

January 30, 2025

Matthew T. Steele, Ph.D., P.E.
8736 Eagle Feather Drive
Manhattan, Kansas 66502

The Honorable Jim Minnix, Chairperson
House Committee on Water
300 SW 10th Avenue, Room 218-N
Topeka, Kansas 66612

Subject: Opponent Testimony on HB 2085, providing an extension of the expiration of permits issued under the water pollution control permit system from five to 10 years.

Dear Representative Minnix and Committee Members:

My name is Dr. Matthew Steele, I am a licensed engineer in the State of Kansas and former Section Chief of the CAFO Program at KDHE. My background and specialty is agricultural engineering emphasizing in livestock waste management systems with 20 years of experience in the regulatory, private, and academic sectors.

I wish to submit the following opponent testimony as an avid supporter of KDHE, the livestock industry, and the people of Kansas.

After talking with several colleagues and producers, we have a few questions:

What is the chance that this will draw additional and unwanted attention by EPA on our industry and KDHE?

Why do we need to change the standard away from the federal standard and standard we have had in place in Kansas for forty years?

If we are already having delays in the renewal of permits currently how is this really going to fix the problem that may be the cause of these delays?

This reminds me of what happened with the swine industry. Another tier system of permits, one set of standards for one group and another set for the rest.

Why did it take almost 4 years to renew a permit that was submitted on time along with all the necessary fees and documentation?

If a backlog continues to exist, why have we not received funding for more staff?

Next, I would like to note the last line of the fiscal note provided for this bill: “The agency notes that some facilities could save money through deferring necessary engineering services for applying and renewing permits over a longer period of time.”

This bill would only impact “state” permitted facilities which from experience do not typically require, warrant or utilize engineering services for the application of permit renewals. These facilities are smaller and are not required to meet the Federal NPDES requirements. Permit renewals can quickly be

completed by the producer. Attached is the current permit application which shows that only 3 of the 11 pages must be completed which consist of contact information, waste management equipment available at the facility and signature. The second document a producer may need to submit is a new waste management plan if the currently approved plan is no longer accurate. Lastly, there are no regulatory or statutory requirements that the design or permit application be completed by an engineer.

Additionally, in the first paragraph of the fiscal note it states: "The Secretary of Health and Environment would also have the authority to issue permits pursuant to KSA 65-165 for terms less than 10 years (instead of the current five years) if there was valid cause."

The valid cause for the current five years is based on the federal requirement that all NPDES permits issued by any state do not exceed five years. For municipal non-NPDES wastewater permits a variance request will be required as K.A.R. 28-16-62(d) limits the permit term to not exceed five years. A variance request from experience takes at least a week assuming everyone in the chain of command is in the office.

Likewise, for all non-NPDES livestock waste permits a variance would be required as the length of permit term is set in K.A.R. 28-18-8 which states that terms and conditions of the livestock waste permits shall meet the requirements of K.A.R. 28-16-62.

As I mentioned a variance would be required but it must be initiated by the permittee as outlined below:

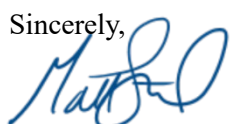
28-18-15 - Variance of specific requirements.

- (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.

Although this change in the statute would now allow for a variance to be granted for extended permit periods of up to 10 years the process would have to be initiated by the permit holder until the regulations are updated appropriately.

I conclude with my opposition to this bill out of respect and concern for KDHE, the livestock industry and the people of Kansas. I do not feel as if this is the solution to the issues that we are facing regarding the maintenance and review of wastewater permits that fall under this statute. I assume we still have the same great relationship with EPA regarding our CAFO program that has for decades provided for only minimal EPA visitations to our facilities compared to our neighboring states. I do not believe at this time that KDHE, the livestock industry or this committee have a complete picture of what is needed to aid our ongoing permitting issues.

Thank you for your time today and consideration of this testimony on HB 2085

Sincerely,


Matthew T. Steele, Ph.D., P.E.



