

STATE OF KANSAS
Department of Health and Environment
Notice of Public Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Bureau of Environmental Field Services, Livestock Waste Management Section, will conduct a public hearing at 10:00 a.m., Thursday, October 14, 2021, to receive public comment regarding the adoption of proposed amended Livestock Waste Management regulations K.A.R. 28-18-1, 28-18-14, 28-18-16, 28-18-17, and 28-18a-24.

Due to recent concerns regarding COVID-19, only remote public participation is available. To participate in the Zoom webinar public hearing, register at this link: https://us02web.zoom.us/webinar/register/WN_A8Mx8swwSbeBoVATyc1hiw. During the public hearing, all interested individuals will be given a reasonable opportunity to present their comment orally on the proposed regulations. It is requested that each individual giving oral comment provide a written copy of the comment for the record prior to the hearing by email or postal mail to the email or postal mailing address listed in this notice or by fax to the fax number also listed in this notice. In order to give each individual an opportunity to present their comment, it may be necessary for the hearing officer to request that each presenter limit an oral presentation of comment to an appropriate time frame.

Individuals are also encouraged to participate in the public hearing by submitting written comment prior to 5:00 p.m. on the day of the hearing. The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comment on the proposed amended regulations. Submit written comment, including a written copy of oral comment, to Erich Glave, Director, Bureau of

RECEIVED

AUG 02 2021

**SCOTT SCHWAB
SECRETARY OF STATE**

Environmental Field Services, Kansas Department of Health and Environment, 1000 SW Jackson, Suite 430, Topeka KS 66612, by email to kdhe.feedlots@ks.gov or by fax to 785-559-4258.

A summary of the proposed regulations and estimated economic impact follows:

Summary of Regulations:

K.A.R. 28-18-1. Definitions. Adds the defined term “authorized representative.” Updates sections listed in the definition of “Equus Beds” according to the order signed July 7, 2017, expanding the boundaries of the Equus Beds Groundwater Management District No. 2. Clarifies the defined term “significant water pollution potential.” Updates referenced regulations used to define “water quality standards.”

K.A.R. 28-18-14. Inspections. Updates terms and provides uniform requirements for inspections at all confined feeding facilities.

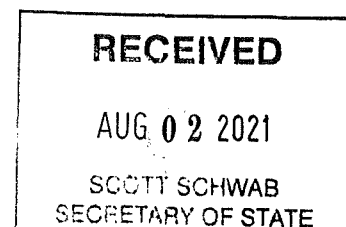
K.A.R. 28-18-16. Waste-retention lagoon or pond closure requirements. Provides that an operator shall submit a waste-retention lagoon or pond closure plan to the department by paper copy or by electronic transmission of the plan.

K.A.R. 28-18-17. Groundwater protection requirements for waste-retention lagoons or ponds and waste treatment facilities. Allows for electronic submission of seepage test results and cites the updated data in the “Kansas Surface Water Quality Standards: Tables of Numeric Criteria” adopted by reference in K.A.R. 28-16-28e.

K.A.R. 28-18a-24. Financial assurance for swine waste-retention lagoon or pond closure. Corrects an error referencing non-existent K.A.R. 28-18-22(d).

Economic Impact:

Cost to the agency: The proposed regulations will not result in increased costs to the



agency.

Cost to the regulated community and public: The proposed regulations will not result in increased costs to the regulated community and public.

Cost to other governmental agencies or units: The proposed regulations will not result in increased costs to other governmental agencies or units.

A detailed economic impact is provided in the economic impact statement that is available from the designated KDHE Livestock Waste Management program contact person or at the Livestock Waste Management website, as listed below.

Complete copies of the proposed regulations and the corresponding economic impact statement may be obtained from the KDHE Livestock Waste Management website at <https://www.kdheks.gov/feedlots/index.html>, or by contacting Rachel Hammond at Rachel.Hammond2@ks.gov, phone 785-296-0076, or fax 785-559-4258. Questions pertaining to the proposed regulations should be directed to Erich Glave at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Rachel Hammond at the contact information above.

Any updated information on how to participate in the remote public hearing will be provided on the KDHE Livestock Waste Management Section website specified in this notice of hearing.

Lee A. Norman, M.D.

Secretary

RECEIVED

AUG 02 2021

**SCOTT SCHWAB
SECRETARY OF STATE**

28-18-1. Definitions. The following terms and abbreviations shall have the following meanings, unless otherwise defined in an individual regulation or unless a different meaning is clear from the context in which it is used. Terms and abbreviations not provided in this article shall have the meanings specified in K.S.A. 65-101 et seq. and amendments thereto; articles 5, 16, 18a, and 30; or the clean water act (CWA). If 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 referenced in this article and the definitions are not identical, the definition prescribed in Kansas statutes or the regulations of this article shall control. Each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) "Animal unit" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(b) "Animal unit capacity" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(c) "Animal waste management system" means any land, structures, or practices utilized for the collection, containment, storage, distribution, land application, or disposal of animal or other process wastes generated by confined feeding operations facilities. This term shall include any of the following:

(1) Site grading to divert extraneous, uncontaminated precipitation runoff around the confined feeding facility;

(2) structures designed and constructed to collect, control the flow of, and direct animal or other process wastes;

APPROVED
MAY 07 2021

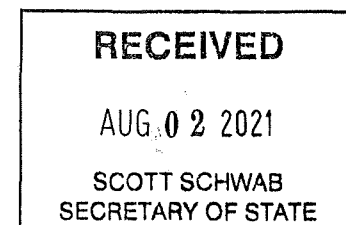
DIVISION OF THE BUDGET

APPROVED
MAY 10 2021

DEPT. OF ADMINISTRATION

APPROVED
MAY 25 2021

ATTORNEY GENERAL



(3) vegetation cover utilized for controlling erosion or for filtering animal or other process wastes;

(4) tanks, manure pits, or other structures designed and constructed to collect or store animal or other process wastes;

(5) waste-retention lagoons or ponds;

(6) land used for the application, utilization, or disposal of animal or other process wastes; and

(7) waste treatment facilities.

