

HOUSE BILL No. 2207

By Committee on Agriculture and Natural Resources

2-4

1 AN ACT concerning public health; relating to confined feeding facilities;
2 permits; notice of intent to construct; separation distances; amending
3 K.S.A. 65-1,179, 65-1,180, 65-1,188 and 65-1,194 and K.S.A. 2012
4 Supp. 65-171d and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2012 Supp. 65-171d is hereby amended to read as
8 follows: 65-171d. (a) For the purpose of preventing surface and subsurface
9 water pollution and soil pollution detrimental to public health or to the
10 plant, animal and aquatic life of the state, and to protect designated uses of
11 the waters of the state and to require the treatment of sewage predicated
12 upon technologically based effluent limitations, the secretary of ~~health and~~
13 ~~environment~~ shall make such rules and regulations, including registration
14 of potential sources of pollution, as may in the secretary's judgment be
15 necessary to: (1) Protect the soil and waters of the state from pollution
16 resulting from underground storage of liquid petroleum gas and
17 hydrocarbons, other than underground porosity storage of natural gas; (2)
18 control the disposal, discharge or escape of sewage as defined in K.S.A.
19 65-164, and amendments thereto, by or from municipalities, corporations,
20 companies, institutions, state agencies, federal agencies or individuals and
21 any plants, works or facilities owned or operated, or both, by them; and (3)
22 establish water quality standards for the waters of the state to protect their
23 designated uses. In no event shall the secretary's authority be interpreted to
24 include authority over the beneficial use of water, water quantity
25 allocations, protection against water use impairment of a beneficial use, or
26 any other function or authority under the jurisdiction of the Kansas water
27 appropriation act, K.S.A. 82a-701, and amendments thereto.

28 (b) The secretary of ~~health and environment~~ may adopt by reference
29 any regulation relating to water quality and effluent standards promulgated
30 by the federal government pursuant to the provisions of the federal clean
31 water act and amendments thereto, as in effect on January 1, 1989, which
32 the secretary is otherwise authorized by law to adopt.

33 (c) For the purposes of this act, including K.S.A. 65-161 through 65-
34 171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and
35 rules and regulations adopted pursuant thereto:

36 (1) "~~Pollution~~" means: (A) ~~Such contamination or other alteration of~~

1 the physical, chemical or biological properties of any waters of the state as
2 will or is likely to create a nuisance or render such waters harmful,
3 detrimental or injurious to public health, safety or welfare, or to the plant,
4 animal or aquatic life of the state or to other designated uses; or (B) such
5 discharge as will or is likely to exceed state effluent standards predicated
6 upon technologically based effluent limitations.

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

11 (3) "Animal unit" means a unit of measurement calculated by adding
12 the following numbers: The number of beef cattle weighing more than 700
13 pounds multiplied by 1.0; plus the number of cattle weighing less than 700
14 pounds multiplied by 0.5; plus the number of mature dairy cattle
15 multiplied by 1.4; plus the number of swine weighing more than 55
16 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or
17 less multiplied by 0.1; plus the number of sheep or lambs multiplied by
18 0.1; plus the number of horses multiplied by 2.0; plus the number of
19 turkeys multiplied by 0.018; plus the number of laying hens or broilers, if
20 the facility has continuous overflow watering, multiplied by 0.01; plus the
21 number of laying hens or broilers, if the facility has a liquid manure
22 system, multiplied by 0.033; plus the number of ducks multiplied by 0.2.
23 However, each head of cattle will be counted as one full animal unit for the
24 purpose of determining the need for a federal permit. "Animal unit" also
25 includes the number of swine weighing 55 pounds or less multiplied by 0.1
26 for the purpose of determining applicable requirements for new
27 construction of a confined feeding facility for which a permit or
28 registration has not been issued before January 1, 1998, and for which an
29 application for a permit or registration and plans have not been filed with
30 the secretary of health and environment before January 1, 1998, or for the
31 purpose of determining applicable requirements for expansion of such
32 facility. However, each head of swine weighing 55 pounds or less shall be
33 counted as 0.0 animal unit for the purpose of determining the need for a
34 federal permit. Except as otherwise provided, animal units for public
35 livestock markets shall be determined by using the average annual animal
36 units sold by the market during the past five calendar years divided by
37 365. Such animal unit determination may be adjusted by the department if
38 the public livestock market submits documentation that demonstrates that
39 such adjustment is appropriate based on the amount of time in 24-hour
40 increments or partials thereof that animals are at the market.