Kansas Water Pollution Control Permit for Agricultural and Related Wastes

Livestock Waste Management Program

Permit Application

Instructions: PLEASE PRINT. Complete and provide all information as requested. Attach all drawings and plans to this application. If you need assistance completing this form, call (785) 296-6432 or your local KDHE District Office. Mail completed application to:

**KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT
LIVESTOCK WASTE MANAGEMENT SECTION
1000 SW JACKSON STREET, SUITE 430
TOPEKA, KS 66612-1367**

If a registration form has been submitted to KDHE within the previous eighteen months, only pages 1 through 7 and not previously submitted portions of Appendix 3 need to be completed. Any information from pages 5 or 7 submitted with the registration does not need to be resubmitted unless changes need to be noted.

NOTICE: Failure to provide all required documentation at the time of submission of this permit application will result in the entire permit package being returned to the applicant for completion.

FACILITY IDENTIFICATION

- Check one:** New Facility Application
 Renewal Application Permit # _____ (only complete pages 1 & 11 & Sec # 10 Equip. List)
 Facility Modification/Expansion Application Permit # _____
 Facility Name/Owner Change ONLY Permit # _____ (only complete pages 1 & 6)

1. Name of Applicant: _____ Date: _____

Name of Property owner(s) (if different from Applicant): _____

2. Name of Facility: _____

3. Mailing Address: _____

City: _____ State: _____ Zip: _____

4. Facility Address (if different): _____

City: _____ State: _____ Zip: _____

5. Applicant's Telephone No.: _____ Home Telephone No.: _____

Cellular Telephone No.: _____ Fax No.: _____

E-Mail Address: _____

Applicant hereby makes application to the Kansas Department of Health and Environment in conformance with K.S.A. 65-171d et seq. and K.A.R. 28-18-1 through 17, and/or 28-18a-1 through 33.

Department Use Only	
Facility ID No.	_____
Date Permit Application Complete:	_____
Permit Fee Paid:	Yes No

ADDITIONAL CONTACT INFORMATION: (optional additional facility contact to receive electronic copy of correspondence)

Name: _____

Title: _____

Email address: _____

FACILITY DESCRIPTION

6. Legal description of property where facility is located:

 Facility ID Quarter(s) Section Township ^{South} Range ^{Circle: E or W} County

 Facility ID Quarter(s) Section Township ^{South} Range ^{Circle: E or W} County

 Facility ID Quarter(s) Section Township ^{South} Range ^{Circle: E or W} County

7. The existing, proposed, and/or expanded livestock operation will consist of: (mark **E** if existing or **P** if proposed)

____ Open Lots ____ Enclosed Bldg. ____ Both Open/Closed ____ Truck Wash ____ Other

8. Existing and/or proposed waste control systems: (mark **E** if existing or **P** if proposed)

____ Earthen Retention Structure ____ Sedimentation Basin ____ Concrete Storage Structure

Other (explain) _____

9. Are there any county or local comprehensive land use plans or zoning requirements or restrictions at this site?

Yes _____ No _____.

If yes, please explain: _____

10. Waste Management Equipment: Needed for all applications. Indicate the type and size of equipment available for: land application and transportation of process waste (in any form: liquid, slurry, or solid). Indicate whether each piece of equipment is owned, leased, or contractor provided. If a wastewater retention structure is present at the facility dewatering equipment **must** be listed. (Please attach additional page if needed)

Equipment Description (55 hp tractor, high lift, pto driven pump, manure wagon, honey wagon, center pivot, traveling gun, etc.)	Equipment Purpose (Transportation, collection, land application, agitate manure in basin, etc.)	Capacity (Gallons per minute, gallons, bushels, acres, cubic yards, etc.)	Owned (O), Leased (L), or Contractor's (C)

ANIMAL UNITS CALCULATION TABLE

Please complete the table below. Identify the **maximum** capacity of each type of animal at your facility. Each pig, weaned or unweaned, weighing 55 pounds or less must be counted as 0.1 animal units. Similarly, for permitting purposes, dairy facilities must count calves and heifers weighing less than 700 pounds as 0.5 animal units and bulls, and heifers weighing more than 700 pounds as 1.0 animal unit. Lactating and dry dairy cows should be counted as 1.4 animal units, etc.

