associated appurtenances and conveyance structures, from the
28 lagoon or pond and dispose of the manure and wastewater in
29 accordance with the requirements of this act or, if the facility
30 requests, as determined otherwise by the department.

31 (4) The secretary shall adopt rules and regulations
32 establishing standards and procedures for demolition of any swine
33 waste retention lagoon or pond, or conversion of the lagoon or
34 pond to another use (such as a farm pond), as a condition of
35 closure.

1 (5) Upon notification to the department by a swine facility
2 that a swine waste retention lagoon or pond has been closed, the
3 department shall inspect the lagoon or pond and certify whether
4 the closure complies with the requirements of this subsection
5 (a).

6 (6) The secretary shall establish, by rules and regulations,
7 standard maximum periods for completion of all closure activities
8 for swine waste retention lagoons and ponds from the date of
9 cessation of operation of the lagoon or pond to the date of
10 compliance with all closure requirements of this subsection (a).

11 (b) When a swine facility ceases to operate, it shall close
12 all other manure and wastewater storage facilities to which
13 subsection (a) does not apply removing all manure and wastewater
14 from the manure and wastewater storage facility and disposing of
15 the manure and wastewater in accordance with the requirements of
16 this act or, if the swine facility requests, as determined
17 otherwise by the department.

18 (c) (1) On and after July 1, 2000:

19 (A) The operator of each swine facility that has a capacity
20 of 4,500 animal units or more and has a swine waste retention
21 lagoon or pond that is constructed or expanded after the
22 effective date of this act shall demonstrate annually to the
23 department evidence, satisfactory to the department, that the
24 operator has financial ability to cover the cost of closure of
25 the lagoon or pond as required by the department; and

26 (B) whenever a swine facility that has a capacity of 4,500
27 animal units or more and has a swine waste retention lagoon or
28 pond constructed before the effective date of this act is sold,
29 the new operator shall demonstrate annually to the department
30 evidence, satisfactory to the department, that the operator has
31 financial ability to cover the cost of closure of the lagoon or
32 pond as required by the department.

33 New Sec. 14. (a) The department shall conduct periodic
34 inspections of, and review the records of, each permitted swine
35 facility as follows:

1 (1) For any facility identified as having a specific water
2 pollution problem, every 6 months;

3 (2) for any facility not identified as having a specific
4 water pollution problem:

5 (A) Every 12 months, if the facility has a capacity of 4,500
6 or more animal units;

7 (B) every 18 months, if the facility has a capacity of 1,000
8 to 4,499 animal units; and

9 (C) every 36 months, if the facility has a capacity of 300
10 to 999 animal units.

11 (b) Each permitted swine facility shall grant access to the
12 facility at reasonable times, with appropriate safeguards for
13 protection of animal health, for authorized representatives of
14 the department to conduct inspections required by subsection (a).

15 (c) If any authorized representative of the department
16 requires access to a swine containment building or facility
17 during the course of any inspection required by subsection (a) or
18 at any other time, the representative shall comply with the
19 animal health protocol of the facility for entry into the
20 building or facility unless the protocol inhibits reasonable
21 access.

22 (d) No swine facility shall be assessed the cost of any
23 inspection required by subsection (a) either directly at the time
24 of the inspection or indirectly at the time of issuance of a
25 permit for the facility, except that such cost may be assessed
26 for any inspection associated with:

27 (1) An emergency that results in the discharge of manure or
28 wastewater to surface water or groundwater; or

29 (2) a swine facility that engages in a course of conduct
30 that results in repeated, material violations of this act.

31 (e) The secretary may contract with persons or entities to
32 conduct inspections and review of records as required by this
33 act.

34 New Sec. 15. (a) When a swine facility exists prior to the
35 construction of a habitable structure or designation of a park as

1 a county, state or federal park that would otherwise be located
2 within the separation distance for a waste retention lagoon or
3 pond or the separation distance for land on which manure or
4 wastewater from the facility has been or is being applied, the
5 separation distance requirement shall not apply to such structure
6 or park since the owner of such structure or park is expected to
7 know and understand that such structure or park, if located in
8 that location, will be subject to agricultural sights, sounds,
9 odors and other characteristics of farming from the preexisting
10 swine facility.

11 (b) A swine facility that is in compliance with all
12 applicable requirements of this act and other environmental laws,
13 and any rules and regulations or orders adopted pursuant to this
14 act or such other laws, shall be presumed not to be a nuisance
15 under K.S.A. 2-3202 and amendments thereto.

16 New Sec. 16. The secretary may deny an application for any
17 permit, whether new or a renewal, for a swine facility and, upon
18 notice and opportunity for hearing in accordance with the Kansas
19 administrative procedure act, may suspend or revoke any permit
20 for a swine facility, if the secretary finds that the applicant,
21 or any officer, director, partner or resident manager of the
22 applicant has:

23 (a) Intentionally misrepresented a material fact in applying
24 for any permit;

25 (b) habitually and intentionally violated environmental laws
26 of this or any other state or of the United States and the
27 violations have caused significant and material environmental
28 damage; or

29 (c) had any permit revoked under the environmental laws of
30 this or any other state or of the United States.

31 New Sec. 17. Every swine facility that has a capacity of
32 1,000 or more animal units shall file with the department a plan
33 for the handling of dead swine. The secretary shall adopt rules
34 and regulations establishing minimum standards, including
35 requirements that no dead swine shall be left where visible from

1 municipal roads or habitable structures and that carcasses shall
2 be picked up within 48 hours under normal circumstances.

3 New Sec. 18. (a) Kansas state university shall cooperate
4 with the department, other agencies and owners and operators of
5 swine facilities to determine best available technology and best
6 management practices.

7 (b) Within the limitations of appropriations therefor and
8 for the purpose of identifying potential risk of groundwater
9 contamination by swine waste retention lagoons or ponds or land
10 application of swine waste, Kansas state university, as a part of
11 its current evaluation of lagoons and ponds for containment of
12 animal waste, shall conduct nutrient management testing of land
13 where swine waste is applied, including deep soil sampling in
14 areas where land application of swine waste is conducted and in
15 adjacent areas where such waste is not applied. Kansas state
16 university, until completion of the evaluation, shall submit
17 preliminary reports regarding such evaluation on or before the
18 first day of each regular legislative session and, upon
19 completion of the evaluation, shall submit a final report of the
20 evaluation on or before the final day of the next regular
21 legislative session. Each such report shall be submitted to the
22 governor, the senate and house standing committees on
23 agriculture, the senate standing committee on energy and natural
24 resources and the house standing committee on environment.

25 New Sec. 19. (a) The express adoption or authorization of
26 standards and requirements for swine facilities by this act shall
27 not be construed to prohibit or limit in any manner the
28 secretary's authority to adopt rules and regulations establishing
29 standards and requirements for confined feeding facilities for
30 livestock other than swine.

31 (b) Nothing in this act shall be construed to exempt any
32 person or entity from or preempt or in any way excuse or waive
33 any obligation to comply with the provisions of the Kansas
34 chemigation safety law (K.S.A. 2-3301 et seq. and amendments
35 thereto), K.S.A. 24-126 and amendments thereto (relating to

1 levees), K.S.A. 82a-301 et seq. and amendments thereto (relating
2 to stream obstructions), the Kansas water appropriation act
3 (K.S.A. 82a-701 et seq. and amendments thereto) or any other
4 statute or rule and regulation except as specifically provided by
5 this act.

6 Sec. 20. K.S.A. 2-3302 is hereby amended to read as follows:
7 2-3302. As used in ~~this act~~ the Kansas chemigation safety law:

8 (a) "Chemigation" means any process whereby pesticides,
9 fertilizers or other chemicals or animal wastes are added to
10 irrigation water applied to land or crops, or both, through an
11 irrigation distribution system.

12 (b) "Board" means the ~~state-board~~ secretary of agriculture.

13 (c) "Secretary" means the secretary of ~~the--state--board--of~~
14 agriculture.

15 (d) "Operating chemigation equipment" for the purposes of
16 this act shall include, but not be limited to:

17 (1) Preparing solution and filling the chemical supply
18 container;

19 (2) calibrating of injection equipment;

20 (3) starting and stopping equipment when injection of
21 chemicals is involved; and

22 (4) supervision of the chemigation equipment to assure its
23 safe operation.

24 (e) "Anti-pollution devices" means mechanical equipment used
25 to reduce hazard to the environment in cases of malfunction of
26 the equipment during chemigation and includes but is not limited
27 to interlock, waterline check valve, chemical line closure
28 device, vacuum relief device and automatic low pressure drain.