41 (4)(2) "Animal unit capacity" means the maximum number of animal
42 units which a confined feeding facility is designed to accommodate at any
43 one time.

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

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

12 (5) *"Pollution" means: (A) Such contamination or other alteration of*
13 *the physical, chemical or biological properties of any waters of the state*
14 *as will or is likely to create a nuisance or render such waters harmful,*
15 *detrimental or injurious to public health, safety or welfare, or to the plant,*
16 *animal or aquatic life of the state or to other designated uses; or (B) such*
17 *discharge as will or is likely to exceed state effluent standards predicated*
18 *upon technologically-based effluent limitations.*

19 (6) *"Secretary" means the secretary of health and environment.*

20 ~~(6)~~(7) *"Wildlife refuge" means Cheyenne Bottoms wildlife*
21 *management area, Cheyenne Bottoms preserve and Flint Hills, Quivera,*
22 *Marais des Cygnes and Kirwin national wildlife refuges.*

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

35 (e) (1) Whenever the secretary ~~of health and environment~~ or the
36 secretary's duly authorized agents find that storage or disposal of salt water
37 not regulated by the state corporation commission or refuse in any surface
38 pond not regulated by the state corporation commission is causing or is
39 likely to cause pollution of soil or waters of the state, the secretary or the
40 secretary's duly authorized agents shall issue an order prohibiting such
41 storage or disposal of salt water or refuse. Any person aggrieved by such
42 order may within 15 days of service of the order request in writing a
43 hearing on the order.

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

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

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

9 (g) *Any notice of intent to construct a confined feeding facility shall*
10 *be registered by the applicant with the secretary and shall designate a*
11 *tract of land, as described in the last document record filed with the*
12 *district court or the register of deeds office in the respective county, for the*
13 *purpose of constructing a confined feeding facility on such tract of land.*
14 *Such notice of intent to construct shall certify that the proposed*
15 *construction will occur within the prescribed tract of land and that the*
16 *separation distances from the tract boundaries or proposed facility*
17 *footprint comply with all separation distance requirements as provided in*
18 *this section. The secretary shall acknowledge the receipt of such notice of*
19 *intent to construct in a form designated by the secretary, and such*
20 *acknowledgment shall establish the registration date of such notice of*
21 *intent to construct.*

22 (h) *If the secretary does not receive a complete application for a*
23 *confined feeding facility within 18 months of the registration date of a*
24 *notice of intent to construct, such notice of intent to construct and such*
25 *established separation distances shall become null and void. The secretary*
26 *shall acknowledge receipt of such completed application in a form*
27 *designated by the secretary.*

28 (i) *In the event the complete application for a confined feeding*
29 *facility is not received within 18 months from the date of the*
30 *acknowledgment of the initial notice of intent to construct, a second notice*
31 *of intent to construct for the same tract of land must be approved by the*
32 *secretary before the expiration of the initial 18-month period. Such second*
33 *notice of intent to construct may be conditioned by the secretary to restrict*
34 *the time frame allowed for submission of a complete application, but in no*
35 *case shall such time frame exceed 18 months. There shall not be more than*
36 *two consecutive notices of intent to construct on any tract of land, or part*
37 *thereof. After the second notice of intent to construct time period expires,*
38 *the secretary shall not accept or approve a subsequent notice of intent to*
39 *construct until 180 days after the second notice of intent to construct*
40 *expires.*

41 (j) *Confined feeding facilities with a capacity of less than 300 animal*
42 *units may register with the secretary. Any such registration shall be*
43 *accompanied by a \$25 fee. Within 30 days of receipt of such registration,*

1 *the department of health and environment shall identify any significant*
2 *water pollution potential or separation distance violations. If a significant*
3 *water pollution potential is identified, such facility shall be required to*
4 *obtain a permit from the secretary. If there is no water pollution potential*
5 *posed by such facility, the secretary shall certify that no permit is required.*

6 *(k) Prior to any new construction of a confined feeding facility with*
7 *an animal unit capacity of 300 or more, such facility shall submit to the*
8 *secretary a notice of intent to construct. The department of health and*
9 *environment shall publish such notice of intent to construct in the Kansas*
10 *register and shall determine the necessary separation distance*
11 *requirements. Any such notice of intent shall be accompanied by a \$25*
12 *fee.*