(A)	(B)	(C)	(D)	(E)
Type of Facility*	Current Maximum Permitted Capacity (Head)	Proposed Expansion or New (Head)	AU Conversion Factor	Maximum Animal Units (B+C) x D
Swine weighing more than 55 pounds			0.4	
Swine weighing 55 pounds or less			0.1	
Cattle weighing more than 700 pounds			1.0	
Cattle weighing less than 700 pounds			0.5	
Mature Dairy Cows (Lactating and Dry)			1.4	
Sheep/Lambs/Goats			0.1	
Turkeys			0.018	
Laying Hens/Broilers w/ continuous overflow watering			0.01	
Laying Hens/Broilers w/ liquid manure system			0.033	
Laying Hens/Broilers w/ dry manure system ¹			0.003	
Horses			2.0	
Ducks			0.2	
Other-specify species _____				
Total				

***Minimum EPA thresholds requiring an NPDES permit** are: 700 head of mature dairy cows (lactating or dry), 1,000 head of veal calves, 1,000 head of cattle other than mature dairy cows or veal calves, 2,500 head of swine weighing greater than 55 pounds, 10,000 head of swine weighing 55 pounds or less, 500 horses, 10,000 sheep or lambs, 30,000 ducks w/ other than liquid manure system, 5,000 ducks w/ liquid manure system, 55,000 turkeys, 30,000 laying hens/broilers w/ liquid manure system, 125,000 chickens other than laying hens (broilers) w/ other than liquid manure system, and 82,000 laying hens w/ other than liquid (dry) manure system.

¹ A 0.033 AU conversion factor should be used for chicken facilities with dry litter systems if manure is exposed to precipitation during collection or when stored in stockpiles, or if manure is land applied without incorporation into the soil within 24 hours.

SEPARATION DISTANCE WAIVERS AND PUBLIC NOTICE REQUIREMENTS

Habitable Structure Separation Distances: On Appendix 2, the applicant is required to provide KDHE with a list all owners of habitable structures and mailing addresses, and the headquarters of all city, county, state, or federal parks, and wildlife refuges within the applicable separation distance for the maximum animal unit capacity of the facility.

	<u>Animal Units (AU)</u>	<u>Habitable structure Separation Distance</u>	<u>Wildlife Refuge Separation Distance (Swine Only)</u>
New facility or expansion	300-999	1,320 feet	
New facility or expansion	1,000-3,724*	4,000 feet	10,000 feet
Swine expansion that will meet or exceed	3,725	4,000 feet**	
New swine facility that will meet or exceed	3,725	5,000 feet	16,000 feet

* No ceiling for non-swine

** If within original designated expansion boundary, otherwise 5,000 feet.

The applicant should request owners of habitable structures within the applicable separation distance to sign a wavier of the separation distance to the proposed facility. Waivers shall be filed by the applicant with the register of deeds office of the county in which the habitable structure is located. Evidence of proper notice such as, signed waiver agreements, or signed certified mail receipts to match the list in Appendix 2 shall be provided before KDHE will notify the public a permit has been drafted. A Confined Animal Feeding Facility/Habitable Structure Separation Distance Agreement form is available upon request from the Department or on-line at <http://www.kdheks.gov/feedlots/>.

List of Property Owners Within One Mile of the Facility: On Appendix 2a, the applicant is required to provide KDHE with a list containing the names and mailing addresses for each owner of a habitable structure and any property within 1 mile of a proposed **new construction or new expansion** of a confined feeding facility. In addition, the applicant of a proposed new construction or new expansion of a confined feeding facility is required to provide KDHE with the address of the United States post office or offices serving the immediate area of the facility.

Public Notice Requirements: Attach all wavier and public notice documentation listed in Appendix 3 to this application. Please read the requirements on page 10 carefully.

PRODUCER'S CHECK LIST

For this permit application to be considered complete and ready for the department to review, the applicant must provide the following documentation. Please check and assemble in the order listed. Additional guidance on specific components is available upon request through the Department. Please call (785) 296-6432 or go on-line at www.kdheks.gov/feedlots/ for assistance.

