

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 12:00 noon on March 26, 2001, in Room 527-S of the Capitol.

All members were present except: Representative O'Brien - absent

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

Conferees appearing before the committee:

Mike Jensen, President, Kansas Pork Association
Todd Johnson, Executive Secretary, Purebred Division, Kansas Livestock Association
John Harsch, Livestock Waste Management Section, Kansas Dept. of Health and Environment
Jamie Clover Adams, Secretary, Kansas Department of Agriculture

Others attending: See attached list

Hearing on HB 2572 - Unlawful entry by agricultural inspector, criminal and civil sanctions

Chairman Johnson opened the hearing on **HB 2572**. Raney Gilliland explained that **HB2572** would make it unlawful for a Kansas Department of Health and Environment or United States Environmental Protection Agency inspector to enter a confined livestock facility without maintaining full compliance with a bio-security plan. The bill provides for both criminal and civil penalties.

Mike Jensen, President, Kansas Pork Association, testified in support of **HB 2572**. He stressed the importance of government inspectors respecting the potential impact of their actions and related a recent incident involving EPA inspectors, accompanied by KDHE personnel, conducting inspections with no respect for the bio-security of the operations being inspected. He requested consideration of two amendments: 1) to allow a producer to seek damages from the government for actions resulting in disease transmission, and 2) additional language clarifying the ability of a producer to file or amend their bio-security plan at any time. (Attachment 1)

Todd Johnson, Executive Secretary, Purebred Division, Kansas Livestock Association, appeared in support of the general concept of **HB 2572** to protect the health and security of Kansas livestock operations. He noted that similar concerns have been raised regarding private citizens who visit livestock production facilities and unknowingly breach bio-security measures. (Attachment 2)

John Harsch, Livestock Waste Management Section, Kansas Department of Health and Environment, appeared in opposition to **HB 2572** as it is drafted. He testified that bio-security is taken very seriously by the Department and discussed inspector training in the importance of bio-security. The Department believes that if penalties for violating bio-security protocols are established, they should apply to all persons entering or exiting a facility. (Attachment 3)

Jamie Clover Adams, Secretary, Kansas Department of Agriculture, appeared in support of the concept of **HB 2572**, but expressed concern about the way the bill is currently drafted. She discussed several options and provided a substitute proposal that would apply to any individual entering the premises of a permitted livestock confinement facility. (Attachment 4)

The conferees, Livestock Commissioner George Teagarden, and Dr. Steve Dritz of the College of Veterinary Medicine at Kansas State University responded to committee questions.

CONTINUATION SHEET

The hearing on **HB 2572** was closed. Chairman Johnson requested that Mr. Harsch, Kansas Department of Health and Environment; Secretary Clover Adams, Kansas Department of Agriculture; and other interested parties draft mutually acceptable language and report to the Chairman by March 28, 2001, in order to schedule a date for possible action on **HB 2572**.

The meeting adjourned at 1:30 p.m.



Testimony in support of HB 2572
Presented on behalf of the Kansas Pork Association

Mr. Chairman, members of the committee, I am Mike Jensen, I serve as President of the Kansas Pork Association. Our members produce the overwhelming majority of the pork in Kansas. This legislation addresses a critical issue among producers in our state. Even before the heightened awareness caused by the potential spread of BSE and Foot and Mouth disease, biosecurity has been important to pork producers. For years, our industry has struggled with inspectors not following even the most basic respect for the biosecurity of a facility.

During the last major revision of KDHE regulations several years ago, language was included to allow a producer to file a "Biosecurity Plan" with the agency. Unfortunately, the regulations also placed a deadline on when these plans could be filed. Recently, the agency did relate verbally that they would again accept these plans. As such we have communicated to our membership this opportunity as well as supplying them with an appropriate form.

Every pork production facility is unique in its biosecurity needs. At the very least, producers cannot allow someone on their farm directly from another without disinfection. This same biosecurity is often expanded to requiring a specified length of time between visits. It also may include showering "in and out". The difference in the needs of facilities is legitimate. Kansas ranks third in the nation in breeding stock production. Breeding stock from Kansas literally moves across the nation. One production facility in Kansas that has the most stringent biosecurity I am aware of is the basis of a pyramid that results in production of 25% of the breeding stock in this country.

