

Substitute for HOUSE BILL No. 2207

By Committee on Agriculture and Natural Resources

2-19

1 AN ACT concerning public health; relating to confined feeding facilities;
2 registration; amending K.S.A. 2012 Supp. 65-171d and repealing the
3 existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 65-171d is hereby amended to read as
7 follows: 65-171d. (a) For the purpose of preventing surface and subsurface
8 water pollution and soil pollution detrimental to public health or to the
9 plant, animal and aquatic life of the state, and to protect designated uses of
10 the waters of the state and to require the treatment of sewage predicated
11 upon technologically based effluent limitations, the secretary of health and
12 environment shall make such rules and regulations, including registration
13 of potential sources of pollution, as may in the secretary's judgment be
14 necessary to: (1) Protect the soil and waters of the state from pollution
15 resulting from underground storage of liquid petroleum gas and
16 hydrocarbons, other than underground porosity storage of natural gas; (2)
17 control the disposal, discharge or escape of sewage as defined in K.S.A.
18 65-164, and amendments thereto, by or from municipalities, corporations,
19 companies, institutions, state agencies, federal agencies or individuals and
20 any plants, works or facilities owned or operated, or both, by them; and (3)
21 establish water quality standards for the waters of the state to protect their
22 designated uses. In no event shall the secretary's authority be interpreted to
23 include authority over the beneficial use of water, water quantity
24 allocations, protection against water use impairment of a beneficial use, or
25 any other function or authority under the jurisdiction of the Kansas water
26 appropriation act, K.S.A. 82a-701, and amendments thereto.

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

32 (c) For the purposes of this act, including K.S.A. 65-161 through 65-
33 171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and
34 rules and regulations adopted pursuant thereto:

35 (1) "Pollution" means: (A) Such contamination or other alteration of
36 the physical, chemical or biological properties of any waters of the state as

1 will or is likely to create a nuisance or render such waters harmful,
2 detrimental or injurious to public health, safety or welfare, or to the plant,
3 animal or aquatic life of the state or to other designated uses; or (B) such
4 discharge as will or is likely to exceed state effluent standards predicated
5 upon technologically based effluent limitations.

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

10 (3) "Animal unit" means a unit of measurement calculated by adding
11 the following numbers: The number of beef cattle weighing more than 700
12 pounds multiplied by 1.0; plus the number of cattle weighing less than 700
13 pounds multiplied by 0.5; plus the number of mature dairy cattle
14 multiplied by 1.4; plus the number of swine weighing more than 55
15 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or
16 less multiplied by 0.1; plus the number of sheep or lambs multiplied by
17 0.1; plus the number of horses multiplied by 2.0; plus the number of
18 turkeys multiplied by 0.018; plus the number of laying hens or broilers, if
19 the facility has continuous overflow watering, multiplied by 0.01; plus the
20 number of laying hens or broilers, if the facility has a liquid manure
21 system, multiplied by 0.033; plus the number of ducks multiplied by 0.2.
22 However, each head of cattle will be counted as one full animal unit for the
23 purpose of determining the need for a federal permit. "Animal unit" also
24 includes the number of swine weighing 55 pounds or less multiplied by 0.1
25 for the purpose of determining applicable requirements for new
26 construction of a confined feeding facility for which a permit or
27 registration has not been issued before January 1, 1998, and for which an
28 application for a permit or registration and plans have not been filed with
29 the secretary of health and environment before January 1, 1998, or for the
30 purpose of determining applicable requirements for expansion of such
31 facility. ~~However, each head of swine weighing 55 pounds or less shall be~~
32 ~~counted as 0.0 animal unit for the purpose of determining the need for a~~
33 ~~federal permit.~~ Except as otherwise provided, animal units for public
34 livestock markets shall be determined by using the average annual animal
35 units sold by the market during the past five calendar years divided by
36 365. Such animal unit determination may be adjusted by the department if
37 the public livestock market submits documentation that demonstrates that
38 such adjustment is appropriate based on the amount of time in 24-hour
39 increments or partials thereof that animals are at the market.