Appendix

- | Number | Document |
|-----------|---|
| _____ 1. | Facility Site Maps – see page 7 for details |
| _____ 2. | List of Habitable Structure Owners within applicable separation distance – see pages 4 and 8 for details |
| _____ 2a. | List of Habitable Structures/Property Owners within one mile (proposed new construction or new expansion) – see page 4 and 9 for details |
| _____ 3. | Public Notice Documentation – see page 10 for details |
| _____ 4. | Depth to Groundwater Information |
| _____ 5. | Facility Design Calculations |
| _____ 6. | Construction Drawings* |
| _____ 6a. | If plans/drawings are prepared by a consultant provide documentation the consultant has adequate general commercial liability insurance coverage addressing errors and omissions in the design plans and specifications has been obtained and is in effect, or plans include a stamp by a KS professional engineer. Per KAR 28-18-12(d) |
| _____ 7. | Waste Management Plan (Required if the facility is less than the EPA thresholds listed on page 3) |
| _____ 8. | Nutrient Management Plan (Required if the facility meets or exceeds the EPA thresholds listed on page 3) |
| _____ 9. | Swine Facility Plans (include the following as appropriate): |
| _____ a. | Nutrient Utilization Plan [Required if 1,000 AU or more] |
| _____ b. | Odor Control Plan [Required if 1,000 AU or more] |
| _____ c. | Emergency Response Plan [Required if 1,000 AU or more] |
| _____ d. | Manure Management Plan [Required if 1,000 AU or more] |
| _____ e. | Dead Swine Handling Plan [Required if 1,000 AU or more] |
| _____ f. | Facility Closure Plan [Required if 3,725 AU or more] |
| _____ g. | Financial Assurance for Facility Closure [Required if 3,725 AU or more] |
| _____ h. | Financial Assurance for Swine Waste-Retention Lagoon or Pond Closure [Required if 3,725 AU or more] |
| _____ i. | Ground Water Monitoring Plan [Required for certain swine facilities (see K.A.R. 28-18a-18).] |

***Provide detailed location/site plans indicating the following:**

Major components of the facility including structures - building sizes/locations, property lines, locations and sizes (length, width, height - area/volume capacity) of lagoons, dirt lots, pits, and manure stockpile locations. Plans should include type, size and maximum anticipated number of animals in each building and/or dirt lot. Also, depict the furthest extent of the facility boundaries to include areas that may be used for future expansion.

ANNUAL PERMIT FEE

The annual permit fee is based on the facility maximum number of animal units as listed below and **must be paid before processing** of the permit and annually to maintain the validation of the permit. These fees are non-refundable.

Facility Size in Animal Units (AU)	Annual Permit Fee
999 AU or less	\$25
1,000 to 4,999 AU	\$100
5,000 to 9,999 AU	\$200
10,000 AU or more	\$400
Private Truck Washing Facility (two or fewer owned trucks)	\$25
Private Truck Washing Facility (three or more owned trucks)	\$200
Commercial Truck Washing Facility	\$320

PLEASE MAKE CHECK PAYABLE TO:
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

SIGNATURE/CERTIFICATION

Swine Facility Consultation Statement: (required for all swine facilities)

I, _____, will consult with the KSU county extension agent, or
(Applicant's Name)

qualified agronomist or individual trained in crop protection, to ensure application of swine wastes at agronomic rates and that records of this information will be available at the swine facility office as prescribed in K.S.A. 65-1,179(b)(3)(E).

Applicants Signature: _____ **Date:** _____

Permit Application Certification: (required for all species)

I hereby certify that the information submitted and/or attached herein is true and correct to the best of my knowledge and belief.

I hereby make application to the Kansas Department of Health and Environment for a water pollution control permit for the facility described in this application in conformance with K.S.A. 65-171d et seq. and K.A.R. 28-18-1 through 17 and/or K.A.R. 28-18a-1 through 33.

Applicants Name: _____
(Type or Print Name and Title)

Applicants Signature: _____ **Date:** _____

This application is to be signed by one of the following: (1) In the case of a corporation, by the principal executive officer of at least the level of Vice President; (2) in the case of a partnership, by a general partner; or (3) in the case of a sole proprietorship, by the proprietor.

APPENDIX 1

MAPS

(Only required for proposed new construction or expansion of an existing facility)

Please provide maps and/or aerial photographs showing the following information. You may combine information on maps as long as all required information is clearly identified and provided. It may be necessary to provide maps of different scales in order to accurately depict the required information. This information is required per K.A.R. 28-18-4 and K.A.R. 28-18a-4.