29 (f) "Supervision" means the attention given to the
30 chemigating system during its operation when chemicals are being
31 applied.

32 (g) "Direct supervision" means supervision with ability to
33 change the procedures.

34 (h) "Irrigation distribution system" means any device or
35 combination of devices having a hose, pipe or other conduit which

1 connects directly to any source of ground or surface water,
2 through which water or a mixture of water and chemicals is drawn
3 and applied to land. The term does not include any handheld hose
4 sprayer or other similar device which is constructed so that an
5 interruption in water flow automatically prevents any backflow to
6 the water source. For the purpose of this act it does not include
7 greenhouse irrigation or residence yards. Animal waste lagoons
8 are not to be considered water sources.

9 (i) "Calibration device" means equipment of sufficient
10 accuracy to determine the rate of chemical application.

11 (j) "Point of diversion" means:

12 (1) The point where the longitudinal axis of the dam crosses
13 the center line of the stream in the case of a reservoir; or

14 (2) the location of the headgate or intake in the case of a
15 direct diversion from a river, stream or other watercourse; or

16 (3) the location of a well in the case of groundwater
17 diversion.

18 (k) "Agronomic application rates" means the method and
19 amount of swine waste defined by the secretary that in the
20 secretary's discretion best protects the environment, including
21 consideration of the crops or soil to which swine waste may be
22 applied and the economic impact associated with any application
23 of swine waste.

24 (l) "Chemicals" shall include nutrients or the chemical
25 composition of animal waste.

26 New Sec. 21. (a) Regardless of whether irrigation water is
27 added, whenever swine waste is applied to crops or land, the
28 secretary is authorized to investigate, inspect or conduct any
29 manner of examination or review of the application of swine
30 waste. No swine waste shall be applied to crops or land in
31 excess of agronomic application rates.

32 (b) The secretary shall review and approve all nutrient
33 utilization plans that provide for the application of swine waste
34 to crops or land and that are submitted by swine confined feeding
35 operations pursuant to section 6 and amendments thereto if the

1 plans demonstrate that swine waste will be applied pursuant to
2 agronomic application rates. Nutrient utilization plans shall be
3 submitted in the form required by the secretary. The secretary
4 shall notify the secretary of health and environment when a
5 nutrient utilization plan has been approved and whether the
6 approval is conditioned on any amendments or revisions to the
7 plan.

8 (c) Any soil tests required by the secretary to evaluate
9 whether agronomic application rates are being met must be paid
10 for by the swine confined feeding facility regardless of whether
11 the soil to be tested is from land owned by such facility.

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

14 Sec. 22. K.S.A. 2-3305 is hereby amended to read as follows:
15 2-3305. Functional anti-pollution devices shall be used in the
16 chemigation process according to:

17 (a) Criteria adopted by the secretary that, in the
18 secretary's discretion, follows the latest scientific knowledge
19 and technology and that is designed to protect the groundwater
20 and surface water of the state; or

21 (b) the following criteria:

22 (a) (1) Waterline check valve shall be an automatic,
23 quick-closing device capable of preventing the backflow of water
24 chemical mixtures into the source of water supply during times of
25 system failure or equipment shutdown;

26 (b) (2) a chemical injection line check valve shall be used
27 to prevent flow of water from the irrigation system into the
28 chemical supply tank and to prevent gravity flow from the
29 chemical supply tank into the irrigation system;

30 (c) (3) an interlock system shall be used between the power
31 system of the injection unit, the irrigation pumping plant and
32 the pivot, if involved; the interlock shall function so that if
33 the irrigation pump stops, the injection pump will also stop;

34 (d) (4) a functional vacuum relief device shall be used
35 between the waterline check valve and the irrigation pump to

1 reduce the chance of chemical being back-siphoned into the water
2 source; and

3 ~~(e)~~ (5) an automatic low pressure drain shall be used
4 between the waterline valve and the irrigation pump.

5 Sec. 23. K.S.A. 2-3307 is hereby amended to read as follows:

6 2-3307. (a) For the purpose of carrying out the provisions of
7 this act, including any review of the application of swine waste
8 under section 21 and amendments thereto, the secretary or the
9 secretary's agent or the county or district attorney or their
10 agents may enter any premises at any reasonable time in order to:

11 (1) Have access for the purpose of inspecting any equipment
12 subject to this act;

13 (2) inspect or sample water, lands and crops reported to be
14 exposed to chemicals;

15 (3) inspect or investigate complaints or injury to humans,
16 crops or land;

17 (4) sample chemicals being applied or to be applied; or

18 (5) observe the use and application of chemicals.

19 Should the secretary, the secretary's agent or the county or
20 district attorney or their agents be denied access to any land
21 where such access was sought for the purposes authorized, the
22 secretary or the county or district attorney may apply to any
23 court of competent jurisdiction for a search warrant authorizing
24 access to such land for such purposes. The court, upon such
25 application, may issue the search warrant for the purposes
26 requested.

27 (b) The enforcement of the criminal provisions of this act
28 shall be the duty of, and shall be implemented by, the county or
29 district attorneys of the various counties or districts. In the
30 event a county or district attorney refuses to act, the attorney
31 general shall so act. The secretary is charged with the duty of
32 enforcing all other provisions of this act.

33 Sec. 24. K.S.A. 1997 Supp. 47-1219 is hereby amended to read
34 as follows: 47-1219. (a) Any person or persons who shall put any
35 dead animals, carcasses of such animals or domestic fowl, or any

1 part thereof, into any well, spring, brook, branch, river, creek,
2 pond, road, street, alley, lane, lot, field, meadow or common
3 shall be deemed guilty of a misdemeanor, and upon conviction
4 thereof shall be fined in a sum not exceeding \$100.

5 (b) Any owner or owners of any dead animals, carcasses of
6 such animals or domestic fowl, or any part thereof, who shall
7 knowingly permit the same to remain in any well, spring, brook,
8 branch, river, creek, pond, road, street, alley, lane, lot,
9 field, meadow or common to the injury of the health or to the
10 annoyance of or damage to the citizens of the state or any of
11 them, shall be deemed guilty of a misdemeanor, and upon
12 conviction thereof shall be fined in a sum not exceeding \$100.
13 Every 24 hours the owners shall permit the same to remain
14 thereafter shall be deemed an additional offense.

15 (c) Persons disposing of dead animals shall do so in one of
16 the following ways: (1) Burial; (2) incineration; or (3)
17 delivery or unloading of the carcasses of dead animals or packing
18 house refuse at a disposal plant, substation, rendering plant or
19 place of transfer licensed by the commissioner; or (4) in
20 accordance with rules and regulations adopted pursuant to section
21 35.

22 New Sec. 25. (a) As used in this section

23 (1) Terms have the meanings provided by section 2 and
24 amendments thereto.

25 (2) "Qualified farm swine facility" means a swine facility
26 that: (A) Is owned and operated by a sole proprietorship or
27 partnership or by a family farm corporation, authorized farm
28 corporation, limited liability agricultural company, family farm
29 limited liability agricultural company, limited agricultural
30 partnership, family trust, authorized trust or testamentary
31 trust, as defined by K.S.A. 17-5903 and amendments thereto; and
32 (B) is utilizing its swine waste management system on January 1,
33 1998.

34 (3) "Required improvements to a qualified family farm swine
35 facility" means capital improvements that the secretary of health

1 and environment certifies to the director of taxation: (A) Are
2 required for a qualified family farm swine facility to comply
3 with the standards and requirements established pursuant to
4 sections 2 through 20 or pursuant to the amendments made by this
5 act to K.S.A. 65-171d; and (B) are not required because of
6 expansion for which a permit has not been issued or applied for
7 before the effective date of this act.

8 (b) There shall be allowed as a credit against the tax
9 liability of a taxpayer imposed under the Kansas income tax act
10 an amount equal to not more than 50% of the costs incurred by the
11 taxpayer for required improvements to a qualified family farm
12 swine facility. The tax credit allowed by this subsection shall
13 be deducted from the taxpayer's income tax liability for the
14 taxable year in which the expenditures are made by the taxpayer.
15 If the amount of such tax credit exceeds the taxpayer's income
16 tax liability for such taxable year, the taxpayer may carry over
17 the amount thereof that exceeds such tax liability for deduction
18 from the taxpayer's income tax liability in the next succeeding
19 taxable year or years until the total amount of the tax credit
20 has been deducted from tax liability, except that no such tax
21 credit shall be carried over for deduction after the fourth
22 taxable year succeeding the year in which the costs are incurred.