The importance of government inspectors respecting the potential impact of their actions is paramount. The KPA actively worked to present an educational seminar with KDHE staff by a swine veterinarian to address this issue. Unfortunately, during the last few weeks, EPA inspectors have been in Kansas, accompanied by KDHE personnel conducting inspections. Based on information we received, these were conducted with no respect for the biosecurity of the operations they inspected. These actions, in the face of the current disease threats in the livestock industry are unacceptable.

This legislation takes a major step forward in addressing some of industry concerns about this. We would respectfully ask your consideration of two additional amendments to this bill. The first would be the addition of a producer to specifically seek damages from the government for actions resulting in disease transmission. Secondly, we would like addition of language clarifying the ability of a producer to file or amend their biosecurity plan at any time.

On behalf of the pork producers in this state, we would encourage your support of this legislation.

Pork Producer Biosecurity Protocol

Permit Number _____

Prepared by: _____

Farm Name _____

Date: _____

Operator Name _____

Please send to:
Kansas Department of Health and Environment
Livestock Waste Management Section
Bureau of Water
Forbes Field, Bldg 283
Topeka, KS 66620-0001

Address _____

City/State/Zip _____

Prior to arriving at the farm location, the inspector will observe a no-contact period with other pigs or related activities (farm visits, transport vehicles, fairs, sale barns, truck washes, or incidental contact with pigs) for the period of time indicated below:

- | | | |
|---|---|-----------------------------------|
| <input type="checkbox"/> No restriction | <input type="checkbox"/> Not the same day | <input type="checkbox"/> 24 hours |
| <input type="checkbox"/> 36 hours | <input type="checkbox"/> 48 hours | <input type="checkbox"/> 60 hours |
| <input type="checkbox"/> 72 hours | <input type="checkbox"/> Other (specify: _____) | |

Is there a protocol for visitor's vehicles? Yes No
If yes, explain: _____

Is there a check-in procedure for visitors? Yes No
If yes, explain: _____

Do all visitors need to shower-in/shower-out? Yes No

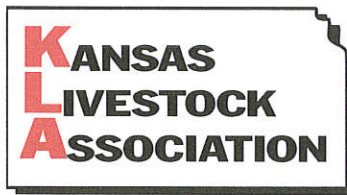
Do all visitors need to wear boots? Yes No
Are boots supplied? Yes No

Do all visitors need to wear coveralls? Yes No
Are coveralls supplied? Yes No

Do all visitors need to wear dust masks? Yes No
Are masks supplied? Yes No

Is there an order required in visiting buildings? Yes No
If yes, explain: _____

Describe additional disease prevention procedures required at the farm



Since 1894

To: The House Agriculture Committee
Representative Dan Johnson, Chairman

From: Todd Johnson, Executive Secretary, Purebred Division

Subject: House Bill 2572

Date: March 26, 2001

Mr. Chairman and members of the committee, thank you for allowing me the opportunity to address the concerns about animal health which have prompted the drafting of HB 2572.

For producers of all species, a top priority is to maintain the health of their livestock because few other factors can impact the bottom line of an operation faster than a disease outbreak. As a result, producers follow stringent vaccination guidelines to protect the health of their herd, feed specially formulated diets to maintain healthy animals and are careful to not bring diseases from other livestock operations onto their farm or ranch.

The recent outbreak of Foot and Mouth Disease (FMD) in foreign countries has brought to the attention of all United States producers the importance of a science based, thorough prevention plan to block the entry of FMD or other diseases into our country. It has also prompted individual producers to monitor more closely the protocols in place on their farms or ranches that prevent spread of diseases from neighboring operations.

It is my understanding that HB 2572 was introduced as a result of visits by inspectors from the federal Environmental Protection Agency and Kansas Department of Health and Environment to multiple swine operations in our state, without following proper bio-security protocols. Kansas producers certainly do not want to evade necessary inspections to insure proper waste management practices, but at the same time, common sense and respect for bio-security standards must be used when making such inspections.