- Indicate at the top of all maps the Facility or Operator Name and County.
- Orient all maps so “North” is at the top of the page and provide a “North Arrow.”
- Use of portions of a standard 7.5 Minute USGS Topographical map is recommended. If a USGS Topographical map is used, please identify the map sheet name used. USGS maps may be obtained by contacting:

Map Distribution
USGS Map Sales
Box 25286
Federal Center, Bldg 810
Denver, Colorado 80225
(888) 275-8747
<http://store.usgs.gov/>

Kansas Geological Survey
1930 Constant Avenue
University of Kansas
Lawrence, Kansas 66047
(785) 864-3965
<http://www.kgs.ku.edu/kgs.html>

Kansas Geological Survey
4150 W. Monroe Street
Wichita, Kansas 67209
(316) 943-2343

Suitable aerial photographs and maps may also be obtained from the local Natural Resources Conservation Services (NRCS). A scaled drawing may also be used.

Please provide or identify the following information on a map:

- Location and layout of the facility **and** facility property lines.
- Location of all habitable structures within applicable separation distance as defined by K.S.A.65-171d(c)(5).
- Location of areas at facility used for stockpiling process and animal wastes.
- Locate and measure distance to draws, creeks, road ditches, etc.*
- Show direction of surface drainage off lots and surrounding areas.
- Specify size and type of vegetative filter strips and vegetative buffer if present or proposed.
- Specify sedimentation basin dimensions and volume capacity if present or proposed.
- Location of city or rural water district lines within **50 feet** of the facility.
- Location of all water, oil, gas, or salt solution mining wells on the facility property and within **600 feet** of existing or proposed wastewater retention structure.
- Any streams, drainage channel, or body of water within **one mile** of the facility property lines.
- Location of public water supply wells within **one mile**.
- Location of any habitable structure, property lines, or parks within **one mile** of the facility property lines.
- Locations of proposed/existing land application areas.

Facilities with swine also include the following:

- Location of all public water supply wells within 1,000 feet of the facility property lines.*
- Location of all private water supply wells within 250 feet of the facility property lines.*

*Minimum separation distances apply to facilities with swine, per K.S.A. 65-1,180 and K.S.A. 65-1,194

APPENDIX 2

Habitable Structure Owners List

(Habitable structures within the applicable separation distance)

Using the format provided, please record the name and mailing address, city, state, zip code of the owners of **all habitable structures within the applicable separation distance** as determined by the number of animal units for the facility.

Habitable structures are structures that are currently occupied or maintained in a condition that may be occupied and, in the case of a confined feeding facility for swine, is owned by a person other than the operator of such facility: a dwelling, church, school, adult care home, medical care service, child care facility, library, community center, public building, office building, or licensed food service, or lodging establishment, parks, and wildlife refuge.

Name	Mailing Address (address, city, state, zip) Rural Route addresses will <u>NOT</u> be accepted	Distance*	Direction
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

* As measured from the currently planned maximum extent of the facility structures such as buildings, pens or wastewater retention structures.

APPENDIX 2a

Habitable Structure/Property Owners List

(For proposed new construction or expansion of an existing facility)

Using the format provided, please record the name, mailing address, city, state, zip code of the owner, distance from the facility, and direction from the facility, of **all property owners and habitable structures within 1 mile of the facility¹**. Also provide the address of the US post office or offices serving the immediate area where the facility is located.

Please check the box on the far left if a habitable structure, as defined on Appendix 2, is located on the property.

? <input type="checkbox"/>	Name	Mailing Address (address, city, state, zip) Rural Route addresses will <u>NOT</u> be accepted	Distance*	Direction
	1.			
	2.			
	3.			
	4.			
	5.			
	6.			
	7.			
	8.			
	9.			
	10.			
	11.			
	12.			
	13.			
	14.			
	15.			
	16.			
	17.			
	18.			
	19.			
US Post Office				

* As measured from the currently planned maximum extent of the facility structures such as buildings, pens or wastewater retention structures.