13 ~~(g)(l)~~ *Prior to any new construction of a confined feeding facility*
14 *with an animal unit capacity of 300 to 999 or more, such facility shall*
15 *register with the secretary of health and environment. Facilities with a*
16 *capacity of less than 300 animal units may register with the secretary. Any*
17 *such registration shall be accompanied by a \$25 fee. Within 30 days of*
18 *receipt of such registration, the department of health and environment shall*
19 *identify any significant water pollution potential or separation distance*
20 *violations pursuant to subsection (h)(m). If there is identified a significant*
21 *water pollution potential, such facility shall be required to obtain a permit*
22 *from the secretary. If there is no water pollution potential posed by a*
23 *facility with an animal unit capacity of less than 300, the secretary may*
24 *certify that no permit is required. If there is no water pollution potential*
25 *nor any violation of separation distances posed by a facility with an animal*
26 *unit capacity of 300 to 999 or more, the secretary shall certify that no*
27 *permit is required and that there are no certification conditions pertaining*
28 *to separation distances. If a separation distance violation is identified, the*
29 *secretary may reduce the separation distance in accordance with*
30 *subsection (i)(n) and shall certify any such reduction of separation*
31 *distances.*

32 ~~(h)(m)~~ *(1) Any new construction or new expansion of a confined*
33 *feeding facility, other than a confined feeding facility for swine, shall meet*
34 *or exceed the following requirements in separation distances from any*
35 *habitable structure in existence when the application for a permit or notice*
36 *of intent to construct is submitted:*

37 *(A) 1,320 feet for facilities with an animal unit capacity of 300 to*
38 *999; and*

39 *(B) 4,000 feet for facilities with an animal unit capacity of 1,000 or*
40 *more.*

41 *(2) A confined feeding facility for swine shall meet or exceed the*
42 *following requirements in separation distances from any habitable*
43 *structure or city, county, state or federal park in existence when the*

1 application for a permit *or notice of intent to construct* is submitted:

2 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
3 999;

4 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to
5 3,724;

6 (C) 4,000 feet for expansion of existing facilities to an animal unit
7 capacity of 3,725 or more if such expansion is within the perimeter from
8 which separation distances are determined pursuant to subsection ~~(k)~~(p)
9 for the existing facility; and

10 (D) 5,000 feet for: (i) Construction of new facilities with an animal
11 unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an
12 animal unit capacity of 3,725 or more if such expansion extends outside
13 the perimeter from which separation distances are determined pursuant to
14 subsection ~~(k)~~(p) for the existing facility.

15 (3) Any construction of new confined feeding facilities for swine
16 shall meet or exceed the following requirements in separation distances
17 from any wildlife refuge:

18 (A) 10,000 feet for facilities with an animal unit capacity of 1,000 to
19 3,724; and

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

22 ~~(h)~~(n) (1) The separation distance requirements of subsections ~~(h)~~ (m)
23 (1) and (2) shall not apply if the applicant for a permit obtains a written
24 agreement from all owners of habitable structures which are within the
25 separation distance stating such owners are aware of the construction or
26 expansion and have no objections to such construction or expansion. The
27 written agreement shall be filed in the register of deeds office of the
28 county in which the habitable structure is located.

29 (2) (A) The secretary may reduce the separation distance
30 requirements of subsection ~~(h)~~(m)(1) if: (i) No substantial objection from
31 owners of habitable structures within the separation distance is received in
32 response to public notice; or (ii) the board of county commissioners of the
33 county where the confined feeding facility is located submits a written
34 request seeking a reduction of separation distances.

35 (B) The secretary may reduce the separation distance requirements of
36 subsection ~~(h)~~(m)(2)(A) or (B) if: (i) No substantial objection from owners
37 of habitable structures within the separation distance is received in
38 response to notice given in accordance with subsection ~~(h)~~(q); (ii) the board
39 of county commissioners of the county where the confined feeding facility
40 is located submits a written request seeking a reduction of separation
41 distances; or (iii) the secretary determines that technology exists that meets
42 or exceeds the effect of the required separation distance and the facility
43 will be using such technology.

1 (C) The secretary may reduce the separation distance requirements of
2 subsection ~~(h)~~(m)(2)(C) or (D) if: (i) No substantial objection from owners
3 of habitable structures within the separation distance is received in
4 response to notice given in accordance with subsection ~~(h)~~(q); or (ii) the
5 secretary determines that technology exists that meets or exceeds the effect
6 of the required separation distance and the facility will be using such
7 technology.