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

43 (5) "Habitable structure" means any of the following structures which

1 is occupied or maintained in a condition which may be occupied and
2 which, in the case of a confined feeding facility for swine, is owned by a
3 person other than the operator of such facility: A dwelling, church, school,
4 adult care home, medical care facility, child care facility, library,
5 community center, public building, office building or licensed food service
6 or lodging establishment.

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

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

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

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

33 (3) Any action of the secretary pursuant to this subsection is subject
34 to review in accordance with the Kansas judicial review act.

35 (f) The secretary may adopt rules and regulations establishing fees for
36 plan approval, monitoring and inspecting underground or buried petroleum
37 products storage tanks, for which the annual fee shall not exceed \$5 for
38 each tank in place.

39 (g) (1) Prior to any new construction of a confined feeding facility
40 with an animal unit capacity of 300 ~~to 999~~ or more, such facility shall
41 register with the secretary of health and environment. *Such registration*
42 *shall be accompanied by a \$25 fee. The secretary shall acknowledge the*
43 *receipt of the registration in a form as designated by the secretary and*

1 *publish a notice of such receipt.*

2 (2) *Such registration shall indicate that the proposed construction*
3 *will occur within the prescribed tract of land and that the separation*
4 *distances from the tract boundaries or proposed facility footprint comply*
5 *with the requirements described in subsections (j), ~~(k)~~, (l) and ~~(m)~~ **(m) or***
6 *exceptions described in (k).*

7 (3) *Within 30 days of receipt of such registration, the department of*
8 *health and environment shall identify any significant water pollution*
9 *potential or separation distance violations pursuant to subsection (j).*

10 (A) (i) *If the proposed facility has an animal unit capacity of 1,000 or*
11 *more, or if there is identified a significant water pollution potential for a*
12 *facility of less than 1,000 but more than 300, such facility shall be*
13 *required to obtain a permit from the secretary.*

14 (ii) *If there is no **identified** water pollution potential posed by a*
15 *facility with an animal unit capacity of 300 or more but less than 1000, the*
16 *secretary shall certify that no permit is required.*

17 (B) *If the secretary certifies that no permit is necessary pursuant to*
18 *subsection (g)(3)(A)(ii), the secretary shall take the following action in*
19 *regard to separation distances of such facility:*

20 (i) ~~*If there is no violation of separation distances, the secretary shall*~~
21 ~~*certify that no such separation distance violation exists*~~ ***the separation***
22 ***distances comply with the requirements for separation distances, the***
23 ***secretary shall certify the registration; or***

24 (ii) ~~*if there is a violation of the separation distances do not comply*~~
25 ~~*with the requirements for separation distances, the secretary shall:*~~

26 (a) ~~*State that there are certification conditions pertaining to*~~
27 ~~*separation distances; or*~~

28 ~~*(b) may reduce the separation distances distance requirements*~~
29 ~~*pursuant to subsection (k) and certify any the registration based on such*~~
30 ~~*reduction of separation distances; or*~~

31 ***(b) shall report the conditions necessary to receive certification to***
32 ***the registrant.***

33 (h) (1) *Facilities with a capacity of less than 300 animal units may*
34 *register with the secretary of health and environment. ~~Any~~ Such*
35 *registration shall be accompanied by a \$25 fee.*

36 (2) *Within 30 days of receipt of such registration, the department of*
37 *health and environment shall identify any significant water pollution*
38 *potential ~~or separation distance violations pursuant to subsection (h).~~ If*
39 *there is identified a significant water pollution potential, such facility shall*
40 *be required to obtain a permit from the secretary. If there is no water*
41 *pollution potential posed by a such facility with an animal unit capacity of*
42 *less than 300, the secretary may certify that no permit is required. ~~If there~~*
43 *is no water pollution potential nor any violation of separation distances*

1 posed by a facility with an animal unit capacity of 300 to 999, the
2 secretary shall certify that no permit is required and that there are no
3 certification conditions pertaining to separation distances. If a separation
4 distance violation is identified, the secretary may reduce the separation
5 distance in accordance with subsection (i) and shall certify any such
6 reduction of separation distances.