23 (c) The provisions of this section shall be applicable to
24 all taxable years commencing after December 31, 1997.

25 Sec. 26. K.S.A. 79-32,117 is hereby amended to read as
26 follows: 79-32,117. (a) The Kansas adjusted gross income of an
27 individual means such individual's federal adjusted gross income
28 for the taxable year, with the modifications specified in this
29 section.

30 (b) There shall be added to federal adjusted gross income:

31 (i) Interest income less any related expenses directly
32 incurred in the purchase of state or political subdivision
33 obligations, to the extent that the same is not included in
34 federal adjusted gross income, on obligations of any state or
35 political subdivision thereof, but to the extent that interest

1 income on obligations of this state or a political subdivision
2 thereof issued prior to January 1, 1988, is specifically exempt
3 from income tax under the laws of this state authorizing the
4 issuance of such obligations, it shall be excluded from
5 computation of Kansas adjusted gross income whether or not
6 included in federal adjusted gross income. Interest income on
7 obligations of this state or a political subdivision thereof
8 issued after December 31, 1987, shall be excluded from
9 computation of Kansas adjusted gross income whether or not
10 included in federal adjusted gross income.

11 (ii) Taxes on or measured by income or fees or payments in
12 lieu of income taxes imposed by this state or any other taxing
13 jurisdiction to the extent deductible in determining federal
14 adjusted gross income and not credited against federal income
15 tax. This paragraph shall not apply to taxes imposed under the
16 provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto,
17 for privilege tax year 1995, and all such years thereafter.

18 (iii) The federal net operating loss deduction.

19 (iv) Federal income tax refunds received by the taxpayer if
20 the deduction of the taxes being refunded resulted in a tax
21 benefit for Kansas income tax purposes during a prior taxable
22 year. Such refunds shall be included in income in the year
23 actually received regardless of the method of accounting used by
24 the taxpayer. For purposes hereof, a tax benefit shall be deemed
25 to have resulted if the amount of the tax had been deducted in
26 determining income subject to a Kansas income tax for a prior
27 year regardless of the rate of taxation applied in such prior
28 year to the Kansas taxable income, but only that portion of the
29 refund shall be included as bears the same proportion to the
30 total refund received as the federal taxes deducted in the year
31 to which such refund is attributable bears to the total federal
32 income taxes paid for such year. For purposes of the foregoing
33 sentence, federal taxes shall be considered to have been deducted
34 only to the extent such deduction does not reduce Kansas taxable
35 income below zero.

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1 (v) The amount of any depreciation deduction or business
2 expense deduction claimed on the taxpayer's federal income tax
3 return for any capital expenditure in making any building or
4 facility accessible to the handicapped, for which expenditure the
5 taxpayer claimed the credit allowed by K.S.A. 79-32,177, and
6 amendments thereto.

7 (vi) Any amount of designated employee contributions picked
8 up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919
9 and 74-4965, and amendments to such sections.

10 (vii) The amount of any charitable contribution made to the
11 extent the same is claimed as the basis for the credit allowed
12 pursuant to K.S.A. 79-32,196, and amendments thereto.

13 (viii) The amount of any costs incurred for improvements to
14 a swine facility, claimed for deduction in determining federal
15 adjusted gross income, to the extent the same is claimed as the
16 basis for any credit allowed pursuant to section 25 and
17 amendments thereto.

18 (c) There shall be subtracted from federal adjusted gross
19 income:

20 (i) Interest or dividend income on obligations or securities
21 of any authority, commission or instrumentality of the United
22 States and its possessions less any related expenses directly
23 incurred in the purchase of such obligations or securities, to
24 the extent included in federal adjusted gross income but exempt
25 from state income taxes under the laws of the United States.

26 (ii) Any amounts received which are included in federal
27 adjusted gross income but which are specifically exempt from
28 Kansas income taxation under the laws of the state of Kansas.

29 (iii) The portion of any gain or loss from the sale or other
30 disposition of property having a higher adjusted basis for Kansas
31 income tax purposes than for federal income tax purposes on the
32 date such property was sold or disposed of in a transaction in
33 which gain or loss was recognized for purposes of federal income
34 tax that does not exceed such difference in basis, but if a gain
35 is considered a long-term capital gain for federal income tax

1 purposes, the modification shall be limited to that portion of
2 such gain which is included in federal adjusted gross income.

3 (iv) The amount necessary to prevent the taxation under this
4 act of any annuity or other amount of income or gain which was
5 properly included in income or gain and was taxed under the laws
6 of this state for a taxable year prior to the effective date of
7 this act, as amended, to the taxpayer, or to a decedent by reason
8 of whose death the taxpayer acquired the right to receive the
9 income or gain, or to a trust or estate from which the taxpayer
10 received the income or gain.

11 (v) The amount of any refund or credit for overpayment of
12 taxes on or measured by income or fees or payments in lieu of
13 income taxes imposed by this state, or any taxing jurisdiction,
14 to the extent included in gross income for federal income tax
15 purposes.

16 (vi) Accumulation distributions received by a taxpayer as a
17 beneficiary of a trust to the extent that the same are included
18 in federal adjusted gross income.

19 (vii) Amounts received as annuities under the federal civil
20 service retirement system from the civil service retirement and
21 disability fund and other amounts received as retirement benefits
22 in whatever form which were earned for being employed by the
23 federal government or for service in the armed forces of the
24 United States.

25 (viii) Amounts received by retired railroad employees as a
26 supplemental annuity under the provisions of 45 U.S.C. 228b (a)
27 and 228c (a)(1) et seq.

28 (ix) Amounts received by retired employees of a city and by
29 retired employees of any board of such city as retirement
30 allowances pursuant to K.S.A. 13-14,106, and amendments thereto,
31 or pursuant to any charter ordinance exempting a city from the
32 provisions of K.S.A. 13-14,106, and amendments thereto.

33 (x) For taxable years beginning after December 31, 1976, the
34 amount of the federal tentative jobs tax credit disallowance
35 under the provisions of 26 U.S.C. 280 C. For taxable years

1 ending after December 31, 1978, the amount of the targeted jobs
2 tax credit and work incentive credit disallowances under 26
3 U.S.C. 280 C.

4 (xi) For taxable years beginning after December 31, 1986,
5 dividend income on stock issued by Kansas Venture Capital, Inc.

6 (xii) For taxable years beginning after December 31, 1989,
7 amounts received by retired employees of a board of public
8 utilities as pension and retirement benefits pursuant to K.S.A.
9 13-1246, 13-1246a and 13-1249 and amendments thereto.

10 (xiii) For taxable years beginning after December 31, 1993,
11 the amount of income earned on contributions deposited to an
12 individual development account under K.S.A. 79-32,117h, and
13 amendments thereto.

14 (xiv) For all taxable years commencing after December 31,
15 1996, that portion of any income of a bank organized under the
16 laws of this state or any other state, a national banking
17 association organized under the laws of the United States, an
18 association organized under the savings and loan code of this
19 state or any other state, or a federal savings association
20 organized under the laws of the United States, for which an
21 election as an S corporation under subchapter S of the federal
22 internal revenue code is in effect, which accrues to the taxpayer
23 who is a stockholder of such corporation and which is not
24 distributed to the stockholders as dividends of the corporation.

25 (d) There shall be added to or subtracted from federal
26 adjusted gross income the taxpayer's share, as beneficiary of an
27 estate or trust, of the Kansas fiduciary adjustment determined
28 under K.S.A. 79-32,135, and amendments thereto.

29 (e) The amount of modifications required to be made under
30 this section by a partner which relates to items of income, gain,
31 loss, deduction or credit of a partnership shall be determined
32 under K.S.A. 79-32,131, and amendments thereto, to the extent
33 that such items affect federal adjusted gross income of the
34 partner.

35 New Sec. 27. On or before the first day of the 1999 and 2000

1 regular legislative sessions, the secretary of health and
2 environment shall submit a report regarding implementation of the
3 provisions of this act to the house and senate standing
4 committees on agriculture, the senate standing committee on
5 energy and natural resources and the house standing committee on
6 environment.

7 New Sec. 28. The provisions of this act shall expire upon
8 the enactment of any law during the 1998 regular legislative
9 session prohibiting the secretary of health and environment from
10 issuing any permit for a new swine breeding, farrowing, feeding
11 or finishing facility, or any combination thereof, regardless of
12 size.

