

Kansas Administrative Regulations

Department of Health and Environment

Article 18.—Animal and Related Waste Control

28-18-1. Definitions.

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 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;

(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.

(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 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.

(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.

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

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

(j) "Department" and "KDHE" mean Kansas department of health and environment.

(k) "Director" means director of the division of environment of the Kansas department of health and environment.

(l) "Division" means division of environment, Kansas department of health and environment.

(m) "Entity" 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.

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

(o) "Equus Beds" means an aquifer underlying the sections of land listed in the following table:

Co unty	R ange	T ownship	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
Mc Pherson	01W	19S	19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35
Mc Pherson	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
Mc Pherson	01W	21S	05, 06, 07, 18, 19, 30, 31
Mc Pherson	02W	19S	19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
Mc Pherson	02W	20S	All sections
Mc Pherson	02W	21S	All sections
Mc	03W	18S	28, 29, 30, 31, 32, 33

Pherson

Mc	03W	19S	04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
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Mc	03W	20S	All sections
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Pherson

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

(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.

(q) "Food animals" means animals, fish, or fowl produced for consumption.

(r) "Fur animals" means animals raised for the skin, pelt, or fur.

(s) "Groundwater" 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. 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-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.

(t) "Habitable structure" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(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).

(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.

(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.

(x) "Maximum soil liner seepage rate" and "specific discharge" mean the flow rate 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 including design freeboard, shall be used.

(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 KDHE.

(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.

(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 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.

(bb) "Nutrient management plan" means a written document that identifies the practices and procedures that an operator 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.

(cc) "Oil or gas well" has the meaning specified for the term "well" in K.S.A. 55-150, and amendments thereto.

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

(ee) "Pleasure animals" means dogs, cats, rabbits, horses, and exotic animals.

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

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

(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.

(ii)(1) "Process wastes" means any of the following:

(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.

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

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

(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.

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

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

(nn)(1) "Sensitive groundwater areas" 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. A sensitive groundwater area shall be any section of land specified in the department's "Kansas sensitive groundwater areas for wastewater lagoons," 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 sensitive groundwater area determination. The request shall be 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 a sensitive groundwater area.

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

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

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

(3) any confined feeding facility that cannot retain or control animal or other process wastes on the confined feeding facility or property or adjacent property with the permission of the owner of the adjacent property; or

(4) a 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.

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

(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.

(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 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 federal NPDES permit requirements.

(tt) "Waste management plan" means a written document that identifies the practices and procedures that an operator not 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.

(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.

(vv) "Waste treatment facility" means a structure or device that collects, stores, stabilizes, treats, or otherwise controls pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution is prevented and public health and the waters of the state are protected.

(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.

(xx) "Water quality standards" means the Kansas surface water quality standards specified in K.A.R. 28-16-28b through K.A.R. 28-16-28h.

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

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

(aaa) "Whole pond seepage test" means a measurement of the evaporation from, and the change in water level of, 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. 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. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-171a, 65-171d, and 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007; amended Nov. 19, 2021.)