7 (i) (1) If a facility requires a permit pursuant to subsection (g)(3) or
8 (h)(2), the registrant shall submit an application for such permit not later
9 than 18 months after the date of receipt of registration or the ~~separation~~
10 ~~distances indicated in such~~ registration shall expire.

11 (2) Upon petition by the registrant, the secretary may extend the
12 application period, by no more than an additional 18 months, if the
13 secretary believes such an extension is reasonable under the
14 circumstances.

15 (3) Within 30 days of receipt of an application, the secretary shall
16 notify the registrant of whether the application is complete or incomplete.
17 If the application is incomplete, such notice shall state the reasons why
18 such application is incomplete. Once such registrant submits an
19 application properly addressing each reason listed as a basis for the
20 determination that the application is incomplete, the secretary shall issue
21 an acknowledgment of receipt of the completed application within 30 days
22 of properly addressing such reasons.

23 (4) Upon expiration of the application period or any extension
24 thereof, the secretary shall not accept any further registrations pertaining
25 to the same location for a period of not less than 180 days.

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

31 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
32 999; and

33 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 or
34 more.

35 (2) A confined feeding facility for swine shall meet or exceed the
36 following requirements in separation distances from any habitable
37 structure or city, county, state or federal park in existence when the
38 ~~application for a permit is submitted~~ registration is received:

39 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
40 999;

41 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to
42 3,724;

43 (C) 4,000 feet for expansion of existing facilities to an animal unit

1 capacity of 3,725 or more if such expansion is within the perimeter from
2 which separation distances are determined pursuant to subsection ~~(k)~~ (m)
3 for the existing facility; and

4 (D) 5,000 feet for: (i) Construction of new facilities with an animal
5 unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an
6 animal unit capacity of 3,725 or more if such expansion extends outside
7 the perimeter from which separation distances are determined pursuant to
8 subsection ~~(k)~~ (m) for the existing facility.

9 (3) Any construction of new confined feeding facilities for swine
10 shall meet or exceed the following requirements in separation distances
11 from any wildlife refuge:

12 (A) 10,000 feet for facilities with an animal unit capacity of 1,000 to
13 3,724; and

14 (B) 16,000 feet for facilities with an animal unit capacity of 3,725 or
15 more.

16 ~~(h)~~ (k) (1) The separation distance requirements of subsections ~~(h)~~ (j)
17 (1) and (2) shall not apply if the ~~applicant for a permit~~ *registrant* obtains a
18 written agreement from all owners of habitable structures which are within
19 the separation distance stating such owners are aware of the construction
20 or expansion and have no objections to such construction or expansion.
21 The written agreement shall be filed in the register of deeds office of the
22 county in which the habitable structure is located.

23 (2) (A) The secretary may reduce the separation distance
24 requirements of subsection ~~(h)~~ (j)(1) if: (i) No substantial objection from
25 owners of habitable structures within the separation distance is received in
26 response to public notice; or (ii) the board of county commissioners of the
27 county where the confined feeding facility is located submits a written
28 request seeking a reduction of separation distances.

29 (B) The secretary may reduce the separation distance requirements of
30 subsection ~~(h)~~ (j)(2)(A) or (B) if: (i) No substantial objection from owners
31 of habitable structures within the separation distance is received in
32 response to notice given in accordance with subsection ~~(h)~~ (n); (ii) the
33 board of county commissioners of the county where the confined feeding
34 facility is located submits a written request seeking a reduction of
35 separation distances; or (iii) the secretary determines that technology exists
36 that meets or exceeds the effect of the required separation distance and the
37 facility will be using such technology.