13 Sec. 29. Upon expiration of the provisions of this act
14 pursuant to section 28, K.S.A. 2-3302 is hereby revived to read
15 as follows: 2-3302. As used in this act:

16 (a) "Chemigation" means any process whereby pesticides,
17 fertilizers or other chemicals or animal wastes are added to
18 irrigation water applied to land or crops, or both, through an
19 irrigation distribution system.

20 (b) "Board" means the state board of agriculture.

21 (c) "Secretary" means the secretary of the state board of
22 agriculture.

23 (d) "Operating chemigation equipment" for the purposes of
24 this act shall include, but not be limited to:

25 (1) Preparing solution and filling the chemical supply
26 container;

27 (2) calibrating of injection equipment;

28 (3) starting and stopping equipment when injection of
29 chemicals is involved; and

30 (4) supervision of the chemigation equipment to assure its
31 safe operation.

32 (e) "Anti-pollution devices" means mechanical equipment used
33 to reduce hazard to the environment in cases of malfunction of
34 the equipment during chemigation and includes but is not limited
35 to interlock, waterline check valve, chemical line closure

1 device, vacuum relief device and automatic low pressure drain.

2 (f) "Supervision" means the attention given to the
3 chemigating system during its operation when chemicals are being
4 applied.

5 (g) "Direct supervision" means supervision with ability to
6 change the procedures.

7 (h) "Irrigation distribution system" means any device or
8 combination of devices having a hose, pipe or other conduit which
9 connects directly to any source of ground or surface water,
10 through which water or a mixture of water and chemicals is drawn
11 and applied to land. The term does not include any handheld hose
12 sprayer or other similar device which is constructed so that an
13 interruption in water flow automatically prevents any backflow to
14 the water source. For the purpose of this act it does not include
15 greenhouse irrigation or residence yards. Animal waste lagoons
16 are not to be considered water sources.

17 (i) "Calibration device" means equipment of sufficient
18 accuracy to determine the rate of chemical application.

19 (j) "Point of diversion" means:

20 (1) The point where the longitudinal axis of the dam crosses
21 the center line of the stream in the case of a reservoir; or

22 (2) the location of the headgate or intake in the case of a
23 direct diversion from a river, stream or other watercourse; or

24 (3) the location of a well in the case of groundwater
25 diversion.

26 Sec. 30. Upon expiration of the provisions of this act
27 pursuant to section 28, K.S.A. 2-3305 is hereby revived to read
28 as follows: 2-3305. Functional anti-pollution devices shall be
29 used in the chemigation process according to the following
30 criteria:

31 (a) Waterline check valve shall be an automatic,
32 quick-closing device capable of preventing the backflow of water
33 chemical mixtures into the source of water supply during times of
34 system failure or equipment shutdown;

35 (b) a chemical injection line check valve shall be used to

1 prevent flow of water from the irrigation system into the
2 chemical supply tank and to prevent gravity flow from the
3 chemical supply tank into the irrigation system;

4 (c) an interlock system shall be used between the power
5 system of the injection unit, the irrigation pumping plant and
6 the pivot, if involved; the interlock shall function so that if
7 the irrigation pump stops, the injection pump will also stop;

8 (d) a functional vacuum relief device shall be used between
9 the waterline check valve and the irrigation pump to reduce the
10 chance of chemical being back-siphoned into the water source; and

11 (e) an automatic low pressure drain shall be used between
12 the waterline valve and the irrigation pump.

13 Sec. 31. Upon expiration of the provisions of this act
14 pursuant to section 28, K.S.A. 2-3307 is hereby revived to read
15 as follows: 2-3307. (a) For the purpose of carrying out the
16 provisions of this act, the secretary or the secretary's agent or
17 the county or district attorney or their agents may enter any
18 premises at any reasonable time in order to:

19 (1) Have access for the purpose of inspecting any equipment
20 subject to this act;

21 (2) inspect or sample water, lands and crops reported to be
22 exposed to chemicals;

23 (3) inspect or investigate complaints or injury to humans,
24 crops or land;

25 (4) sample chemicals being applied or to be applied; or

26 (5) observe the use and application of chemicals.

27 Should the secretary, the secretary's agent or the county or
28 district attorney or their agents be denied access to any land
29 where such access was sought for the purposes authorized, the
30 secretary or the county or district attorney may apply to any
31 court of competent jurisdiction for a search warrant authorizing
32 access to such land for such purposes. The court, upon such
33 application, may issue the search warrant for the purposes
34 requested.

35 (b) The enforcement of the criminal provisions of this act

1 shall be the duty of, and shall be implemented by, the county or
2 district attorneys of the various counties or districts. In the
3 event a county or district attorney refuses to act, the attorney
4 general shall so act. The secretary is charged with the duty of
5 enforcing all other provisions of this act.

6 Sec. 32. Upon expiration of the provisions of this act
7 pursuant to section 28, K.S.A. 1997 Supp. 47-1219 is hereby
8 revived to read as follows: 47-1219. (a) Any person or persons
9 who shall put any dead animals, carcasses of such animals or
10 domestic fowl, or any part thereof, into any well, spring, brook,
11 branch, river, creek, pond, road, street, alley, lane, lot,
12 field, meadow or common shall be deemed guilty of a misdemeanor,
13 and upon conviction thereof shall be fined in a sum not exceeding
14 \$100.

15 (b) Any owner or owners of any dead animals, carcasses of
16 such animals or domestic fowl, or any part thereof, who shall
17 knowingly permit the same to remain in any well, spring, brook,
18 branch, river, creek, pond, road, street, alley, lane, lot,
19 field, meadow or common to the injury of the health or to the
20 annoyance of or damage to the citizens of the state or any of
21 them, shall be deemed guilty of a misdemeanor, and upon
22 conviction thereof shall be fined in a sum not exceeding \$100.
23 Every 24 hours the owners shall permit the same to remain
24 thereafter shall be deemed an additional offense.

25 (c) Persons disposing of dead animals shall do so in one of
26 the following ways: (1) Burial; (2) incineration; or (3)
27 delivery or unloading of the carcasses of dead animals or packing
28 house refuse at a disposal plant, substation, rendering plant or
29 place of transfer licensed by the commissioner.

30 Sec. 33. Upon expiration of the provisions of this act
31 pursuant to section 28, K.S.A. 1997 Supp. 65-171d is hereby
32 revived to read as follows: 65-171d. (a) For the purpose of
33 preventing surface and subsurface water pollution and soil
34 pollution detrimental to public health or to the plant, animal
35 and aquatic life of the state, and to protect beneficial uses of

1 the waters of the state and to require the treatment of sewage
2 predicated upon technologically based effluent limitations, the
3 secretary of health and environment shall make such rules and
4 regulations, including registration of potential sources of
5 pollution, as may in the secretary's judgment be necessary to:
6 (1) Protect the soil and waters of the state from pollution
7 resulting from underground storage reservoirs of hydrocarbons and
8 liquid petroleum gas; (2) control the disposal, discharge or
9 escape of sewage as defined in K.S.A. 65-164 and amendments
10 thereto, by or from municipalities, corporations, companies,
11 institutions, state agencies, federal agencies or individuals and
12 any plants, works or facilities owned or operated, or both, by
13 them; and (3) establish water quality standards for the waters of
14 the state to protect their beneficial uses.

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

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

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

33 (2) "Confined feeding facility" means any lot, pen, pool or
34 pond: (A) Which is used for the confined feeding of animals or
35 fowl for food, fur or pleasure purposes; (B) which is not

1 normally used for raising crops; and (C) in which no vegetation
2 intended for animal food is growing.

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

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

33 (5) "Habitable structure" means any of the following
34 structures which is occupied or maintained in a condition which
35 may be occupied: A dwelling, church, school, adult care home,

1 medical care facility, child care facility, library, community
2 center, public building, office building or licensed food service
3 or lodging establishment.

4 (d) In adopting rules and regulations, the secretary of
5 health and environment, taking into account the varying
6 conditions that are probable for each source of sewage and its
7 possible place of disposal, discharge or escape, may provide for
8 varying the control measures required in each case to those the
9 secretary finds to be necessary to prevent pollution. If a
10 freshwater reservoir or farm pond is privately owned and where
11 complete ownership of land bordering the reservoir is under
12 common private ownership, such freshwater reservoir or farm pond
13 shall be exempt from water quality standards except as it relates
14 to water discharge or seepage from the reservoir to waters of the
15 state, either surface or groundwater, or as it relates to the
16 public health of persons using the reservoir or pond or waters
17 therefrom.