HB 2572 certainly addresses the oversight made by individuals during inspections. Similar concerns have been raised regarding private citizens who visit livestock production facilities and unknowingly breach bio-security measures. The Kansas Livestock Association supports measures that protect the health and security of livestock operations.

House Agriculture Committee
March 26, 2001
Attachment 2



KANSAS

DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Clyde D. Graeber, Secretary

Testimony on House Bill 2572

to

House Committee on Agriculture

Presented by:

John Harsch, KDHE, Livestock Waste Management Section

March 26, 2001

Good morning, Chairman Johnson and members of the committee. I am John Harsch, with the Kansas Department of Health and Environment. I appreciate the opportunity to speak to you regarding HB 2572. The Department opposes this bill as it is drafted.

KDHE is very aware of the bio-security concerns of the producers. Bio-security is taken seriously at KDHE. Our inspectors are trained in the importance of bio-security and the need to follow bio-security plans submitted to the Department. Two pages from the training manual used for training our inspectors is attached. Mr. Steve Henry, DVM, provided additional training during a staff meeting May 5, 1999 in Hutchinson to further inform and train staff on the importance of bio-security.

Current rules and regulations, K.A.R. 28-18a-21 (swine), and K.A.R.28-18-14 (all species) address bio-security protocols. It requires that the protocols be submitted to KDHE. I have provided these regulations as an attachment. Both regulations define responsibilities of the producer and Department employees. The regulations state "bio-security protocols shall not inhibit reasonable access to any department inspector. If any department employee conducting an inspection of a confined feeding facility complies with the facility's bio-security protocol, that employee shall be allowed to access the animal waste management system to conduct inspections." (K.A.R. 28-28a-21(d) and K.A.R. 28-28- 14(d))

HB 2572 establishes penalties for violating bio-security protocols. These penalties apply only to agricultural inspectors of KDHE and EPA. To maintain bio-security at a facility, the plan must apply to all persons entering or exiting a facility. This could include agricultural staff from the Department of Agriculture, USDA, NRCS, consultants, salespersons, veterinarians, guests, delivery services, KSU extension staff, etc. And if penalties are established, they should apply to any person who violates bio-security protocols.

I thank you for the opportunity to appear before the House Agriculture Committee and will gladly stand for questions the committee may have on this topic.

8. **To gather general information.** Any necessary general information, such as the name and address of the chief executive office of the facility, should be obtained during this meeting.

Holding the opening discussion immediately after receiving access to the facility may not be appropriate in all cases. Depending upon the objectives of the inspection, the inspector may want to see particular operations or locations in the facility prior to the opening discussion. For example, in an unannounced inspection of a facility with a suspected violation, the inspector may want to go directly to the site of the suspected violation in order to observe the violation before the owner/operator can stop, conceal, or otherwise obscure the non-complying operation or condition.

BIOSECURITY ISSUES

Any inspection of swine containment facilities at a pork production operation should comply with the biosecurity protocol of the operation so long as the protocol does not inhibit reasonable access. Biosecurity refers to facility management practices that prevent disease agents from infecting or re-infecting the pigs. Disease prevention is an important factor in keeping a herd healthy. By using good management techniques to keep disease agents out, problems can be avoided and not given the opportunity to adversely affect the efficiency of the operation. Many producers have implemented extensive biosecurity measures to insure the health of their herds.

One of the more important aspects of biosecurity involves traffic control, both animal and people. People traffic is usually limited and controlled, particularly in or immediately around isolation buildings. Having all employees and visitors shower in and out greatly reduces the possibility of someone carrying unwanted organisms or disease into or between hog containment buildings. Requiring people to wear protective clothing and boots is a common practice improves biosecurity against diseases that are indirectly transmitted.

Another common practice is the use of foot baths which are strategically placed between buildings. These foot baths contain an iodine-based disinfectant and are designed so that people are forced to walk through them as they pass between buildings.