38 (C) The secretary may reduce the separation distance requirements of
39 subsection ~~(h)~~ (j)(2)(C) or (D) if: (i) No substantial objection from owners
40 of habitable structures within the separation distance is received in
41 response to notice given in accordance with subsection (l); or (ii) the
42 secretary determines that technology exists that meets or exceeds the effect
43 of the required separation distance and the facility will be using such

1 technology.

2 ~~(j)~~ (l) (1) The separation distances required pursuant to subsection ~~(h)~~
3 (j)(1) shall not apply to:

4 (A) Confined feeding facilities which were permitted or certified by
5 the secretary on July 1, 1994;

6 (B) confined feeding facilities which existed on July 1, 1994, and
7 registered with the secretary before July 1, 1996; or

8 (C) expansion of a confined feeding facility, including any expansion
9 for which an application was pending on July 1, 1994, if: (i) In the case of
10 a facility with an animal unit capacity of 1,000 or more prior to July 1,
11 1994, the expansion is located at a distance not less than the distance
12 between the facility and the nearest habitable structure prior to the
13 expansion; or (ii) in the case of a facility with an animal unit capacity of
14 less than 1,000 prior to July 1, 1994, the expansion is located at a distance
15 not less than the distance between the facility and the nearest habitable
16 structure prior to the expansion and the animal unit capacity of the facility
17 after expansion does not exceed 2,000.

18 (2) The separation distances required pursuant to subsections ~~(h)~~ (j)
19 (2)(A) and (B) shall not apply to:

20 (A) Confined feeding facilities for swine which were permitted or
21 certified by the secretary on July 1, 1994;

22 (B) confined feeding facilities for swine which existed on July 1,
23 1994, and registered with the secretary before July 1, 1996; or

24 (C) expansion of a confined feeding facility which existed on July 1,
25 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000
26 or more prior to July 1, 1994, the expansion is located at a distance not less
27 than the distance between the facility and the nearest habitable structure
28 prior to the expansion; or (ii) in the case of a facility with an animal unit
29 capacity of less than 1,000 prior to July 1, 1994, the expansion is located at
30 a distance not less than the distance between the facility and the nearest
31 habitable structure prior to the expansion and the animal unit capacity of
32 the facility after expansion does not exceed 2,000.

33 (3) The separation distances required pursuant to subsections ~~(h)~~ (j)
34 (2)(C) and (D) and (h)(3) shall not apply to the following, as determined in
35 accordance with subsections (a), (e) and (f) of K.S.A. 65-1,178, and
36 amendments thereto:

37 (A) Expansion of an existing confined feeding facility for swine if an
38 application for such expansion has been received by the department before
39 March 1, 1998; and

40 (B) construction of a new confined feeding facility for swine if an
41 application for such facility has been received by the department before
42 March 1, 1998.

43 ~~(k)~~ (m) The separation distances required by this section for confined

1 feeding facilities for swine shall be determined from the exterior perimeter
2 of any buildings utilized for housing swine, any lots containing swine, any
3 swine waste retention lagoons or ponds or other manure or wastewater
4 storage structures and any additional areas designated by the ~~applicant~~
5 *registrant* for future expansion. Such separation distances shall not apply
6 to offices, dwellings and feed production facilities of a confined feeding
7 facility for swine.

8 ~~(j)~~ *(n)* The ~~applicant~~ *registrant* shall give the notice required by
9 subsections ~~(i)(2)(B)~~ **(k)(2)(B)** and (C) by certified mail, return receipt
10 requested, to all owners of habitable structures within the separation
11 distance. The ~~applicant~~ *registrant* shall submit to the department evidence,
12 satisfactory to the department, that such notice has been given.

13 ~~(m)~~ *(o)* All plans and specifications submitted to the department for
14 new construction or new expansion of confined feeding facilities may be,
15 but are not required to be, prepared by a professional engineer or a
16 consultant, as approved by the department. Before approval by the
17 department, any consultant preparing such plans and specifications shall
18 submit to the department evidence, satisfactory to the department, of
19 adequate general commercial liability insurance coverage.

20 Sec. 2. K.S.A. 2012 Supp. 65-171d is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.