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

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

33 (3) Any action of the secretary pursuant to this subsection
34 is subject to review in accordance with the act for judicial
35 review and civil enforcement of agency actions.

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

3 (1) Plan approval, monitoring and inspecting underground or
4 buried petroleum products storage tanks, for which the annual fee
5 shall not exceed \$5 for each tank in place;

6 (2) permitting, monitoring and inspecting salt solution
7 mining operators, for which the annual fee shall not exceed
8 \$1,950 per company; and

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

12 (g) Prior to any new construction of a confined feeding
13 facility with an animal unit capacity of 300 to 999, such
14 facility shall register with the secretary of health and
15 environment. Facilities with less than 300 animal units may
16 register with the secretary. Any such registration shall be
17 accompanied by a \$25 fee. Within 30 days of receipt of such
18 registration, the department of health and environment shall
19 identify any significant water pollution potential or separation
20 distance violations pursuant to subsection (h). If there is
21 identified a significant water pollution potential, such facility
22 shall be required to obtain a permit from the secretary. If
23 there is no water pollution potential posed by a facility with an
24 animal unit capacity of less than 300, the secretary may certify
25 that no permit is required. If there is no water pollution
26 potential nor any violation of separation distances posed by a
27 facility with an animal unit capacity of 300 to 999, the
28 secretary shall certify that no permit is required and that there
29 are no certification conditions pertaining to separation
30 distances. If a separation distance violation is identified, the
31 secretary may reduce the separation distance in accordance with
32 subsection (i) and shall certify any such reduction of separation
33 distances.

34 (h) Any new construction or new expansion of a confined
35 feeding facility shall meet or exceed the following requirements

1 in separation distances from any habitable structure:

2 (1) 1320 feet for facilities with an animal unit capacity of
3 300 to 999; and

4 (2) 4000 feet for facilities with an animal unit capacity of
5 1,000 or more.

6 (i) The separation distance requirements of subsection (h)
7 shall not apply if such person newly constructing or newly
8 expanding a confined feeding facility obtains a written agreement
9 from all owners of habitable structures which are within the
10 separation distance stating such owners are aware of such
11 construction or expansion and have no objections to such
12 construction or expansion. The written agreement shall be filed
13 in the register of deeds office of the county in which the
14 habitable structure is located. The secretary may reduce
15 separation distance requirements if: (1) No substantial objection
16 from owners of habitable structures within the separation
17 distance is received in response to public notice; or (2) the
18 board of county commissioners of the county where the confined
19 feeding facility is located submits a written request seeking a
20 reduction of separation distances.

21 (j) The separation distances required pursuant to subsection
22 (h) shall not apply to:

23 (1) Confined feeding facilities which are permitted or
24 certified by the secretary on the effective date of this act;

25 (2) confined feeding facilities which exist on the effective
26 date of this act and register with the secretary before July 1,
27 1996; or

28 (3) expansion of a confined feeding facility, including any
29 expansion for which an application is pending on the effective
30 date of this act, if: (A) In the case of a facility with an
31 animal unit capacity of 1,000 or more prior to the effective date
32 of this act, the expansion is located at a distance not less than
33 the distance between the facility and the nearest habitable
34 structure prior to the expansion; or (B) in the case of a
35 facility with an animal unit capacity of less than 1,000 prior to

1 the effective date of this act and, the expansion is located at a
2 distance not less than the distance between the facility and the
3 nearest habitable structure prior to the expansion the animal
4 unit capacity of the facility after expansion does not exceed
5 2,000.

6 (k) All plans and specifications submitted to the department
7 for new construction or new expansion of confined feeding
8 facilities may be, but are not required to be, prepared by a
9 professional engineer or a consultant.

10 New Sec. 34. Upon expiration of the provisions of this act
11 pursuant to section 28, K.S.A. 79-32,117 is hereby revived to
12 read as follows: 79-32,117. (a) The Kansas adjusted gross income
13 of an individual means such individual's federal adjusted gross
14 income for the taxable year, with the modifications specified in
15 this section.

16 (b) There shall be added to federal adjusted gross income:

17 (i) Interest income less any related expenses directly
18 incurred in the purchase of state or political subdivision
19 obligations, to the extent that the same is not included in
20 federal adjusted gross income, on obligations of any state or
21 political subdivision thereof, but to the extent that interest
22 income on obligations of this state or a political subdivision
23 thereof issued prior to January 1, 1988, is specifically exempt
24 from income tax under the laws of this state authorizing the
25 issuance of such obligations, it shall be excluded from
26 computation of Kansas adjusted gross income whether or not
27 included in federal adjusted gross income. Interest income on
28 obligations of this state or a political subdivision thereof
29 issued after December 31, 1987, shall be excluded from
30 computation of Kansas adjusted gross income whether or not
31 included in federal adjusted gross income.

32 (ii) Taxes on or measured by income or fees or payments in
33 lieu of income taxes imposed by this state or any other taxing
34 jurisdiction to the extent deductible in determining federal
35 adjusted gross income and not credited against federal income

1 tax. This paragraph shall not apply to taxes imposed under the
2 provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto,
3 for privilege tax year 1995, and all such years thereafter.

4 (iii) The federal net operating loss deduction.

5 (iv) Federal income tax refunds received by the taxpayer if
6 the deduction of the taxes being refunded resulted in a tax
7 benefit for Kansas income tax purposes during a prior taxable
8 year. Such refunds shall be included in income in the year
9 actually received regardless of the method of accounting used by
10 the taxpayer. For purposes hereof, a tax benefit shall be deemed
11 to have resulted if the amount of the tax had been deducted in
12 determining income subject to a Kansas income tax for a prior
13 year regardless of the rate of taxation applied in such prior
14 year to the Kansas taxable income, but only that portion of the
15 refund shall be included as bears the same proportion to the
16 total refund received as the federal taxes deducted in the year
17 to which such refund is attributable bears to the total federal
18 income taxes paid for such year. For purposes of the foregoing
19 sentence, federal taxes shall be considered to have been deducted
20 only to the extent such deduction does not reduce Kansas taxable
21 income below zero.

22 (v) The amount of any depreciation deduction or business
23 expense deduction claimed on the taxpayer's federal income tax
24 return for any capital expenditure in making any building or
25 facility accessible to the handicapped, for which expenditure the
26 taxpayer claimed the credit allowed by K.S.A. 79-32,177, and
27 amendments thereto.

28 (vi) Any amount of designated employee contributions picked
29 up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919
30 and 74-4965, and amendments to such sections.

31 (vii) The amount of any charitable contribution made to the
32 extent the same is claimed as the basis for the credit allowed
33 pursuant to K.S.A. 79-32,196, and amendments thereto.

34 (c) There shall be subtracted from federal adjusted gross
35 income:

1 (i) Interest or dividend income on obligations or securities
2 of any authority, commission or instrumentality of the United
3 States and its possessions less any related expenses directly
4 incurred in the purchase of such obligations or securities, to
5 the extent included in federal adjusted gross income but exempt
6 from state income taxes under the laws of the United States.

7 (ii) Any amounts received which are included in federal
8 adjusted gross income but which are specifically exempt from
9 Kansas income taxation under the laws of the state of Kansas.

10 (iii) The portion of any gain or loss from the sale or other
11 disposition of property having a higher adjusted basis for Kansas
12 income tax purposes than for federal income tax purposes on the
13 date such property was sold or disposed of in a transaction in
14 which gain or loss was recognized for purposes of federal income
15 tax that does not exceed such difference in basis, but if a gain
16 is considered a long-term capital gain for federal income tax
17 purposes, the modification shall be limited to that portion of
18 such gain which is included in federal adjusted gross income.

19 (iv) The amount necessary to prevent the taxation under this
20 act of any annuity or other amount of income or gain which was
21 properly included in income or gain and was taxed under the laws
22 of this state for a taxable year prior to the effective date of
23 this act, as amended, to the taxpayer, or to a decedent by reason
24 of whose death the taxpayer acquired the right to receive the
25 income or gain, or to a trust or estate from which the taxpayer
26 received the income or gain.

27 (v) The amount of any refund or credit for overpayment of
28 taxes on or measured by income or fees or payments in lieu of
29 income taxes imposed by this state, or any taxing jurisdiction,
30 to the extent included in gross income for federal income tax
31 purposes.

32 (vi) Accumulation distributions received by a taxpayer as a
33 beneficiary of a trust to the extent that the same are included
34 in federal adjusted gross income.