Traffic control on the outside of the containment buildings is also important to insure the health of the herd. All vehicles should be kept as far away from the buildings as possible. This includes trucks which take the hogs to market, any feed delivery trucks or any other service vehicles. Loadout areas are usually isolated at one end of the facility and are designed for easy cleaning and maintenance.

Animal traffic can be a threat to the health of the swine herd. Diseases which can affect the herd can be carried by wild or domestic animals, so that it is not uncommon to see chain-link security fences

surrounding containment buildings. Rodent and bird control measures are also common components of biosecurity programs

When visiting swine production facilities, it is important that the inspector be aware of any biosecurity measures and that he or she be prepared to comply with any protocol required by the facility. Generally, it should not be necessary to need entry to any swine containment area. If the occasion does arise, however, the inspector should consult with his or her supervisor before entering a secure area

GENERAL INSPECTION PROCEDURES

In general, the visual inspection of the facility should proceed in accordance with an inspection plan or strategy developed by the inspector during inspection planning. This plan should lay out, in the level of detail considered appropriate by the inspector (which may vary according to individual preferences), the operations the inspector intends to inspect and the tentative order in which the inspection will proceed. The inspector may, however, determine that it is appropriate to modify the plan based upon information obtained during the record review or other facts, such as the availability of specific personnel for interviewing or the scheduled operations of waste management units to be inspected. Inspectors should be flexible in changing their planned approach to suit conditions encountered at the facility.

Step-by-step procedures for visually inspecting a facility will vary according to the type of facility and the objectives of the inspection. The inspection checklist should be used as a guide in performing the inspection and in recording results of the inspection are provided in Appendix IV.

Inspections may be conducted on foot or, at larger facilities, by vehicle and on foot. In either case, inspectors should be alert to all that is happening at the facility and keep their eyes, ears, and noses open to any potential violations. Although it is generally good to follow an inspection plan in order to better understand waste generation and management within the facility, inspectors should not feel compelled to follow their original inspection plan to further investigate any observations which may uncover potential violations or environmental hazards.

Inspectors should not allow facility representatives to hurry the inspection, direct the route of the inspection, or prevent them from asking pertinent questions of facility personnel. Inspectors should ask relevant questions of both the facility representative and of other personnel. Questioning diverse personnel may identify inconsistencies in explanations of procedures or operations that could indicate possible non-complying conditions that should be further investigated, and can also give the inspector an indication of the adequacy of the personnel training program. Answers to questions and observations that are not reported on checklists should be recorded in a filed log or notebook.

Inspections

January, 1999

process wastes at the land application site. Irrigation practices shall be managed to ensure that animal or other process wastes are not discharged from the application sites.

(g) Adequate equipment and land application areas shall be available for removal of animal or other process wastes and contaminated stormwater runoff from the confined feeding facility to comply with the provisions of the permit and these regulations.

(h) Unless approved in advance by the department, liquid, liquid concentrated animal, or other liquid process wastes shall not be land applied when the ground is frozen, snow covered, or saturated, or during a precipitation event. Land application of animal or other process wastes during these periods may be authorized by the department for use in filtering animal or other process wastes from retention structures that are properly operated and maintained and that are in imminent danger of overflow to surface waters of the state due to chronic or catastrophic precipitation events. Solid animal or other process wastes may be applied to frozen ground only if the proposed application site and practices ensure that the wastes will be retained at the application site.

(i) Each operator, as directed by the department, shall conduct sampling and analysis of animal or process wastes or sites utilized for the application of animal or process wastes from confined animal feeding facilities, to determine nutrient and salinity levels, to confirm utilization of the animal or process wastes at agronomic rates, and to protect soil and water resources. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-14. Inspections. (a) Each operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable a department inspector to enter the facility for inspection.

(b) Each operator that utilizes bio-security protocols for the confined feeding facility and that requests KDHE conformance with the protocols shall submit a copy of the bio-security protocols to the department by September 1, 1999.

(c) Any operator that develops or modifies bio-security protocols and that requests KDHE con-

formance with the protocols shall submit a copy of the protocols to the department.