(d) “Authorized representative” means either of the following:

(1) Any person employed by the department; or

(2) an entity contracted by the department to conduct inspections and the review of records required by this article of the department’s regulations.

(e) “Certification” means a document issued by the secretary in lieu of a water pollution control permit, indicating that the confined feeding facility meets the requirements of the applicable animal waste management statutes and regulations and does not represent a significant water pollution potential.

~~(e)~~ (f) “Change in operation” and “modification” mean any of the following:

(1) Expansion or enlargement of a confined feeding facility beyond the scope or boundaries established by registration, permit, certification, or approved plans and specifications;

(2) any increase in the animal unit capacity beyond that authorized by a permit or

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

certification; or

(3) a change in construction or operation of a confined feeding facility that affects the collecting, storage, handling, treatment, utilization, or disposal of animal or other process wastes.

~~(f)~~ (g) “Clean water act” and “CWA” mean the federal water pollution control act, 33 U.S.C. 1251 et seq., as in effect on November 27, 2002.

~~(g)~~ (h) “Closure plan” means a written document that identifies the practices and procedures that the operator of a confined feeding facility plans to use when closing the confined feeding facility or any part of the confined feeding facility.

~~(h)~~ (i) “Confined feeding facility” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

~~(i)~~ (j) “Department” and “KDHE” mean the Kansas department of health and environment.

~~(j)~~ (k) “Director” means the director of the division of environment of the Kansas department of health and environment.

~~(k)~~ (l) “Division” means the division of environment, Kansas department of health and environment.

~~(l)~~ (m) “Entity;” for the purposes of these regulations, means a person, individual, association, company, corporation, institution, group of individuals, joint venture, partnership, trust, or federal, state, county, or municipal agency or department legally capable of conducting business or owning real or personal property in Kansas.

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

~~(m)~~ (n) "Environmental protection agency" and "EPA" mean ~~the~~ United States environmental protection agency.

~~(n)~~ (o) "Equus Beds," ~~for the purposes of these regulations,~~ means an aquifer underlying the sections of land listed in the following table:

County	Range	Township	Section
Harvey	01W	22S	06, 07, 18, 19, 30, 31
Harvey	01W	23S	06, 07, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	01W	24S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	02W	22S	All sections
Harvey	02W	23S	All sections
Harvey	02W	24S	All sections
Harvey	03W	22S	All sections
Harvey	03W	23S	All sections
Harvey	03W	24S	All sections
McPherson	01W	19S	<u>19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35</u>
McPherson	01W	20S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33
McPherson	01W	21S	05, 06, 07, 18, 19, 30, 31

APPROVED
DEC 22 2020

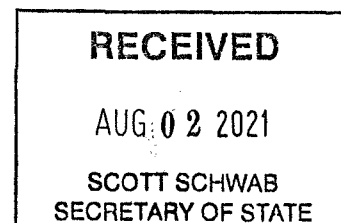
DIVISION OF THE BUDGET

APPROVED
DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED
MAY 25 2021

ATTORNEY GENERAL



<u>McPherson</u>	<u>02W</u>	<u>19S</u>	<u>19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,</u> <u>32, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>02W</u>	<u>20S</u>	<u>All sections</u>
McPherson	02W	21S	12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 <u>All sections</u>
McPherson	03W	18S	28, 29, 30, 31, 32, 33
McPherson	03W	19S	04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20, 21, 22, <u>23, 24, 25, 26,</u> 27, 28, 29, 30, 31, 32, 33, 34, <u>35, 36</u>
McPherson	03W	20S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35 <u>All sections</u>
McPherson	03W	21S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 <u>All sections</u>
McPherson	04W	18S	20, 21, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36
McPherson	04W	19S	01, 02, 03, 04, 09, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
McPherson	04W	20S	01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION ATTORNEY GENERAL

APPROVED

MAY 25 2021

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 28-18-1, page 6

McPherson	04W	21S	01, 02, 03, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
Reno	04W	22S	All sections
Reno	04W	23S	All sections
Reno	04W	24S	All sections
Reno	04W	25S	All sections
Reno	04W	26S	All sections
Reno	05W	22S	All sections
Reno	05W	23S	All sections
Reno	05W	24S	All sections
Reno	05W	25S	All sections
Reno	05W	26S	All sections
Reno	06W	22S	All sections
Reno	06W	23S	All sections
Reno	06W	24S	All sections
Reno	06W	25S	All sections
Reno	06W	26S	All sections
Reno	07W	22S	All sections
Reno	07W	23S	All sections
Reno	07W	24S	All sections
Reno	07W	25S	All sections

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 28-18-1, page 7

Reno	07W	26S	All sections
<u>Reno</u>	<u>08W</u>	<u>22S</u>	<u>05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16,</u> <u>17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,</u> <u>29, 30, 31, 32, 33, 34, 35, 36</u>
<u>Reno</u>	<u>08W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>08W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>08W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>08W</u>	<u>26S</u>	<u>All sections</u>
<u>Sedgwick</u>	<u>01E</u>	<u>25S</u>	<u>05, 06, 07, 08, 17, 18, 19, 20, 29, 30, 31, 32</u>
Sedgwick	01E	26S	<u>05, 06, 07, 08, 17, 18, 19, 20</u>
Sedgwick	01W	25S	<u>03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19,</u> <u>20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34,</u> <u>35, 36 All sections</u>
Sedgwick	01W	26S	<u>01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13,</u> <u>14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28,</u> <u>29, 30, 31, 32</u>
Sedgwick	01W	27S	<u>05, 06</u>
Sedgwick	02W	25S	All sections
Sedgwick	02W	26S	<u>01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13,</u> <u>14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,</u> <u>27, 34, 35, 36 All sections</u>

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

Sedgwick	02W	27S	01
Sedgwick	03W	25S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36 <u>All sections</u>
Sedgwick	03W	26S	01, 02, 03, 04, 11, 12 <u>All sections</u>

(e) (p) “Federal permit,” “national pollutant discharge elimination system permit,” and “NPDES permit” mean an authorization, license, or equivalent control document issued by the EPA or an approved state to implement the requirements of 40 C.F.R. parts 122, 123, 124, and 412.