35 (vii) Amounts received as annuities under the federal civil

1 service retirement system from the civil service retirement and
2 disability fund and other amounts received as retirement benefits
3 in whatever form which were earned for being employed by the
4 federal government or for service in the armed forces of the
5 United States.

6 (viii) Amounts received by retired railroad employees as a
7 supplemental annuity under the provisions of 45 U.S.C. 228b (a)
8 and 228c (a)(1) et seq.

9 (ix) Amounts received by retired employees of a city and by
10 retired employees of any board of such city as retirement
11 allowances pursuant to K.S.A. 13-14,106, and amendments thereto,
12 or pursuant to any charter ordinance exempting a city from the
13 provisions of K.S.A. 13-14,106, and amendments thereto.

14 (x) For taxable years beginning after December 31, 1976, the
15 amount of the federal tentative jobs tax credit disallowance
16 under the provisions of 26 U.S.C. 280 C. For taxable years
17 ending after December 31, 1978, the amount of the targeted jobs
18 tax credit and work incentive credit disallowances under 26
19 U.S.C. 280 C.

20 (xi) For taxable years beginning after December 31, 1986,
21 dividend income on stock issued by Kansas Venture Capital, Inc.

22 (xii) For taxable years beginning after December 31, 1989,
23 amounts received by retired employees of a board of public
24 utilities as pension and retirement benefits pursuant to K.S.A.
25 13-1246, 13-1246a and 13-1249 and amendments thereto.

26 (xiii) For taxable years beginning after December 31, 1993,
27 the amount of income earned on contributions deposited to an
28 individual development account under K.S.A. 79-32,117h, and
29 amendments thereto.

30 (xiv) For all taxable years commencing after December 31,
31 1996, that portion of any income of a bank organized under the
32 laws of this state or any other state, a national banking
33 association organized under the laws of the United States, an
34 association organized under the savings and loan code of this
35 state or any other state, or a federal savings association

1 organized under the laws of the United States, for which an
2 election as an S corporation under subchapter S of the federal
3 internal revenue code is in effect, which accrues to the taxpayer
4 who is a stockholder of such corporation and which is not
5 distributed to the stockholders as dividends of the corporation.

6 (d) There shall be added to or subtracted from federal
7 adjusted gross income the taxpayer's share, as beneficiary of an
8 estate or trust, of the Kansas fiduciary adjustment determined
9 under K.S.A. 79-32,135, and amendments thereto.

10 (e) The amount of modifications required to be made under
11 this section by a partner which relates to items of income, gain,
12 loss, deduction or credit of a partnership shall be determined
13 under K.S.A. 79-32,131, and amendments thereto, to the extent
14 that such items affect federal adjusted gross income of the
15 partner.

16 New Sec. 35. The secretary of health and environment shall
17 adopt rules and regulations establishing standards and procedures
18 for composting livestock, including chickens and turkeys.

19 Sec. 36. K.S.A. 2-3302, 2-3305, 2-3307 and 79-32,117 and
20 K.S.A. 1997 Supp. 47-1219 and 65-171d are hereby repealed.

21 Sec. 37. Upon expiration of the provisions of this act
22 pursuant to section 28, K.S.A. 2-3302, as amended by section 20
23 of this act, 2-3305, as amended by section 22 of this act,
24 2-3307, as amended by section 23 of this act, and 79-32,117, as
25 amended by section 26 of this act, and K.S.A. 1997 Supp. 47-1219,
26 as amended by section 24 of this act, and 65-171d, as amended by
27 section 1 of this act, are hereby repealed.

28 Sec. 38. This act shall take effect and be in force from and
29 after its publication in the Kansas register.

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February 27, 1998

To: House Committee on Environment
From: Raney Gilliland, Principal Analyst
Re: Proposed Substitute for House Bill No. 2950

Proposed Sub. for H.B. 2950 would make amendments to current law and establish new provisions relating to the regulation of confined animal feeding facilities. Most of the provisions would establish standards for swine feeding facilities.

The bill would amend the current definition of the term "habitable structure" so that the term would exclude those habitable structures owned by a person other than a person operating a confined feeding facility for swine.

In addition, the bill would establish new separation distances for new construction or new expansion of confined feeding facilities for swine. The new separation distances would apply to distances to "habitable structures" and from any, county, state, or federal park, or wildlife refuge in existence when the application for a permit is submitted. The new separation distances for swine facilities in the bill would not apply to facilities which were permitted or certified by the Secretary of KDHE on the effective date of the bill, or to the expansion of a swine confined feeding facility with an animal unit capacity of less than 4,500 including any expansion for which an application is pending under certain conditions.

The bill would require a separation distance of 1,320 feet for facilities with an animal unit capacity of 300 to 999 and of 4,000 feet for facilities with an animal unit capacity of 1,500 to 4,499. A separation distance of 4,000 feet would be required for the expansion of an existing facility to an animal unit capacity of 4,500 or more if the expansion is within the perimeter of facilities from which distances are determined under other provisions of the bill. Further, the bill would establish a separation distance of 5,000 feet for construction of new swine facilities with more than 4,500 animal units or to the expansion of existing facilities where the animal

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unit capacity is greater than 4,500 and the expansion extends outside the perimeter as established by the bill.

The bill would require that separation distances would be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine, any waste detention lagoons or ponds or other manure or wastewater storage structure and any additional areas designed by the applicant for future expansion. The distances would not include offices, dwellings or feed production facilities.

The bill also would modify current policy of allowing the Secretary of KDHE to reduce the separation distances under certain conditions. One of the current conditions is if the board of county commissioners of the county submits a written request to KDHE seeking a reduction of separation distances. Under new provisions of the bill, the county commission would no longer be able to make this request for a reduction of the separation distances for expansion or construction of new swine facilities which would have more than 4,500 animal units. Separation distances for all sizes of swine facilities would be permitted to be modified if the Secretary of KDHE determines that technological improvements exist to justify the modification of the separation distance. Separation distances could continue to be reduced when no substantial objection from owners of habitable structures is received in response to the notice which is given. (Sec. 1(i)(2)(B) and (C))

The bill would require that the applicant for a swine permit give notice, by certified mail, to all owner of habitable structures within the separation distances. The operator of the facility or of the proposed facility would submit to KDHE evidence that the notice has been given. (Sec. 1(l))

Finally, current law would be amended to require that all plans and specification submitted to KDHE for new construction or new expansion of feeding facilities would be certified by a licensed professional engineer. (Sec. 1(m))

The bill would enact a number of new sections of law dealing specifically with the regulations of confined feeding facilities for swine. The following is a section by section description of the major provisions of the remaining provisions of the bill, all of which only relate to confined feeding facilities for swine.

New Sec. 2 would establish a number of new definitions including the following: "best management practices for swine," "swine facility," "swine waste retention lagoon or pond," "swine waste management system," and "significant water pollution potential." The term "significant water pollution potential" would be defined to mean any potential for pollution of groundwater or surface water and defined by rules and regulations adopted by the secretary. In addition, the Secretary would be directed to issue rules and regulations with respect to what constitutes an "animal waste management system."

New Sec. 3 would require KDHE to prepare and publish in the *Kansas Register*, certain items, after the receipt of an application for a permit or for expansion of an existing facility, including a document containing all the requirements with which the swine facility must comply and a fact sheet containing information relating to the location of the facility, maps showing water wells located on the facility's property, and a description of the facility including the exterior perimeter of structures and lagoons which would include information of the facility's waste management system. Also required would be a nutrient application plan, including baseline soil tests, and a statement that the applicant will consult with the county extension agent, qualified soil scientist, or qualified agronomist, in order to ensure correct agronomic rates of application are used and records of those consultations will be maintained. (New Sec. 3(a))

The bill also would require there to be established by rules and regulations the form of public notice for a new swine facility or the expansion of an existing facility. The bill would require the notice to be by publication in a newspaper of general circulation in the county where the facility is or will be located to residents in the vicinity, and to local government officials. The bill would require specific information to be provided in the public notification. (New Sec. 3(b))

The bill would require KDHE to hold a public meeting or hearing within 30 days after the conclusion of the 30 comment period as provided for in another provision of the bill. KDHE would not be permitted to make a determination to approve a permit until the completion of the provisions of this section. In addition, the public hearings would be conducted only for the purpose of issues over which the Secretary of KDHE has authority. The bill also would provide that KDHE could disapprove, at any time, the issuance of a permit without completing the procedures as outlined in the bill. (New Sec. 3(f), (e), and (g))