(d) Bio-security protocols shall not inhibit reasonable access to any department inspector. If any department employee conducting an inspection of a confined feeding facility complies with the facility's bio-security protocol, that employee shall be allowed to access the animal waste management system to conduct inspections. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-15. Variance of specific requirements. (a) Each operator seeking a variance from the regulations in this article shall submit to the department a written request for variance from the regulations in this article and shall provide information relevant to the request.

(b) Each request shall specifically set forth why the variance should be considered and how the requested variance addresses the intent of this article.

(c) A variance may be granted by the department whenever site-specific conditions or proposals are in keeping with the purpose and intent of this article. (Authorized by and implementing K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, and K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; effective Jan. 15, 1999.)

Article 18a.—SWINE AND RELATED WASTE CONTROL

28-18a-1. Definitions. The following words, terms, phrases, and abbreviations shall have the following meanings, unless otherwise defined in an individual regulation or unless a different meaning of a word is clear from the context in which it is used. Words, terms, phrases, and abbreviations not provided in the regulations of this article shall have the meaning defined in K.S.A. 65-101 et seq. and amendments thereto, K.A.R. 28-5-1 et seq., K.A.R. 28-16-1 et seq., K.A.R. 28-18-1 et seq., K.A.R. 28-30-1 et seq., or the clean water act (CWA). When the same word is defined both in Kansas statutes or the regulations of this article and in any federal regulation adopted by reference in these regulations or in

state regulations referred to in these regulations, the definitions are not identical unless specifically described in Kansas statute or regulation. The definitions in this article shall control.

(a) "Agronomic application" as defined in K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 143, sec. 1, and amendments thereto, and is defined in the regulations of the Kansas department of health and environment.

(b) "Animal unit" is defined in K.S.A. 1997 Supp. 65-171d (c)(3), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(c) "Animal unit capacity" is defined in K.S.A. 1997 Supp. 65-171d (c)(3), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(d) "Best available technology" is as defined in the regulations of the Kansas department of health and environment, as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(e) "Best management practices" is as defined in the regulations of the Kansas department of health and environment, as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(f) "Certification" means a statement of a water pollution permittee indicating that the facility meets the requirements and does not pose a water pollution potential.

(g) "Change in operation" means any of the following:

(1) Expansion or enlargement beyond the scope or boundary of the permit, certification, or specifications;

(2) any increase in the volume of waste beyond that authorized by the permit or certification;

(3) a change in construction, operation, or maintenance of a confined feeding facility, including collecting, storage, handling, or disposal of swine or manure.

(h) "Clean water act" means the federal law 92-500, as amended by public law 95-576, public law 97-117, and 33 U.S.C. 1361, as amended on February 4, 1987.

(i) "Confined feeding facility" is defined in K.S.A. 1997 Supp. 65-171d (c)(3), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(j) "Dead swine handling" means a document that identifies the operator of a confined feeding facility and the dead swine, to minimize

171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; effective Jan. 15, 1999.)

28-18a-20. Denial, suspension, revocation, or termination of a permit or certification for swine facilities. (a) A permit or certification may be denied, suspended, revoked, or terminated, pursuant to K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, L. 1998, ch. 143, sec. 16, and amendments thereto [K.S.A. 1998 Supp. 65-171d, K.S.A. 1998 Supp. 65-1,193, and amendments thereto].

(b) A permit or certification may be denied, suspended, revoked, or terminated for any of the following reasons:

(1) Misrepresentation or omission of a significant fact by the swine operator, either in the application for the permit or in information subsequently reported to the department;

(2) improper operation of the confined feeding facility, swine waste management system, or pollution control system, including any land application areas that cause pollution or a public health hazard;

(3) violation of any provision of K.S.A. 65-159 et seq. and amendments thereto, any regulations of article 16 and article 18, or other restrictions set forth in the permit, certification, or waiver; or

(4) failure to comply with an order or modified permit issued by the secretary.

(c) Procedures and provisions for the denial, suspension, revocation, or termination of a permit shall be pursuant to the provisions of K.A.R. 28-16-62.

(d) Any swine operator aggrieved by the denial, suspension, revocation, or termination of a permit or certification may request a hearing in accordance with the provisions of the Kansas administrative procedure act, K.S.A. 77-501 et seq. and amendments thereto.