(p) (q) “Food animals” means animals, fish, or fowl produced for consumption.

(q) (r) “Fur animals” means animals raised for the skin, pelt, or fur.

(r) (s) “Groundwater,” ~~as used in this article,~~ means water located under the surface of the land that is or can be the source of supply for wells, springs, seeps, or streams, or that is held in aquifers. ~~For the purposes of this article,~~ Groundwater shall be considered capable of being a source of supply for wells if at least one of the following conditions is met:

(1) The groundwater can be produced at a rate of 10 gallons or more per hour from a borehole with a diameter of nine or fewer inches. In determining the groundwater production rate for an excavation, borehole, or existing water or monitoring well, the quantity of produced water shall be adjusted for comparison purposes to the surface area of a borehole with a diameter of nine inches.

(2) The groundwater is currently being used within ½ mile of the proposed waste-

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

retention lagoon or pond, regardless of the rate at which the groundwater can be produced.

(3) There is evidence of past groundwater use within ½ mile of the proposed waste-retention lagoon or pond.

(s) (t) “Habitable structure” has the meaning specified in K.S.A. ~~Supp.~~ 65-171d, and amendments thereto.

(t) (u) “Impermeable synthetic membrane liner” means a commercially manufactured membrane liner composed of synthetic materials commonly identified as being plastic, plastic polymer, or other synthetic materials that, when installed, provide for the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of 1/64 inch per day; or

(2) the liner manufacturer's criteria for the maximum monitored or calculated seepage rate for the installed membrane liner, expressed in units of volume per unit area per unit of time (gallons per square foot per day).

(u) (v) “Land application” means the distribution of animal or other process wastes onto, or incorporation into, the soil mantle for the purpose of disposal or utilization by crops or vegetation.

(v) (w) “Liner” means any designed barrier in the form of in situ, layer, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between animal or other process wastes that are controlled or retained by animal waste management systems and waters of the state.

(w) (x) “Maximum soil liner seepage rate” and “specific discharge” mean the flow rate

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

of water through the liner of a waste-retention lagoon or pond and shall be expressed as velocity (distance/time). The maximum seepage rate shall be calculated as $v = k(h/d)$, in which “k” is the hydraulic conductivity (coefficient of permeability) and “(h/d)” is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance “h” measured from the liquid surface to the liner bottom, divided by the thickness of the soil liner “d.” When calculating the maximum seepage rate, the maximum design depth, not ~~considering~~ including design freeboard, shall be used.

~~(x)~~ (y) “Minimum standards of design, construction, and maintenance” means the following:

- (1) Effluent standards and limitations;
- (2) other performance standards for treatment or utilization; and
- (3) other standards of design, construction, and maintenance for confined feeding facilities or animal waste management systems, published by the KDHE.

~~(y)~~ (z) “Monitoring” means all procedures using any of the following methods:

- (1) Either systematic inspection or collection and analysis of data on the operational parameters of a confined feeding facility or an animal waste management system; or
- (2) the systematic collection and analysis of data on the quality of the animal or other process wastes, groundwater, surface water, or soils on or in the vicinity of the confined feeding facility or animal waste management system.

~~(z)~~ (aa) “National pollutant discharge elimination system” and “NPDES” mean the national system for the issuance of permits under 33 U.S.C. section 1342; and shall include any

APPROVED

DEC 22 2020

APPROVED

DEC 28 2020

APPROVED

MAY 25 2021

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

state or interstate program that has been approved by the EPA administrator, in whole or in part, pursuant to 33 U.S.C. section 1342.

(aa) (bb) “Nutrient management plan” means a written document that identifies the practices and procedures that the an operator of a ~~confined feeding facility~~ that is required to obtain a federal permit plans to use to operate and maintain the animal waste management system and to manage the handling, storage, utilization, and disposal of wastes generated by the confined feeding facility.

(bb) (cc) “Oil or gas well” ~~shall have~~ has the meaning assigned to specified for the term “well” in K.S.A. 55-150, and amendments thereto.

(ee) (dd) “Operator” means an individual, association, company, corporation, municipality, group of individuals, joint venture, partnership, entity, a state or federal agency or department, or any business owning, leasing, or having charge or control of one or more confined feeding facilities.

(dd) (ee) “Pleasure animals” means dogs, cats, rabbits, horses, and exotic animals.

(ee) (ff) “Point source” has the meaning specified in K.A.R. 28-16-28b.

(ff) (gg) “Pollution” has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(gg) (hh) “Precipitation runoff” means the rainwater or the meltwater that is derived from snow, hail, sleet, or other forms of atmospheric precipitation and that flows by gravity over the surface of the land.

(hh) (ii)(1) “Process wastes” means any of the following:

APPROVER

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

- (A) Excrement from animals, wastewater, and animal carcasses;
- (B) precipitation that comes into contact with any manure, litter, bedding, or other raw, intermediate, or final material or product used in or resulting from the production of animals or direct products, including meat, milk, and eggs;
- (C) spillage or overflow from animal or poultry watering systems;
- (D) wastes from washing, cleaning, or flushing pens, barns, manure pits, equipment, trucks, trailers, milking parlors, milking equipment, and other associated animal facilities;
- (E) wastes from washing animals or spraying animals for cooling;
- (F) wastes from dust control;
- (G) boiler blowdown and water softener regenerate wastes;
- (H) precipitation runoff from confinement, loading, and unloading areas;
- (I) spillage of feed, molasses, animal wastes, or any other process wastes described in this regulation;
- (J) discharges from land application fields that occur during application;
- (K) precipitation runoff from land application fields, if liquid or concentrated liquid wastes are applied during frozen, snow-covered, or saturated soil conditions without approval by the department;
- (L) raw, intermediate, or finished materials associated with wastes or contaminated storm water runoff from animal waste or dead animal composting operations;
- (M) silo liquors; or
- (N) flows or runoff from waste storage areas.

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

(2) Process wastes shall not include animal wastes spilled by trucks transporting livestock on city, township, county, state, or federal streets, roads, or highways.

