

SENATE BILL No. 138

By Committee on Ways and Means

2-3

1 AN ACT concerning the department of health and environment; relating to
2 rules and regulations; confined feeding facilities; amending K.S.A.
3 2014 Supp. 65-171d and repealing the existing section.
4

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

6 Section 1. K.S.A. 2014 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) (1) *Except as provided in paragraph (2), the secretary of health*
28 *and environment may adopt by reference any regulation relating to water*
29 *quality and effluent standards promulgated by the federal government*
30 *pursuant to the provisions of the federal clean water act, and amendments*
31 *thereto, as in effect on January 1, 1989, which the secretary is otherwise*
32 *authorized by law to adopt.*

33 (2) *On and after July 1, 2015, for cattle confined feeding facilities*
34 *with an animal unit capacity of 1,000 or more, the secretary of health and*
35 *environment shall not promulgate or enforce any such rules and*
36 *regulations that are more stringent or restrictive than required by federal*

1 *law, including, but not limited to, the clean water act.*

2 (c) For the purposes of this act, including K.S.A. 65-161 through 65-
3 171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and
4 rules and regulations adopted pursuant thereto:

5 (1) "Pollution" means: (A) Such contamination or other alteration of
6 the physical, chemical or biological properties of any waters of the state as
7 will or is likely to create a nuisance or render such waters harmful,
8 detrimental or injurious to public health, safety or welfare, or to the plant,
9 animal or aquatic life of the state or to other designated uses; or (B) such
10 discharge as will or is likely to exceed state effluent standards predicated
11 upon technologically based effluent limitations.

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

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

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

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

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

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

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

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

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

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

43 (g) (1) Prior to any new construction of a confined feeding facility

1 with an animal unit capacity of 300 or more, such facility shall register
2 with the secretary of health and environment. Such registration shall be
3 accompanied by a \$25 fee. The secretary shall acknowledge the receipt of
4 the registration in a form as designated by the secretary and publish a
5 notice of such receipt.

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

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

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

18 (ii) If there is no identified water pollution potential posed by a
19 facility with an animal unit capacity of 300 or more but less than 1,000,
20 the secretary shall certify that no permit is required.

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

24 (i) If the separation distances comply with the requirements for
25 separation distances, the secretary shall certify the registration; or

26 (ii) if the separation distances do not comply with the requirements
27 for separation distances, the secretary:

28 (a) May reduce the separation distance requirements pursuant to
29 subsection (k) and certify the registration based on such reduction of
30 separation distances; or

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

33 (h) (1) Facilities with a capacity of less than 300 animal units may
34 register with the secretary of health and environment. Such registration
35 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. If there is identified a significant water pollution potential, such
39 facility shall be required to obtain a permit from the secretary. If there is
40 no water pollution potential posed by such facility, the secretary may
41 certify that no permit is required.

42 (i) (1) If a facility requires a permit pursuant to subsection (g)(3) or
43 (h)(2), the registrant shall submit an application for such permit not later

1 than 18 months after the date of receipt of registration or the registration
2 shall expire.

3 (2) Upon petition by the registrant, the secretary may extend the
4 application period, by no more than an additional 18 months, if the
5 secretary believes such an extension is reasonable under the
6 circumstances.

7 (3) Within 30 days of receipt of an application, the secretary shall
8 notify the registrant of whether the application is complete or incomplete.
9 If the application is incomplete, such notice shall state the reasons why
10 such application is incomplete. Once such registrant submits an
11 application properly addressing each reason listed as a basis for the
12 determination that the application is incomplete, the secretary shall issue
13 an acknowledgment of receipt of the completed application within 30 days
14 of properly addressing such reasons.

