

Kansas Administrative Regulations

Department of Health and Environment

Article 18.—Animal and Related Waste Control

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 was in existence on March 16, 2007 or that the secretary approved for construction before 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 not greater than 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) 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.

(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 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 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 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 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) 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: tables of numeric criteria," 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. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-171d, and 65-171h; effective March 16, 2007; amended Nov. 19, 2021.)

***** Authenticated Kansas Administrative Regulation *****