~~(ii)~~ (jj) "Public livestock market" has the meaning specified in K.S.A. 47-1001, and amendments thereto. ~~For the purposes of these regulations,~~ This term shall include public livestock markets where federal veterinary inspections are regularly conducted.

~~(ji)~~ (kk) "Registration" means any required fee and the properly completed and executed documents designated by the division and any additional required documents or information necessary for determining the need for a water pollution control permit.

~~(kk)~~ (ll) "Salt solution mining well" has the meaning specified in K.S.A. 55-1,120, and amendments thereto.

~~(ll)~~ (mm) "Secretary" means the secretary of the Kansas department of health and environment.

~~(mm)~~ (nn)(1) "Sensitive groundwater areas," ~~for the purpose of these regulations,~~ means aquifers generally comprised of alluvial aquifers, the area within the boundaries of the Equus Beds groundwater management district no. 2 (GMD #2), and the dune sand area located south of the great bend of the Arkansas River. ~~Each~~ A sensitive groundwater area shall be any section of land ~~listed in~~ specified in the department's "Kansas sensitive groundwater areas for wastewater lagoons," ~~prepared by KDHE and dated January 1, 2005,~~ which is adopted by reference in K.A.R. 28-16-160.

(2) Any operator proposing a new animal waste-retention lagoon or expansion of an existing animal waste-retention lagoon may request that the director make a site-specific

APPROVED
APR 06 2021

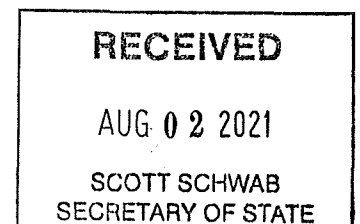
DIVISION OF THE BUDGET

APPROVED
APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED
MAY 25 2021

ATTORNEY GENERAL



sensitive groundwater area determination. The request shall be ~~made~~ submitted in writing to the director. The request shall contain supporting data and information and an explanation of why the area in question should not be considered ~~to be~~ a sensitive groundwater area, ~~for the purpose of these regulations.~~

~~(nn)~~ (oo) "Sewage" has the meaning specified in K.S.A. 65-164, and amendments thereto.

~~(ee)~~ (pp) "Significant water pollution potential" means any of the following, as determined by the secretary:

(1) ~~A livestock or animal feeding operation that utilizes structures designed and constructed to collect, control the flow of, and direct animal or other process wastes, tanks, manure pits, or other structures designed and constructed to collect or store animal or other process wastes, waste retention lagoons or ponds, or waste treatment facility or facilities; A~~ confined feeding facility that utilizes any of the following:

(A) Structures designed and constructed to control the flow of or direct animal or other process wastes;

(B) structures designed and constructed to collect or store animal or other process wastes in tanks, manure pits, or other containment structures;

(C) waste-retention lagoons or ponds; or

(D) a waste treatment facility or facilities;

(2) lots, pens, or concentrated feeding areas with creeks, streams, intermittent waterways, or any other conveying channel or device that has the potential to carry pollutants

APPROVED

APR 13 2021

APPROVED

APR 14 2021

APPROVED

MAY 25 2021

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

DIVISION OF THE BUDGET

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

to waters of the state running through or proximate to the lots, pens, or concentrated feeding areas;

(3) any ~~operation~~ confined feeding facility that cannot retain or control animal or other process wastes on the ~~operator's~~ confined feeding facility or property or adjacent property ~~without~~ with the ~~owner's~~ owner's permission of the owner of the adjacent property; or

(4) a ~~livestock or animal feeding operation that has been determined to practice~~ confined feeding facility that uses methods of improper collection, handling, or disposal of animal or other process wastes that have the potential to degrade or impair the quality of any waters of the state.

~~(pp)~~ (qq) "Surface waters," for water quality purposes, has the meaning specified in K.A.R. 28-16-28b.

~~(qq)~~ (rr) "Truck-washing facility for animal wastes" means a truck-washing facility that exists solely for the purpose of washing animal wastes from trucks or trailers.

~~(rr)~~ (ss) "Variance" means the secretary's written approval or permit authorizing a proposed action that knowingly results in a lack of conformity with one or more provisions of ~~these regulations or~~ the minimum standards of design, construction, and maintenance. Each variance authorized by the secretary shall be deemed to protect public health and the environment and to comply with the ~~intent of these regulations and with~~ federal NPDES permit requirements.

~~(ss)~~ (tt) "Waste management plan" means a written document that identifies the practices and procedures that ~~the~~ an operator of a ~~confined feeding facility~~ not required to

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

obtain a federal permit plans to use to operate and maintain the animal waste management system and to manage the handling, storage, utilization, and disposal of wastes generated by the confined feeding facility.

(~~tt~~) (uu) “Waste-retention lagoon or pond” means excavated or diked structures, or natural depressions provided for or used for the purpose of containing or detaining animal or other process wastes. Discharges from waste-retention lagoons or ponds shall not be allowed, except as authorized by a water pollution control permit.

(~~uu~~) (vv) “Waste treatment ~~facilities~~ facility” means ~~structures~~ a structure or ~~devices~~ device that ~~collect~~ collects, ~~store~~, ~~stabilize~~, ~~treat~~ stores, stabilizes, treats, or otherwise ~~control~~ controls pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution ~~will not occur~~, is prevented and public health and the waters of the state ~~will be~~ are protected.

(~~vv~~) (ww) “Water pollution control permit” and “permit” mean an authorization, license, or equivalent control document issued by the secretary. This term shall not include any document that has not yet been the subject of final action by the secretary.

(~~ww~~) (xx) “Water quality standards” means the Kansas surface water quality standards as specified in K.A.R. 28-16-28b through K.A.R. ~~28-16-28g~~ 28-16-28h.

(~~xx~~) (yy) “Water well” has the meaning specified in K.S.A. 82a-1203, and amendments thereto.

(~~yy~~) (zz) “Waters of the state” has the meaning specified in K.S.A. 65-161, and amendments thereto.