New Sec. 4 of the bill would prohibit KDHE from approving a permit for the new construction or expansion of a swine facility unless the waste management system is located in the following manner:

1. in a place to prevent the impairment of surface water and groundwater;
2. outside any 100-year flood plain unless precautions are taken to flood-proof the facility;
3. the system is not less than 500 feet from any surface water if the swine facility has an animal unit capacity of 4,500 or more; the system is not less than 250 feet from any surface water if the facility has an animal unit capacity of 1,000 to 4,499; or if the system is not less than 100 feet from any surface water if the facility has a capacity of under 1,000 (none of these distances would apply if the surface water is owned by the operator);
4. the system is not less than 250 feet from any private drinking water well other than the operator's well (if the operator's well is less than 250 feet from the system and the facility has a capacity of greater than 4,500 animal units, it would have to be tested annually and the results reported to KDHE); and
5. the system is not less than 1,000 feet from any publicly-owned drinking water well that is in active use. (New Sec. 4(a))

The bill would provide that the distances from the waste management system outlined above would not apply in certain circumstances such as if the facility holds a valid permit, the facility permit is pending on the effective date of the bill, and if there is a permit pending for the expansion of the facility on the effective date of the bill. (New Sec. 4(b))

The bill would require each applicant for a permit for construction or expansion of a swine facility with 1,000 or more animal units to submit with the application for a permit a manure management plan. In addition, each existing swine facility having a capacity of 1,000 animal units or more would be required to have a manure management plan submitted to KDHE

within one year or as soon as practicable. The bill would require these facility's also to have a nutrient utilization plan if the methods of disposal of the manure and wastewater include land application. The bill would require that the manure management plan be maintained so that it is accessible to inspection by representatives of KDHE. (New Sec. 5(a), (b), (c), and (f))

The bill would require that if the operator of the facility does not own the swine at the facility, the operator would be required to execute with the owner of the swine a contract that specifies the responsibility for the management of the manure and wastewater. (New Sec. 5(g))

The bill also would require that whenever manure and wastewater generated at a facility is sold or given to a person who is not employed by the facility and is to be disposed of by means other than land application on the areas covered by the nutrient utilization plan, then the operators of the facility are to maintain a log of each person to whom the manure and wastewater are sold or given, the hauler, and the date and volume of removal. (New Sec. 5(h))

The bill, further, would establish new requirements for the construction of any new waste retention lagoon or pond where the groundwater is 25 feet or less under the surface of the lagoon or pond and is utilized by a facility with an animal unit capacity of 4,500 or more. Under these conditions, the bill would require the lagoon or ponds to be lined with a synthetic liner of 40 mil thickness with an underlying compacted soil liner with a seepage standard of 1/4 inch per day or by a compacted soil liner with an 1/8 inch per day standard. Operators of existing ponds or lagoons with these conditions would not be required to have this kind of liner or meet the seepage rate but would be required to install one upstream and two downstream groundwater monitoring wells or employ equivalent technology by January 1, 2000. If the soil compaction requirements outlined above cannot be met and the facility has a 4,500 or greater animal unit facility, then the sides and bottom of the lagoons or ponds would have to have a 40 mil liner with soil compacted to the extent possible. If these conditions exist, the operator would be required to install not fewer than one upstream and two downstream groundwater monitoring wells or employ equivalent technology as provided by rules and regulations of the Secretary of KDHE. (New Sec. 5(i))

After January 1, 2000, if the Secretary determines, on a scientific basis, that the waster retention lagoons and ponds lined with compacted soil provide sufficient protection of the

groundwater, the Secretary would be permitted to increase the animal unit capacity at which a synthetic liner or the 1/8 inch seepage rate standard is required. (New Sec. 5(ii))

Further, the bill would give authority to the Secretary to require the installation and sampling of groundwater monitoring wells, the planting of trees to provide vegetative screening to control odor, and the adoption of any other rule and regulation concerning the location and construction of waste retention lagoons and ponds for swine facilities to protect the waters and the soils of the state and the public health if the facility has 1,000 animal units of swine or more. (New Sec. 5(j), (k), and (l))

This section would prescribe the conditions under which the application of manure and wastewater to land could occur from swine facilities with animal unit capacities of more than 1,000 swine. The section would require the development of a nutrient utilization plan if the manure management plan contain provisions for the land application of manure and wastewater. The bill would prescribe the contents of any nutrient utilization plan which must be approved by the Secretary of Agriculture. Among other things, the bill would require that these plans contain a site map of land application areas, crop rotations, records of soil tests, frequency and timing of applications, the amounts of nitrogen and phosphorous applied, precipitation records, and names of employees and contractors whom the operator of the facility has identified to supervise the transfer of manure and wastewater to land application, and records of training of all personnel who supervise and conduct land application of manure or wastewater. Each swine facility required to have a nutrient utilization plan would be required to file the plan with KDHE and KDHE would forward a copy of it to the Kansas Department of Agriculture for approval or disapproval. (New Sec. 6(a)(b))

A provision of the bill also would require that each manure management plan contain certain provisions for the testing of the soil for nitrogen, phosphates, chlorides, copper, and zinc on land to which manure and wastewater are to be applied. (New Sec. 6(c))

The bill would mandate that operators of swine facilities conduct soil tests and manure nutrient analysis to calculate needed fertility and application rates. If the soil tests demonstrate that phosphorous levels exceed or are projected to exceed within five years the phosphorous holding capacity of the soil, then the manure and wastewater must be applied with the agronomic phosphorous needs of the crops or pasture where applied. If the holding capacity

for any soils in the facility's land application areas is expected to exceed the phosphorous holding capacity within five years, then the operator of the facility would be required to initiate the process of obtaining access to additional land application areas as needed. (New Sec. 6(c), (d), and (e))

The bill would require that a swine facility that applies manure or wastewater not apply, other than by incorporation into the soil during the same day, within 1,000 feet of any habitable structure; county, state, or federal park; or a wildlife refuge. The bill would provide exceptions to this prohibition including when the manure and wastewater have been subjected to physical or biological treatment for odor reduction approved by KDHE; the manure and wastewater are applied with innovative treatment or the application of best management practices, best available technology, or other technology approved by KDHE; or the owner of the structure has provided a written waiver. (New Sec. 6(f))

These setback requirements for application would not apply to any structure constructed or park designated after the effective date of the bill, for swine facilities in existence on the effective date of the bill, or to any habitable structure constructed (or state, federal, or county park) after submission of an application for a permit for a new swine facility or expansion of an existing facility. (New Sec. 6(f)(2))

The bill would prohibit the application of manure or wastewater to highly erodible land except under special conditions, during rain storms except under special conditions, or to frozen or saturated soil except under special conditions. (New Sec. 6(f)(3))

This section also would establish the requirements for the application of manure and wastewater from swine facilities through an irrigation system. The bill would require that: irrigation occur only when soil moisture is suitable to allow all wastewater to soak into the soil and that when applied procedures are used that avoid spray drift from the irrigation so that it does not result in application to roads, ditches, or adjacent property. The bill would require that equipment used in any land application process be properly maintained and calibrated so that any malfunction is detected. (New Sec. 6(f))

Provisions of the bill would require that the operator of each swine facility that land applies manure or wastewater identify, train and keep current the training of each employee and

contractor who supervises the transfer of manure and wastewater to land application equipment and the conducting of land application activities. (New Sec. 6(f))

The bill would require the Secretary of KDHE to adopt rules and regulations with respect to standards for training and certifying, and for periodic continuing education or recertification of operators of swine facilities maintaining or supervising the waste management system of a swine facility. The Secretary also would be required to adopt procedures for notifying KDHE of any failure of a waste retention lagoon or pond or any unplanned release of animal waste. (New Sec. 7)

This section would require KDHE to establish rules and regulations with respect to the establishment of an emergency response plan. Emergency response plans would have to be kept in a readily accessible location and would require that employees be trained to be responsible for implementing the emergency response plan. The bill would require the plan be amended whenever warranted by changes in the facility or other condition impacting the facility. (New Sec. 8)

This section would require the operator of the facility to keep all records and plans required by the bill at the facility's office in an accessible place. The records would be subject to inspection by authorized representatives of KDHE. The bill would require that the records be kept for three years. (New Sec. 9)