(e) If a confined feeding facility is required to terminate operations or reduce the number of animal units at the facility, the swine operator may be allowed by the secretary to finish feeding existing swine at the facility at the time of notification by the department, until the facility is permitted or certified, or complies with the provisions of these regulations. However, in no case shall the termination of operations or the reduction of the animal unit number exceed five months from the initial notification to terminate operations by the depart-

ment. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 16 [K.S.A. 1998 Supp. 65-1,193]; effective Jan. 15, 1999.)

28-18a-21. Inspections. (a) Each swine operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable a department inspector to enter the facility for inspection.

(b) Each swine operator that utilizes bio-security protocols for the confined feeding facility and that requests KDHE conformance with the protocols shall submit a copy of the bio-security protocol to the department by September 1, 1999.

(c) Any swine operator that develops or modifies the bio-security protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department.

(d) Bio-security protocols shall not inhibit reasonable access to any department inspector. If any department employee conducting an inspection of a confined feeding facility complies with the facility's bio-security protocol, that employee shall be allowed to access the animal waste management system to conduct inspections. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 14 [K.S.A. 1998 Supp. 65-1,191]; effective Jan. 15, 1999.)

28-18a-22. Swine facility closure requirements. (a) Each swine operator of a facility permitted by the department shall notify the department of plans to cease operation of, close, or abandon the swine facility.

(b) Each swine operator shall maintain and comply with a valid permit until the department approves the closure of the swine facility.

(c) A swine facility closure plan shall be developed and implemented for any proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 3,725 or more, pursuant to L. 1998, ch.

143, sec. 12, and amended Supp. 65-1,189, and amending submitting swine facility permit for approval, and submit at least four copies

(d) A facility closure plan with an animal unit capacity include, at a minimum, the

(1) Identification of a permit and pollution control measures to contain, control, and excess wastes at the swine

(2) the procedures to be dispose of swine or other

(3) the maintenance, demolition of a swine pond pursuant to L. 1998 amendments thereto [K.S.A. and amendments thereto swine waste-retention lag following methods:

(A) Removing the be vegetating the site to pro

(B) leaving the structure for use as a freshwater fi

(C) retaining the structure use as a part of a swine pollution control system;

(D) using any other me and

(4) the plugging of a monitoring wells at the

(e) Any swine facility capacity of 3,725 or more facility closure plan and department for approval directed by the department by one or more of the fo

(1) Changes in operat

(2) a change or modif management and pollut

(3) other conditions a waste management syst system.

(f) Each swine facility capacity of 3,725 or more t a facility closure plan sh: at the facility's site offic accessible to inspection department.

(g) Closure of a swi pleted within six months department of the propose

STATE OF KANSAS

BILL GRAVES, GOVERNOR

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KANSAS DEPARTMENT OF AGRICULTURE

House Agriculture Committee

March 26, 2001

Testimony Regarding HB 2572

Jamie Clover Adams, Secretary of Agriculture

Chairman Johnson and members of the House Agriculture Committee, I am Jamie Clover Adams, Kansas Secretary of Agriculture. I appear today to support the concept of House Bill 2572. However, I do have grave concerns about the way the bill is currently drafted.

Background

It is my understanding that this bill was introduced in response to recent confined livestock feeding facility inspections, during which inspectors were not sensitive to producer biosecurity concerns. This perception is unfortunate, particularly in light of the recent outbreak and spread of foot-and-mouth disease in Europe and beyond.

Biosecurity is a mix of attitude, routine, communication and common sense. It also is absolutely necessary in modern livestock production. A producer can never be certain who poses an exposure risk, so he or she must always be alert to possible breaches of his or her biosecurity plan. Individuals inspecting confined livestock feeding facilities should be well-versed on the importance of biosecurity. In fact, because they are moving from facility to facility, they should be even more keenly aware of their potential to transport infectious organisms from one group of animals to another. Inspectors should respect producers' biosecurity measures and do everything within their power to abide by reasonable producer requests.