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 28-18-1, page 17

(~~zz~~) (aaa) "Whole pond seepage test" means a measurement of the evaporation from, and the change in water level of ~~the~~, a waste-retention lagoon, pond, or structure; or a swine waste-retention lagoon, pond, or structure using either of the following:

(1) Any method that meets the requirements specified in the section titled "conclusion: recommendations for a standard" on pages 9-12 in "standards for measuring seepage from anaerobic lagoons and manure storages," by Jay M. Ham, Ph.D., and Tom M. DeSutter, dated 2003 and. This section is hereby adopted by reference; or

(2) any equivalent method at least as protective of public health, safety, and the environment approved by the secretary. (Authorized by K.S.A. ~~2005 Supp.~~ 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. ~~2005 Supp.~~ 65-166a, K.S.A. ~~65-171a,~~ K.S.A. ~~2005 Supp.~~ 65-171d, and K.S.A. ~~65-171h;~~ effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007; amended P-_____.)

APPROVED

MAY 07 2021

DIVISION OF THE BUDGET

APPROVED

MAY 10 2021

DEPT. OF ADMINISTRATION

APPROVED

MAY 25 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

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

(b) Each operator that develops or modifies ~~biosecurity~~ animal health protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department within 30 days of establishing or modifying the ~~biosecurity~~ animal health protocols.

(c) ~~If any department inspector conducting an inspection of a confined feeding facility complies with the facility's biosecurity protocol, that inspector shall be allowed to access the animal waste management system to conduct inspections. Biosecurity protocols shall not restrict the reasonable access of any department inspector~~ Each operator shall allow any authorized representative following animal health protocols access to any confined feeding facility to conduct an inspection of the animal waste management system.

(d) Each operator shall allow any authorized representative access to conduct periodic inspections and review records at any confined feeding facility, scheduled as follows:

(1) For any confined feeding facility identified as having uncontrolled process wastes, every six months; or

(2) for any confined feeding facility not identified as having uncontrolled process wastes, at least once every five years if the confined feeding facility has a capacity of 300 or more animal units. (Authorized by K.S.A. 2005 Supp. 65-170b and 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-170b, 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007; amended

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

P-_____.)

APPROVED

APR 06 2021

DIVISION OF THE BUDGET DEPT. OF ADMINISTRATION

APPROVED

APR 06 2021

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

28-18-16. Waste-retention lagoon or pond closure plan requirements. (a) Each operator of a ~~confined feeding facility permitted by the department~~ shall notify the department of any ~~plans~~ intention to cease operation of, close, or abandon the waste-retention lagoon or pond.

(b) Each operator shall maintain and comply with a valid water pollution control permit for the confined feeding facility until closure of the waste-retention lagoon or pond is complete and all materials representing a threat to public health and the environment are removed.

(c) Each operator of a confined feeding facility ~~that is~~ located over the Equus Beds ~~who~~ that is required to obtain a federal permit and ~~who~~ proposes the new construction or expansion of a waste-retention lagoon or pond shall develop ~~and implement~~ a waste-retention lagoon or pond closure plan. The operator shall submit the waste-retention lagoon or pond closure plan with the permit application to the department for consideration for approval. When submitting waste-retention lagoon or pond closure plans, each operator shall submit four paper copies or shall transmit an electronic copy of the closure plan.

(d) Each operator of a confined feeding facility required to obtain a federal permit shall develop ~~and implement~~ a waste-retention lagoon or pond closure plan if all of the following conditions are met:

(1) The waste-retention lagoon or pond is located over the Equus Beds.

(2) The operator is applying for the renewal of the permit after the effective date of this regulation.

(3) The operator does not have an approved waste-retention lagoon or pond closure plan. The operator shall submit the closure plan with the permit renewal application to ~~KDHE~~ the department. When submitting a waste-retention lagoon or pond closure plan, each the

APPROVED

APR 13 2021

DIVISION OF THE BUDGET

APPROVED

APR 14 2021

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

operator shall submit four paper copies or shall transmit an electronic copy of the plan.

(e) Each operator of a confined feeding facility with a waste-retention lagoon or pond shall ~~include at a minimum~~ submit a closure plan that includes the following information:

- (1) A description of all animal waste management system components utilized to contain, control, or store process wastes at the facility;
- (2) a description of the procedures to be employed to remove and dispose of animal or other process wastes;
- (3) a description of the maintenance, deactivation, conversion, or demolition of all waste-retention lagoons or ponds or the closure of any waste-retention lagoon or pond by one of the following methods:
 - (A) Removing the berms, and leveling and revegetating the site to provide erosion control;
 - (B) leaving the structure or structures in place for use as a freshwater farm pond or reservoir;
 - (C) retaining the structure or structures for future use as a part of an animal waste management system; or
 - (D) using any other method approved by the secretary that will be protective of the environment and will meet all statutory and regulatory requirements; and
- (4) a description of, and detailed drawings for, the plugging of any water or groundwater monitoring wells at the confined feeding facility.

(f) Each operator of a confined feeding facility required to have a waste-retention

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

lagoon or pond closure plan shall amend and submit the amended plan to the department for approval whenever specifically directed by the secretary or whenever warranted by one or more of the following:

- (1) Any significant changes in operation of the confined feeding facility;
- (2) any significant change or modification in the animal waste management system; or
- (3) any other significant conditions affecting the confined feeding facility or the animal waste management system.

(g) Each operator of a confined feeding facility required to develop a waste-retention lagoon or pond closure plan shall retain the current plan at the site office of the confined feeding facility or at a central records location, in a manner that is accessible to inspection by representatives of the department any authorized representative.

(h) Within six months before the closure of a waste-retention lagoon or pond, the operator shall ~~be completed within six months of~~ perform either of the following:

(1) Notification to the department of the proposed closure of the waste-retention lagoon or pond; or

(2) termination of operations for any confined feeding facility ~~whose~~ for which the operator is required to develop and implement a waste-retention lagoon or pond closure plan.

(i) Each operator seeking an extension of time for closure shall submit a written request detailing the reasons to the secretary. ~~The request shall detail the reasons for the extension.~~

Only weather conditions or the legal change in ownership of the confined feeding facility shall be grounds for ~~the secretary to consider~~ an extension.

