

Kansas Administrative Regulations

Department of Health and Environment

Article 18.—Animal and Related Waste Control

28-18-12. Design and construction of animal waste management systems.

(a) If a confined feeding facility represents a significant water pollution potential or if the operator of a facility is required by statute or regulation to obtain a permit, as determined by the secretary, the operator shall provide an animal waste management system that is designed in accordance with the minimum standards of design, construction, and maintenance and is constructed and operated in accordance with construction plans, specifications, and either a waste management plan or nutrient management plan approved by the secretary. If site topography, operating procedures, experience, and other available information indicate that more than the minimum standards of design, construction, and maintenance are required to effect adequate water pollution control, additional provisions may be required. Each applicant shall ensure that any new construction or new expansion of a confined feeding facility or animal waste management system meets the requirements of the "minimum standards of design, construction, and maintenance," as defined in K.A.R. 28-18-1.

(b) The operator shall not initiate operation of the new confined feeding facility or animal waste management system or the expanded portions of any existing confined feeding facility or animal waste management system, until after issuance of the new or modified permit by the secretary. Initiation of construction before the issuance of a new or modified permit by the secretary shall be deemed to be solely at the risk of the operator.

(c) For the purpose of these regulations, each reference to a professional engineer or consultant shall be deemed to designate an individual offering a service for a fee for the design of a confined feeding facility or animal waste management system, exclusive of any nutrient utilization plan, soil or cropping consultations, hydrologic work involved in conducting hydrologic or geologic investigations, or in the siting, design, or construction of groundwater monitoring wells. Each reference to a professional engineer shall be

deemed to designate an individual licensed to practice engineering in Kansas by the Kansas state board of technical professions.

(d) Consultants that prepare plans and specifications for the new construction or new expansion of confined feeding facilities that are submitted to comply with statutes and regulations shall provide KDHE with documentation that adequate general commercial liability insurance coverage addressing errors and omissions in the design plans and specifications has been obtained and is in effect.

(e) (1) Each operator shall initiate any proposed new construction or new expansion of a confined feeding facility that has been approved by the secretary and for which the required permit or permit modification has been issued, within two years after the date on which the permit or permit modification is effective or pursuant to the requirements of the permit issued by the secretary. Each operator shall complete any proposed new construction or new expansion of a confined feeding facility that has been approved by the secretary and for which the required permit or permit modification is issued, within three years after the date on which the permit or permit modification is effective or as required by the permit issued by the secretary.

(2) Failure to initiate the approved construction or expansion within two years and to complete the approved construction or expansion within three years after the effective date of the permit or permit modification shall void the secretary's approval of the construction plans, specifications, and other associated plans. If phased construction is proposed, the initiation and completion of construction shall conform to the schedule stipulated by the secretary.

(3) If the approval becomes void, the permit or permit modification shall remain in effect for the term of the permit, but the operator shall resubmit the construction plans, specifications, and other associated plans to the secretary for review and consideration for approval before initiating the construction or expansion of a confined feeding facility.

(f) Neither the approval of construction plans, specifications, or other required plans, nor the issuance of a permit or certification by the secretary shall prohibit the secretary from taking any enforcement action if the animal waste management system fails to protect the waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, the secretary's approval of the plans or the

secretary's issuance of a permit or certification shall not constitute a defense by the operator regarding violation of any statute, regulation, permit condition, or requirement.

(g) A new confined feeding facility or animal waste management system shall not be built in any stream, river, lake, reservoir, or water bodies meeting the definition of jurisdictional wetlands and consistent with the definition of "surface waters" in K.A.R. 28-16-28b.

(h) Each operator, when directed by the secretary, shall notify the department a minimum of two days before performing any soil sample collection activities or liner integrity testing.

(i) There shall be no deviation from plans and specifications submitted to and approved by the secretary, unless amended plans and specifications showing the proposed changes have been submitted to the department and approved by the secretary.

(j) Each construction plan shall indicate the location of any active, abandoned, or plugged water, oil, gas, or salt solution mining well within 600 feet of any planned location for a waste-retention lagoon or pond. If the operator is unable to confirm the exact location of any well or wells, the construction plan shall contain a note indicating the potential for the well or wells to be located in the vicinity of any proposed waste-retention lagoon or pond. Each active, abandoned, or plugged water, oil, gas, or salt solution mining well that is encountered during construction and that was not identified or located on the construction plan shall be reported to the department within 48 hours of discovery. Construction activities that would impact the well or wells or that would be in the immediate vicinity of the well or wells shall be immediately terminated until the secretary determines that the appropriate steps, including plugging the well, have been taken to protect public health and the environment.

(k) Following the completion of the proposed construction or proposed expansion and when requested by the secretary, each operator shall certify that the animal waste management system was constructed in accordance with the plans approved by the secretary. If the operator utilized a professional engineer or consultant to monitor the construction of the animal waste management system, then the certification shall also be signed by the professional engineer or the consultant who monitored the

construction or installation of the animal waste management system, including any waste-retention lagoon or pond liner. The certification shall be based on actual observations during construction and any field or laboratory data developed during or following construction. The certification shall be maintained on-site or at a central records location and made available to the department, along with any supporting information, upon request.

(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 Jan. 15, 1999; amended March 16, 2007.)

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