Inspectors who are not aware of their potential to spread infectious disease can consult with USDA to learn more about preventive measures. USDA currently is working very hard to prevent the import of foot-and-mouth disease into the U.S. from countries experiencing outbreaks of that illness. I am sure they would be glad to share their expertise with other agency inspectors.

Specifics of HB 2572

As currently drafted, the bill makes it an unlawful act for a KDHE or EPA inspector to enter a confined livestock facility without maintaining full compliance with a biosecurity plan. It provides both civil and criminal penalties. However, it appears that government employees are not subject to civil penalties when performing their duties. While K.S.A. 75-6103(a) makes governmental entities liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment, K.S.A. 75-6104(e) states that any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a

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governmental entity or employee is exempt from liability under the Kansas Tort Claims Act.

Under current law (K.S.A. 65-1, 191), KDHE inspectors are required to comply with facility biosecurity plans, which are also known as animal health protocols. However, while the statute states that the protocol cannot inhibit reasonable access, biosecurity plans are not reviewed or approved by anyone. This puts the inspector in a situation where disregarding an unreasonable procedure or request now carries potential civil and/or criminal penalties.

Options

KDA is concerned about the spread of infectious disease. In that vein, we offer the following language as a substitute for HB 2572. As you can see, it will apply to any person entering the premises of a permitted livestock confinement facility and requires the individual to maintain reasonable and appropriate biosecurity measures. The penalty will be a misdemeanor punishable by up to a \$500 fine. We believe this language encompasses all facilities concerned about biosecurity and all individuals that may inspect a permitted livestock confinement facility.

Another option is to pattern the language found in K.S.A. 65-1,191 and attach criminal misdemeanor punishments. This statute states that each facility “shall grant access to the facility at reasonable times, with appropriate safeguards for protection of animal health, for authorized representatives” of government to conduct inspections. It goes on to state that representatives shall comply with the animal health protocol of the facility unless the protocol inhibits reasonable access. Using this language, combined with criminal misdemeanor punishment and including the EPA, will achieve what appears to be the intent of HB 2572.

Another option is to adopt language in the form of a resolution to heighten the awareness of inspectors and Kansans of infectious diseases and the part they can play in controlling such disease. For example, swine are susceptible to a number of viral, bacterial, fungal and parasitic diseases, two of which are a big concern to Kansas producers:

Transmissible gastroenteritis (TGE), which costs the U.S. swine industry between \$25 million and \$75 million every year, is considered one of the most contagious causes of diarrhea in swine.

Pseudorabies virus (PRV) is estimated to cost producers more than \$30 million annually in vaccinations, testing, abortion, illness, loss of productivity and access to some foreign markets.

To combat PRV, federal, state and industry representatives joined forces to create the National Pseudorabies Virus Eradication Program. The group has worked since 1989 to eradicate PRV and is finally reaching a point where it may be able to claim victory. However, temporary success is no reason for swine producers — or anyone for that matter — to become complacent about biosecurity measures designed to prevent the spread of contagious disease.

Thank you for the opportunity to provide testimony on HB 2572. I am available to answer questions at the appropriate time.

One option to cover any individual entering the premises of a permitted livestock facility.

HOUSE BILL No. 2572

An act concerning agriculture, related to permitted confined animal facilities.

It shall be unlawful for **any** person to enter the premises of a permitted livestock confinement facility without maintaining reasonable and appropriate bio-security standards for the protection of animal health, including but not limited to; application of sanitizing solutions or treatments, and specialized garments or footwear. Such standards and protocols are applicable to state and federal agency employees, but shall not inhibit reasonable access to the facilities for authorized purposes. The operator of the facility shall be responsible for providing all necessary equipment and garments required to comply with the bio-security protocol, and shall post visible written notice of the requirements at each entrance to the facility.

Unlawful entry of a confined animal facility shall be a misdemeanor punishable by a fine of not less than \$100, nor more than \$500. Upon a finding that said unlawful entry resulted in economic loss due to the breach of the bio-security standards, restitution may be ordered.

KSA 65-1,191, KAR 28-18a-21