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

(j) If the operator of a confined feeding facility is unwilling or unable to properly close the waste-retention lagoon or pond, the owner of the confined feeding facility and the property owner shall be responsible for closing the waste-retention lagoon or pond ~~in accordance with these regulations and~~ in a manner that protects the waters of the state, public health, and the environment. (Authorized by K.S.A. 2005-Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005-Supp. 65-166a, K.S.A. 2005-Supp. 65-171d, and K.S.A. 65-171h; effective March 16, 2007; amended P-_____.)

APPROVED

NOV 30 2020

DIVISION OF THE BUDGET

APPROVED

DEC 03 2020

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

28-18-17. Groundwater protection requirements for waste-retention lagoons or ponds and waste treatment facilities. (a) The provisions of this article of the department's regulations shall not apply to any permitted waste-retention lagoon or pond or waste treatment facility that ~~is~~ was in existence on March 16, 2007 or that the secretary approved for construction before ~~the effective date of this regulation~~ March 16, 2007, unless information becomes available showing that the waste-retention lagoon or pond or the waste treatment facility presents an imminent threat to public health or the environment.

(b)(1) The provisions of this article of the department's regulations shall not apply to any existing or proposed waste-retention lagoon or pond or waste treatment facility located at a confined feeding facility if all of the following conditions are met:

(A) The confined feeding facility existed on July 1, 1994.

(B) The operator registered the confined feeding facility with the secretary before July 1, 1996.

(C) The capacity of the existing or proposed waste-retention lagoon or pond or waste treatment facility is ~~no larger~~ not greater than that what was necessary to serve the confined feeding facility as described in the registration application submitted before July 1, 1996.

(D) The separation distance from the bottom of the existing or proposed waste-retention lagoon or pond or waste treatment facility to groundwater is less than 10 feet.

(2) Each operator of a confined feeding facility meeting the requirements of paragraph (b)(1) ~~of this regulation~~ and proposing to use a waste-retention lagoon or pond or waste treatment facility shall propose site-specific groundwater protection measures for the secretary's consideration for approval.

APPROVED

JUN 14 2021

DIVISION OF THE BUDGET

APPROVED

JUN 14 2021

DEPT. OF ADMINISTRATION

APPROVED

JUL 07 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

(c) Each new or expanded portion of a waste-retention lagoon or pond or waste treatment facility other than those described in subsections (a) and (b) shall be located a ~~minimum of~~ at least 10 feet above the static groundwater level, as measured from the lowest elevation of the finished interior grade of the waste-retention lagoon or pond or the waste treatment facility. Each operator of or permit applicant for a confined feeding facility shall notify the department at least two days before performing any site investigations to determine the static groundwater level at the site.

(d) Each operator or permit applicant shall ensure that each liner for a new or expanded portion of a waste-retention lagoon or pond or waste treatment facility meets the following requirements:

(1) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is not located over the Equus Beds or in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than $\frac{1}{4}$ inch per day.

(2) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is located in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than $\frac{1}{10}$ inch per day.

(3) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is located over the Equus Beds, either an impermeable synthetic membrane liner shall be used or the material used for the liner shall consist of either of the following:

(A) Two or more layers of compacted soil designed to have a seepage rate of no more than $\frac{1}{10}$ inch per day. To demonstrate that this seepage requirement is met, the soil liner

APPROVED

NOV 30 2020

DIVISION OF THE BUDGET

APPROVED

DEC 03 2020

DEPT. OF ADMINISTRATION

APPROVED

JUL 07 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

seepage rate shall be determined within 12 months of placing the waste-retention lagoon or pond or waste treatment facility into operation. The test method used shall be the whole pond seepage test; or

(B) any material that has been approved through the variance process ~~in accordance with~~ required by K.A.R. 28-18-15.

(e) Each permit applicant or operator that conducts testing to determine the seepage rate shall submit four paper copies or shall transmit an electronic copy of the test results to the department.

(f) ~~For the purpose of K.A.R. 28-18-1 through K.A.R. 28-18-17,~~ An imminent threat to public health or the environment may be deemed to exist if physical, chemical, biological, or radiological substances or a combination of these substances is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the "Kansas surface water quality standards: ~~table~~ tables of numeric criteria," dated ~~December 6, 2004,~~ which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numerical criterion, the background concentration shall be considered the criterion. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, ~~K.S.A. 2005 Supp. 65-166a,~~ ~~K.S.A. 2005 Supp. 65-171d,~~ and ~~K.S.A. 65-171h;~~ effective March 16, 2007; amended P-_____.)

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

JUL 07 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

28-18a-24. Financial assurance for swine waste-retention lagoon or pond closure. (a) ~~On or after July 1, 2000 and annually thereafter~~ Before January 1 15 each year, each swine operator of a swine facility with an animal unit capacity of 3,725 or more that utilizes swine waste-retention lagoons or ponds shall provide evidence, satisfactory to the department, that the swine operator has the financial ability to cover the cost of closure of the swine waste-retention lagoons or ponds as required by the department.

(b) For new construction or new expansion of a swine facility with a proposed animal unit capacity of 3,725 or more that employs the use of swine waste-retention lagoons or ponds, the swine operator shall provide evidence, satisfactory to the department, that the swine operator has the financial ability to cover the cost of closure of the proposed swine waste-retention lagoons or ponds at the time the application is submitted to the department for review.

(c) Each swine operator of a swine facility with an animal unit capacity of 3,725 or more shall submit, as a part of the evidence provided to the department, a detailed written estimate in current dollars of the cost to close the swine waste-retention lagoons or ponds in a manner acceptable to the department. The estimate shall be prepared by a professional engineer or consultant approved by the department.

(d) To estimate the cost to close the swine waste-retention lagoons or ponds, the swine operator shall consider the following:

(1) The cost of the swine waste-retention lagoons or ponds closure by determining the cost of a third party to collect and dispose of all swine or other process wastes stored or retained on-site in the lagoons or ponds at a specifically identified off-site application area; and

(2) all swine waste-retention lagoons or ponds to be 100 percent full, for the purpose of

APPROVED

DEC 22 2020

DIVISION OF THE BUDGET

APPROVED

DEC 28 2020

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

estimating costs.