The bill would require the operator of a facility to be certified by KDHE or by a third party approved by KDHE. The certified operator would be knowledgeable in management of manure and wastewater, nutrient utilization planning and implementation, emergency response planning and implementation and other requirements of the bill, including the training of employees in land application and in emergency response. The bill would allow KDHE to approve a facility without the operator certificate under certain conditions and would require that the operator obtain the certification within six month. The operator of each swine facility would be responsible for the training of employees or contractors for supervision of land application of manure or wastewater, the persons who actually conduct the land application, and for the persons who are responsible for implementing the emergency response plan. (New Sec. 10)

The bill would require a condition of the issuance of a permit the submission of a plan for odor control. This requirement would apply to:

1. a permit for construction or expansion of a swine facility that has an animal unit capacity of 4,500 or more;
2. a permit for expansion of a swine facility that would have a capacity of 4,500 or more; or
3. renewal of a permit for a swine facility that has a capacity of 4,500 or more.
(New Sec. 11)

This section of the bill would require a closure plan for any swine facility which has or will have more than 4,500 animal units. The operator of a swine facility with more than 4,500 animal units would be required to demonstrate annually to KDHE that the operation has financial ability to cover the cost of closure of the facility. (New Sec. 12)

The bill would establish the conditions under which KDHE would certify that a swine retention lagoon or pond has fully complied with closure procedures. The surety for a waste lagoon or pond posted by the facility could not be released until the facility obtains the certification of closure. The bill would require the Secretary of KDHE to establish rules and regulations for demolition of any waste retention lagoon or pond, or conversion of the lagoon or pond to another use. Rules and regulations would be promulgated which would establish standard maximum periods for completion of all closure activities from the date of cessation of operation to the date of compliance with all closure requirements. (New Sec. 13)

The bill also would require that on and after July 1, 2000 that each swine facility that has a capacity of 4,500 animal units or more and that has a waste retention lagoon or pond constructed or expand after the effective date of the bill to demonstrate annually to KDHE evidence of financial ability to cover the cost of closure of the lagoons or ponds. If the facility having a capacity of 4,500 animal units or more is sold, the new operator would be required to establish and maintain the evidence of financial responsibility to cover the cost of closure of the lagoons or ponds. (New Sec. 13)

The bill would require periodic inspections of the facilities and review of their records. The inspection and review would occur:

1. every 12 months for swine facilities with a capacity of 4,500 or more animal units;
2. every 18 months for swine facilities with a capacity of 1,000 to 4,499 animal units;
3. every 36 months for swine facilities with a capacity of 300 to 999 animal units, and
4. every 6 months for swine facilities regardless of size, if identified as having a specific water pollution problem.

Operators would be required to grant access to facilities, with appropriate safeguards for the protection of the health of the animals. Costs associated with the inspection would not be assessed to the facility except in an emergency that results in the discharge of manure or wastewater to surface water or groundwater or if the operator engages in a course of conduct that results in repeated, material violations of the bill. (New Sec. 14(b)(d))

The bill would allow the Secretary to contract with persons or entities to conduct inspections and review of records as required by the bill. (New Sec. 14(c))

The bill would provide that the setbacks do not apply to new habitable structures or county, state, or federal parks if they are established after existing swine facilities. Also the bill would establish the presumption that owners of the habitable structure or parks will be subject to agricultural sights, sounds, odors, or other farm characteristics. (New Sec. 15)

The bill would provide that if a swine facility is in compliance with all applicable requirements of this bill and any other environmental law would not presumed to be a nuisance under K.S.A. 2-3202 (the right-to-farm legislation). (New Sec. 15)

The bill would permit the Secretary of KDHE to deny an application for any permit or suspend or revoke any permit, for a swine facility, if the applicant, or any officer, director, partner or resident manager of the applicant has intentionally misrepresented a material fact; habitually and intentionally violated environmental law of this or any other state or the United States where the violation have caused significant and material environmental damage; or had any permit revoked under the environmental laws of this or any other state or of the United States. The Secretary would have to give notice and opportunity for hearing in accordance with the Kansas Administrative Procedure Act. (New Sec. 16)

The bill would require that every swine facility with a capacity of 1,00 or more animal units file with KDHE a plan for handling of dead swine. The Secretary would adopt rules and regulations establishing minimum standards, with the requirement that no dead animal would be left where visible from roads or habitable structures and that the carcasses would be picked up with 48 hours under normal circumstances. (New Sec. 17)

The bill would require Kansas State University, to cooperate with KDHE, other agencies and owners and operator of swine facilities to determine best available technology and best management practices. Best management practices for swine facilities would be defined to mean those schedules of activities, maintenance procedures and other management practices of a swine facility that are designed to minimize or prevent pollution of the air, water or soil or to control odor, flies, rodents, or other pests as determined by KDHE in consultation with KSU and swine producers.

The bill also would require KSU, within the limitations therefor, to conduct nutrient management testing of land where swine waste is applied, including deep soil sampling. This testing would be in conjunction with KSU's current lagoon study and would be for the purpose of identifying potential risk of groundwater pollution. The bill would require annual reporting of the University's findings to the House and Senate Agriculture Committees, to the House Environment Committee, to the Senate Energy and Natural Resources Committee, and to the Governor. (New Sec. 18)

The bill would make it clear that the adoption or authorization of standards and requirements for swine facilities in this bill would not prohibit or limit the authority of the

Secretary of KDHE to adopt rules and regulations for facilities for livestock other than swine.
(New Sec. 19)

The bill would add new definitions to the Kansas Chemigation Act with respect to "agronomic application rates" and "chemicals." "Agronomic application rates" would mean the method and amount of swine waste that, in the Secretary's discretion, best protects the environment, including consideration of the crops or soil to which swine waste may be applied and the economic impact associated with the application of swine waste. (New Sec. 20)

The bill would require that regardless of whether irrigation water is added or not, that whenever swine waste is applied to crops or land, the Secretary of Agriculture would be authorized to investigate, inspect or conduct examinations or reviews of the application of the waste. No swine waste would be applied to crops or land in excess of agronomic application rates. The Secretary of Agriculture would be required to review and approve all nutrient utilization plans for the application of swine waste to crops or land. The Secretary of Agriculture would notify the Secretary of KDHE when a nutrient utilization plan has been approved. Soil testing would be paid for by the swine facility. (New Sec. 21)

The bill would amend the Kansas Chemigation Act to allow the Secretary of Agriculture to adopt criteria which follows the latest scientific knowledge and technology which is designed to protect groundwater and surface water of the state. This criteria would be used to regulate the functional anti-pollution devices used in the chemigation process to protect water sources from pollution. (Sec. 22)

This section would give authority to the Secretary of Agriculture to enter premises to enforce to the provisions of this bill relating to the application of swine waste under the Kansas Chemigation Act. (Sec. 23)

This portion of the bill would allow there to be an additional means to dispose of dead animals. New Sec. 35 of the bill would allow the Secretary of KDHE to adopt rules and regulations establishing standards and procedures for composting livestock, including chickens and turkeys.

The bill would permit a tax credit against the tax liability of a taxpayer under the Kansas Income Tax Act in an amount equal to not more than 50 percent of the costs incurred by the taxpayer for required improvements to a "qualified family farm swine facility." The bill would define "required improvements" to mean capital improvements that the Secretary of KDHE certifies to the Director of Taxation that are required to comply with the standards and requirements established by the bill and also to those not required because of expansion. The term "qualified farm swine facility" would mean a swine facility that is owned and operated by a sole proprietorship or partnership or by a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust, or testamentary trust as defined by K.S.A. 17-5903 and is utilizing its swine waste management system on January 1, 1998. (New Sec. 25)

The bill would require the addition of the tax credit back into federal adjusted gross income. (Sec. 26)

The bill would require that on or before the first day of the 1999 and 2000 Legislative Sessions that the Secretary of KDHE submit a report regarding the implementation of the provisions of the bill to the House and Senate Agriculture Committees, the Senate Energy and Natural Resources Committee and to the House Committee on Environment. (New Sec. 27)

The provisions of the bill would expire upon the enactment of any law during the 1998 Legislative Session prohibiting the Secretary from issuing any permit for a new swine breeding, farrowing, feeding or finishing facility, or any combination thereof, regardless of size. (New Sec. 28)

Sections 29 through 34 and Section 36 of the bill would restore amended provisions of current law to their existing status if a bill is passed during the 1998 Legislative Session which prohibits the Secretary of KDHE from issuing any permit for a new swine breeding, farrowing, feeding, or finishing facility, or any combination thereof.

The last provision of the bill is the effective date which is upon publication in the *Kansas Register*.