8 ~~(j)~~(o) (1) The separation distances required pursuant to subsection ~~(h)~~
9 (m)(1) shall not apply to:

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

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

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

24 (2) The separation distances required pursuant to subsections ~~(h)~~(m)
25 (2)(A) and (B) shall not apply to:

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

28 (B) confined feeding facilities for swine which existed on July 1,
29 1994, and registered with the secretary before July 1, 1996; or

30 (C) expansion of a confined feeding facility which existed on July 1,
31 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000
32 or more prior to July 1, 1994, the expansion is located at a distance not less
33 than the distance between the facility and the nearest habitable structure
34 prior to the expansion; or (ii) in the case of a facility with an animal unit
35 capacity of less than 1,000 prior to July 1, 1994, the expansion is located at
36 a distance not less than the distance between the facility and the nearest
37 habitable structure prior to the expansion and the animal unit capacity of
38 the facility after expansion does not exceed 2,000.

39 (3) The separation distances required pursuant to subsections ~~(h)~~(m)
40 (2)(C) and (D) and ~~(h)~~(m)(3) shall not apply to the following, as
41 determined in accordance with subsections (a), (e) and (f) of K.S.A. 65-
42 1,178, and amendments thereto:

43 (A) Expansion of an existing confined feeding facility for swine if an

1 application for such expansion has been received by the department before
2 March 1, 1998; and

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

6 ~~(k)~~(p) The separation distances required by this section for confined
7 feeding facilities for swine shall be determined from the exterior perimeter
8 of any buildings utilized for housing swine, any lots containing swine, any
9 swine waste retention lagoons or ponds or other manure or wastewater
10 storage structures and any additional areas designated by the applicant for
11 future expansion. Such separation distances shall not apply to offices,
12 dwellings and feed production facilities of a confined feeding facility for
13 swine.

14 ~~(h)~~(q) The applicant shall give the notice required by subsections ~~(i)~~
15 (n)(2)(B) and (C) by certified mail, return receipt requested, to all owners
16 of habitable structures within the separation distance. The applicant shall
17 submit to the department evidence, satisfactory to the department, that
18 such notice has been given.

19 ~~(m)~~(r) All plans and specifications submitted to the department for
20 new construction or new expansion of confined feeding facilities may be,
21 but are not required to be, prepared by a professional engineer or a
22 consultant, as approved by the department. Before approval by the
23 department, any consultant preparing such plans and specifications shall
24 submit to the department evidence, satisfactory to the department, of
25 adequate general commercial liability insurance coverage.

26 Sec. 2. K.S.A. 65-1,179 is hereby amended to read as follows: 65-
27 1,179. (a) After receipt of an application for a permit for construction of a
28 new swine facility or expansion of an existing swine facility, the
29 department shall publish in the Kansas register a notice of receipt of the
30 application which shall include but not be limited to:

31 (1) The names and addresses of the operator of the facility and the
32 owner of the property where the facility is or will be located; and

33 (2) notice of the availability of the document and fact sheet prepared
34 pursuant to subsection (b).

35 (b) After receipt of an application for a permit for construction of a
36 new swine facility or expansion of an existing swine facility, the
37 department shall prepare the following, which, at a minimum, shall be
38 made available on the internet and shall be available for inspection and
39 copying, in accordance with the open records act, at the department's
40 office in the district where the swine facility is or will be located:

41 (1) A document containing all the requirements with which the swine
42 facility must comply upon approval by the department and a brief
43 explanation of the statutory or regulatory provisions on which the

1 requirements are based;

2 (2) any determinations of, and explanations for, departures from any
3 requirements otherwise applicable to the facility, including citations to the
4 applicable guidelines, development documents or authorities for the
5 departures; and

6 (3) a fact sheet containing the following information required in the
7 application:

8 (A) A detailed description of the location of the facility, including the
9 section, township and range, with reference to any applicable
10 comprehensive land use plan or zoning requirements;

11 (B) a map showing water wells located on the facility's property,
12 landmarks in the vicinity and nearby streams and bodies of water;

13 (C) a description of the facility, including the swine waste
14 management system and facilities and any areas designated by the
15 applicant for future expansion as provided for by ~~subsection (k)~~ of K.S.A.
16 65-171d, and amendments thereto;

17 (D) a nutrient application plan, if required by K.S.A. 65-1,182, *and*
18 *amendments thereto*, including base-line soil tests for a new facility or new
19 field to which wastes will be applied, and a crop rotation plan; and

20 (E) a statement that the applicant will consult with the county
21 extension agent or a qualified agronomist or individual trained in crop
22 protection to ensure that correct agronomic rates of application are used
23 and records of those consultations will be maintained by the applicant.