(e) Each swine operator shall increase the closure cost estimate and the amount of financial assurance provided if changes in the swine facility closure plan addressing the swine waste-retention lagoons or ponds or a change in operation increase the maximum cost of closure at any time.

(f) Each swine operator shall provide continuous ~~coverage~~ financial assurance for the cost of closure until the department determines the closure of the swine waste-retention lagoons or ponds to be acceptable.

(g) Mechanisms used to demonstrate financial assurance shall ensure that the funds necessary to meet the cost to close the swine waste-retention lagoons or ponds, ~~pursuant to required by K.A.R. 28-18-22 (d) 28-18a-22;~~ are accessible to the department in a timely fashion when needed. In establishing financial assurance for the swine waste-retention lagoons or ponds closure, swine operators shall utilize one or more of the following options:

- (1) Trust fund;
- (2) surety bond guaranteeing payment or performance;
- (3) letter of credit;
- (4) insurance; or
- (5) self-insurance; ~~or~~
- (6) ~~use of multiple mechanisms.~~

(h) ~~Each swine operator that utilizes a trust fund shall meet the following requirements.~~

If a swine operator utilizes a trust fund for financial assurance, the swine operator shall meet

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

following requirements:

(1) ~~Provide for a trustee. The trustee~~ The swine operator shall provide for a trustee that shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be provided to the department.

(2) The swine operator shall provide authority for the department or person authorized by the department to implement the closure to request and obtain ~~from the trustee~~ reimbursement for closure expenditures from the trustee. Requests for reimbursement shall be granted by the trustee, to the limit of the funds in the trust fund and with proper documentation of the incurred costs ~~are provided~~.

(3) ~~Maintain the trust fund.~~ The swine operator shall maintain the trust fund until an alternative financial assurance mechanism is approved by the department and is in place, or shall cease operations and close ~~out~~ the swine waste-retention lagoons or ponds before the trust fund is terminated ~~or if, unless~~ the operator is no longer required to demonstrate financial ~~responsibility~~ assurance.

(i) ~~Each swine operator that utilizes a surety bond guaranteeing payment or performance shall meet all of the following requirements~~ If a swine operator utilizes a surety bond guaranteeing payment or performance for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain a surety bond, with the penal sum of the bond in an amount at least equal to the estimated swine waste-retention lagoons or ponds closure cost;

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

(2) provide the department with a copy of the bond;

(3) obtain the bond from a company that is licensed to issue bonds in Kansas;

(4) provide in the bond that the surety becomes liable on the bond obligation when the swine operator fails to perform as guaranteed by the bond;

(5) establish a standby trust fund;

(6) provide that payments made under the terms of the bond ~~will~~ shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be made by the trustee to the limit of the bond amount when proper documentation of the incurred costs is provided; and

(7) obtain a bond providing that the surety may cancel the bond by sending notice of cancellation by certified mail to the swine operator and the department at least 120 days in advance of the cancellation. If the surety cancels the bond, the swine operator shall obtain alternative financial assurance before the cancellation; or shall cease operations and close out the swine waste-retention lagoons or ponds before the cancellation date of the bond, unless the swine operator is no longer required to demonstrate financial ~~responsibility~~ assurance.

(j) ~~Each swine operator that utilizes a letter of credit shall meet the following requirements~~ If a swine operator utilizes a letter of credit for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain an irrevocable standby letter of credit by which the issuing institution shall be an entity that has authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The letter of credit shall be in a form that constitutes an

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

unconditional promise to pay and shall be in a form negotiable by the department;

(2) provide the department with a copy of the letter of credit. Information contained in the letter of credit or provided by the swine operator shall include the name, location, and permit number of the swine facility and the amount of funds assured;

(3) provide an irrevocable letter of credit issued for ~~a period of~~ at least one year in an amount at least equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds. The letter of credit shall provide that the expiration date ~~will~~ shall be automatically extended for ~~a period of~~ at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the swine operator and department at least 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the ~~owner~~ swine operator shall obtain alternative financial assurance before the cancellation, or shall cease operations and close out the swine waste-retention lagoons or ponds before the cancellation date of the letter of credit, unless the swine operator is no longer required to demonstrate financial ~~responsibility~~ assurance; and

(4) cancel the letter of credit only if alternative financial assurance, approved by the ~~department~~ secretary, is substituted or if the swine operator is no longer required to demonstrate financial ~~responsibility~~ assurance.

(k) ~~Each swine operator that utilizes insurance shall meet all of the following requirements~~ If a swine operator utilizes insurance for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain insurance coverage for ~~a period of~~ at least one year in an amount at least

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds;

(2) obtain insurance from an insurer authorized to sell insurance in Kansas;

(3) provide the department with a copy of the insurance policy;

(4) ensure that the insurance policy guarantees that funds shall be available to close the swine waste-retention lagoons or ponds if the swine operator is unable or unwilling to close the swine waste-retention lagoons or ponds in accordance with the swine facility closure plan approved by the department;

(5) ensure that the insurance policy provides that the insurer is responsible for the payment of the department or person authorized to close the swine waste-retention lagoons or ponds. Payments by the insurer for the policy shall be made ~~by the insurer~~ to the limit of the policy amount when proper documentation of the incurred costs is provided;

(6) ensure that the insurance policy shall provide that the insurer ~~may~~ shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the swine operator and the department at least 120 days in advance of the cancellation;

(7) if the insurer cancels the policy, obtain alternative financial assurance before the cancellation; or cease operations and close out the swine waste-retention lagoons or ponds before the cancellation date of the insurance policy, unless the swine operator is no longer required to demonstrate financial ~~responsibility~~ assurance; and

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

(8) cancel the insurance policy only if alternative financial assurance, approved by the department, is substituted or if the swine operator is no longer required to demonstrate financial responsibility assurance.