¹New and expanding **swine** facilities with 1,000 or more AU of swine should also provide this information **for habitable structures within 1,000 feet of any land application area.**

APPENDIX 3

Public Notice Documentation

(Only required for proposed new construction or expansion of an existing facility)

This appendix contains the documentation of the applicant's efforts at giving proper public notice in accordance with K.S.A. 65-171d et seq and K.A.R. 28-18-4 / K.A.R. 28-18a-4. Please provide the following:

- Originals of signed waivers by owners of habitable structures within the applicable separation distance. These must be signed by a notary and filed with the county Register of Deeds.
- Any other documentation related to public notices.

The following items are for **SWINE** facilities only, in accordance with K.A.R. 28-18a-7(b) and K.S.A. 65-1,179(c) the applicant of a proposed new construction or new expansion of a swine facility is required to give notice to all owners of habitable structures within the applicable separation distance, by certified mail, of the applicant's intention to apply for a water pollution control permit. The notice should include pertinent information regarding the location, size, general methods of waste management, and any other information the applicant deems necessary.

- Provide a draft copy of the Notice of Application with this permit application for review prior to submitting for newspaper notification. If assistance is needed to prepare the draft Notice of Application, please contact the KDHE Central Office at 785-296-6432 and request a copy of the Guidance for Swine Producers document.
- Submit copy of Notice of Application to County Commission via "Certified Return Receipt" mail.
- Submit copy of Notice of Application to mayor of any city within 3 miles or less of facility via "Certified Return Receipt" mail.
- Submit copy of Notice of Application to owners of habitable structures within applicable separation distance via "Certified Return Receipt" mail. **FAILURE TO PROVIDE THIS NOTICE IS GROUNDS FOR AUTOMATIC DENIAL OF THE PERMIT APPLICATION BY THE SECRETARY OF KDHE.**
- Publish a single Notice of Application in the official county newspaper and in any other newspaper regularly published and generally circulated serving the county and general area of the facility, notifying the public of the proposal.*
- If the facility is within 1 mile of an adjoining county, a single notification shall also be provided in the official newspaper serving the adjoining county.*
- Provide a publisher's affidavit of publication, or a certified copy of the Notice of Application from the official county newspaper serving the area of the facility within 20 days of the publication.*
- Notify KDHE by telephone or facsimile within 2 days of publication of notice in newspaper.*

* Not required as part of complete application; however, must be completed and submitted prior to KDHE's publication of intent to issue a draft permit.

Renewal Application Certification: (required for all Renewal Applications)

I hereby certify that the animal unit capacity and facility description contained in the most recent Kansas Water Pollution Control Permit for Agricultural and Related Wastes issued to the facility is currently and will continue to remain true and correct to the best of my knowledge and belief. Your signature on this form attests to your agreement to comply with these statements and warrants that the statements are truthful.

I hereby make application to the Kansas Department of Health and Environment for a water pollution control permit for the facility described in this application in conformance with K.S.A. 65-171d et seq. and K.A.R. 28-18-1 through 17 and/or K.A.R. 28-18a-1 through 33.

Applicants Name: _____
(Type or Print Name and Title)

Applicants Signature: _____ **Date:** _____

This application is to be signed by one of the following: (1) In the case of a corporation, by the principal executive officer of at least the level of Vice President; (2) in the case of a partnership, by a general partner; or (3) in the case of a sole proprietorship, by the proprietor.

For Renewal Applications at facilities with no changes in animal unit capacity, facility layout, or operation, please sign above. Please submit this page along with completed page 1 and the following items as applicable.

_____ **Waste Management Plan** (If the facility is less than the EPA thresholds listed on page 3 and previously approved Waste Management Plan or listed waste application fields are no longer accurate)

_____ **Nutrient Management Plan** (Required if the facility meets or exceeds the EPA thresholds listed on page 3)

_____ **Nutrient Utilization Plan** (Required if 1,000 AU or more of swine)

_____ **Odor Control Plan** (Required if 1,000 AU or more of swine)

_____ **Facility Closure Plan** (Required if 3,725 AU or more of swine)

_____ **Financial Assurance for Facility Closure** (Required if 3,725 AU or more of swine)

_____ **Financial Assurance for Swine Waste-Retention Lagoon or Pond Closure** (Required if 3,725 AU or more of swine)