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

18 (j) (1) Any new construction or new expansion of a confined feeding
19 facility, other than a confined feeding facility for swine, shall meet or
20 exceed the following requirements in separation distances from any
21 habitable structure in existence when the registration is received:

22 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
23 999; and

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

26 (2) A confined feeding facility for swine shall meet or exceed the
27 following requirements in separation distances from any habitable
28 structure or city, county, state or federal park in existence when the
29 registration is received:

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

32 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to
33 3,724;

34 (C) 4,000 feet for expansion of existing facilities to an animal unit
35 capacity of 3,725 or more if such expansion is within the perimeter from
36 which separation distances are determined pursuant to subsection (m) for
37 the existing facility; and

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

43 (3) Any construction of new confined feeding facilities for swine

1 shall meet or exceed the following requirements in separation distances
2 from any wildlife refuge:

3 (A) 10,000 feet for facilities with an animal unit capacity of 1,000 to
4 3,724; and

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

7 (k) (1) The separation distance requirements of subsections (j)(1) and
8 (2) shall not apply if the registrant obtains a written agreement from all
9 owners of habitable structures which are within the separation distance
10 stating such owners are aware of the construction or expansion and have
11 no objections to such construction or expansion. The written agreement
12 shall be filed in the register of deeds office of the county in which the
13 habitable structure is located.

14 (2) (A) The secretary may reduce the separation distance
15 requirements of subsection (j)(1) if: (i) No substantial objection from
16 owners of habitable structures within the separation distance is received in
17 response to public notice; or (ii) the board of county commissioners of the
18 county where the confined feeding facility is located submits a written
19 request seeking a reduction of separation distances.

20 (B) The secretary may reduce the separation distance requirements of
21 subsection (j)(2)(A) or (B) if: (i) No substantial objection from owners of
22 habitable structures within the separation distance is received in response
23 to notice given in accordance with subsection (n); (ii) the board of county
24 commissioners of the county where the confined feeding facility is located
25 submits a written request seeking a reduction of separation distances; or
26 (iii) the secretary determines that technology exists that meets or exceeds
27 the effect of the required separation distance and the facility will be using
28 such technology.

29 (C) The secretary may reduce the separation distance requirements of
30 subsection (j)(2)(C) or (D) if: (i) No substantial objection from owners of
31 habitable structures within the separation distance is received in response
32 to notice given in accordance with subsection (l); or (ii) the secretary
33 determines that technology exists that meets or exceeds the effect of the
34 required separation distance and the facility will be using such technology.

35 (l) (1) The separation distances required pursuant to subsection (j)(1)
36 shall not apply to:

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

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

41 (C) expansion of a confined feeding facility, including any expansion
42 for which an application was pending on July 1, 1994, if: (i) In the case of
43 a facility with an animal unit capacity of 1,000 or more prior to July 1,

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

8 (2) The separation distances required pursuant to subsections (j)(2)
9 (A) and (B) shall not apply to:

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

12 (B) confined feeding facilities for swine which existed on July 1,
13 1994, and registered with the secretary before July 1, 1996; or

14 (C) expansion of a confined feeding facility which existed on July 1,
15 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000
16 or more prior to July 1, 1994, the expansion is located at a distance not less
17 than the distance between the facility and the nearest habitable structure
18 prior to the expansion; or (ii) in the case of a facility with an animal unit
19 capacity of less than 1,000 prior to July 1, 1994, the expansion is located at
20 a distance not less than the distance between the facility and the nearest
21 habitable structure prior to the expansion and the animal unit capacity of
22 the facility after expansion does not exceed 2,000.

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

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

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

33 (m) The separation distances required by this section for confined
34 feeding facilities for swine shall be determined from the exterior perimeter
35 of any buildings utilized for housing swine, any lots containing swine, any
36 swine waste retention lagoons or ponds or other manure or wastewater
37 storage structures and any additional areas designated by the registrant for
38 future expansion. Such separation distances shall not apply to offices,
39 dwellings and feed production facilities of a confined feeding facility for
40 swine.

41 (n) The registrant shall give the notice required by subsections (k)(2)
42 (B) and (C) by certified mail, return receipt requested, to all owners of
43 habitable structures within the separation distance. The registrant shall

1 submit to the department evidence, satisfactory to the department, that
2 such notice has been given.

3 (o) All plans and specifications submitted to the department for new
4 construction or new expansion of confined feeding facilities may be, but
5 are not required to be, prepared by a professional engineer or a consultant,
6 as approved by the department. Before approval by the department, any
7 consultant preparing such plans and specifications shall submit to the
8 department evidence, satisfactory to the department, of adequate general
9 commercial liability insurance coverage.

10 Sec. 2. K.S.A. 2014 Supp. 65-171d is hereby repealed.

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