(l) ~~To establish evidence of financial ability for self insurance, each operator shall meet the following requirements~~ If a swine operator utilizes self-insurance for financial assurance, the swine operator shall meet the following requirements:

(1) Submit a financial statement, prepared by a certified public accountant, listing tangible assets and total liabilities of the swine operator. The assets shall not include the value of the swine at the swine facility. The financial statement shall include a general release, by the swine operator, providing the department authorization for verification with banks or other financial institutions; and

(2) provide ~~the~~ an indication, on the financial statement, of whether ~~or not~~ the tangible assets, less the total liabilities, are satisfactory to cover the estimated cost of closure. The financial statement shall note the estimated cost of closure utilized.

(m) Each swine operator that utilizes multiple financial assurance mechanisms shall meet both of the following requirements:

(1) Use only the financial assurance mechanisms ~~provided for~~ specified in this regulation; and

(2) ~~provide that~~ submit documentation to the department that confirms that the total coverage of all the financial mechanisms utilized provides an amount at least equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds. (Authorized by

APPROVED

APR 06 2021

DIVISION OF THE BUDGET

APPROVED

APR 06 2021

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

K.A.R. 28-18a-24, page 8

and implementing K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 13 [K.S.A. 1998 Supp. 65-1,190] and 65-1,190; effective Jan. 15, 1999; amended P-_____.)

APPROVED

NOV 30 2020

DIVISION OF THE BUDGET

APPROVED

DEC 03 2020

DEPT. OF ADMINISTRATION

APPROVED

APR 21 2021

ATTORNEY GENERAL

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

Proposed

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

785-296-1291
Contact Phone Number

K.A.R. 28-18-1, 28-18-4, 28-18-14, 28-18-16, 28-18-17, 28-18a-4, 28-18a-24
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

These regulations have been amended to make corrections, update criteria, and specify current requirements.

K.A.R. 28-18-1 - Clarifies ambiguous definitions and includes additional definitions of terms used in regulations.

K.A.R. 28-18-4 - Clarifies application filing requirements for owners of multiple facilities and requires the signatory to meet requirements of 40 C.F.R.122.22.

K.A.R. 28-18-14 – Provides uniform requirements for inspections at all confined feeding facilities.

K.A.R. 28-18-16 – Allows electronic submission of waste-retention lagoon or pond closure reports.

K.A.R. 28-18-17 – Allows electronic submission of seepage rate tests results and cites the updated data in the “Kansas water quality standards: table of numeric criteria,” dated December 15, 2017.

K.A.R. 28-18a-4 –Clarifies application filing requirements for owners of multiple facilities and requires the signatory to meet requirements of 40 C.F.R.122.22.

K.A.R. 28-18a-24 – Corrects an error referencing non-existent K.A.R. 28-18-22(d).

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

Electronic submission of reports and test results referenced in K.A.R. 28-18-16 and K.A.R. 28-18-17 will be required by federal law to be submitted electronically. The remainder of the proposed regulations are not mandated by federal law. The four contiguous states, Colorado, Nebraska, Missouri, and Oklahoma, each have their own established state CAFO permitting programs that operate like the Kansas CAFO

DOB APPROVAL STAMP

APPROVED

NOV 30 2020

DIVISION OF THE BUDGET

program. The proposed amended regulations in this package and are generally in line with regulations in the contiguous states.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

These regulations will enhance business activities as the regulations will correct errors in current language, allow submittals using electronic methods, and also give confined feeding facility permit applicants a more concise criteria for whether the facilities are to be permitted as a single facility or multiple facilities.

Furthermore, after a recent district court ruling, it is unclear under the current regulation if two individual owners of two confined feeding facilities on separate tracts of land separated by a road would need to be considered a single facility. Under this proposal it makes clear that an owner of a confined feeding facility does not have to search property records in an attempt to ascertain the location of any adjoining properties that might contain a confined feeding facility even though there is no connection to the applicant and no shared waste management systems. This should save the applicant and agency staff significant administrative expenses to research a verify ownership claims.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

There would be a net savings to industry as less time would need to be spent interpreting the current ambiguous regulations K.A.R. 28-18-4 and 28-18a-4 and a cost savings in avoided litigation should a permit be challenged under the current ambiguous regulation.

C. Businesses that would be directly affected by the proposed rule and regulation;

All livestock operations that contain confined feeding facilities, regardless of size, would be positively affected by this regulation.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

There would be a net savings to industry as less time would need to be spent interpreting the current ambiguous regulations K.A.R. 28-18-4 and 28-18a-4 and a cost savings in avoided litigation should a permit be challenged under the current ambiguous regulation.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

KDHE consulted with industry groups to determine how current operations are structured to optimize an application and permitting process for determining whether two operations should be permitted as separate confined feeding facilities or a single confined feeding facility as authorized by statute. Industry groups indicated that a more prescriptive definition of separate and single facilities that focused on the separateness of waste management systems

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

DOB APPROVAL STAMP

APPROVED

NOV 30 2020

DIVISION OF THE BUDGET

maximized environmental benefits, while providing industry a predictable permitting process.

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$0

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$0

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

There are no changes in the permitting process, changes are clarifying ambiguous language.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The regulations will not have an effect on the cities, counties, or school districts within the state. However, when the notice of hearing for the regulations is published in the *Kansas Register*, standard agency procedure will be followed and the three organizations will be contacted electronically for comment with attached copies of the regulations, economic impact statement, and published notice of hearing.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

Industry associations and affected businesses were given several opportunities to provide feedback at stakeholder meetings.

RECEIVED

AUG 02 2021

SCOTT SCHWAB
SECRETARY OF STATE

DOB APPROVAL STAMP

APPROVED

NOV 30 2020

DIVISION OF THE BUDGET

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

The current regulations K.A.R. 28-18-4 and 28-18a-4 are ambiguous and have been subject to recent litigation. Litigation over ambiguous regulation requirements could cost the State lost administrative time and resources of staff, and confined feeding facilities lost administrative time, legal fees, and investment in a constructed facility if an approved permit is later invalidated by a court.

RECEIVED

AUG 02 2021

**SCOTT SCHWAB
SECRETARY OF STATE**

DOB APPROVAL STAMP

APPROVED

NOV 30 2020

DIVISION OF THE BUDGET