24 (c) The secretary shall establish by rules and regulations the form of
25 public notice that is required for receipt of a completed application for a
26 permit for construction of a new swine facility or expansion of an existing
27 swine facility. Such notice shall be by publication in a newspaper of
28 general circulation in the county where the facility is or will be located,
29 direct notification of residents in the vicinity of the facility and notification
30 of local government officials.

31 (d) The public notice required by subsection (c) shall contain the
32 following:

33 (1) The name, address and telephone number of the official at the
34 department who is responsible for processing the application and the
35 locations where further information and copies of documents can be
36 reviewed, which locations shall be in the county where the facility is or
37 will be located;

38 (2) the names and addresses of the operator of the facility and the
39 owner of the property where the facility is or will be located;

40 (3) a statement of the tentative determination of the department to
41 approve the issuance of the permit;

42 (4) a brief description of the procedures and schedule for making the
43 final determination of approval or disapproval;

1 (5) notice of availability of the document and fact sheet prepared
2 pursuant to subsection (b);

3 (6) a request for public comment on the tentative decision to approve
4 the issuance of the permit and the requirements for the facility described in
5 the document prepared pursuant to subsection (b)(1); and

6 (7) a description of the procedures for providing public comment.

7 (e) The department shall provide a period of 30 days from the date of
8 the public notice required by subsection (c) for submission of public
9 comments.

10 (f) The department, in its discretion, may hold a public meeting or
11 hearing within 60 days after the conclusion of the comment period
12 required by subsection (e) to receive further public comment if the
13 department determines that significant environmental or technical
14 concerns or issues have been raised during the comment period. The
15 department shall hold a public hearing within 60 days after the conclusion
16 of the comment period required by subsection (e) to receive further public
17 comment if a hearing is requested by any owner of a habitable structure
18 within the applicable separation distance. Public meetings and hearings
19 held pursuant to this subsection shall address only those matters for which
20 the secretary has authority.

21 (g) The department shall not make a determination to approve the
22 issuance of a permit until completion of the procedures required by this
23 section. The department may disapprove at any time the issuance of a
24 permit without completing the procedures required by this section.

25 (h) The department shall make the determination to approve or
26 disapprove the issuance of a permit not later than 180 days after the
27 completed application is filed with the department.

28 (i) An operator of a swine facility shall submit a registration or
29 application to the department before initiating construction or operation of
30 either a swine facility or a swine waste management system. When the
31 department finds no permit is required, construction or operation of the
32 swine facility may be initiated upon issuance, by the department, of a
33 certification. When the department determines a permit or permit
34 modification is required for the swine facility, construction may be
35 initiated upon approval of the application, construction plans,
36 specifications and swine waste management plan. Operation and stocking
37 of a swine facility for which a permit is required shall not be initiated until
38 the department issues the permit. An operator of a swine facility for which
39 a permit modification is required because of a proposed facility expansion
40 shall not increase the number of swine at the facility beyond that
41 authorized by the permit until the department issues the modified permit.

42 Sec. 3. K.S.A. 65-1,180 is hereby amended to read as follows: 65-
43 1,180. (a) The department shall not approve a permit for construction of a

1 new swine facility or expansion of an existing swine facility unless the
2 swine waste management system for the facility:

3 (1) Is located in such a manner as to prevent impairment of surface
4 waters and groundwaters, except where consistent with the requirements
5 of this section;

6 (2) is located outside any 100-year flood plain unless procedures and
7 precautions are employed to flood-proof the facilities;

8 (3) except as provided by subsection (c), is located: (A) Not less than
9 500 feet from any surface water if the facility has an animal unit capacity
10 of 3,725 or more; (B) not less than 250 feet from any surface water if the
11 facility has an animal unit capacity of 1,000 to 3,724; or (C) not less than
12 100 feet from any surface water if the facility has an animal unit capacity
13 of under 1,000;

14 (4) except as provided by subsection (d), is located not less than 250
15 feet from any private drinking water well that is in active use; and

16 (5) is located not less than 1,000 feet from any publicly owned
17 drinking water well that is in active use.

18 (b) The separation distances required pursuant to subsection (a) shall
19 not apply to:

20 (1) Any swine facility that, on the effective date of this act, holds a
21 valid permit issued by the secretary;

22 (2) swine facilities for which an application has been received before
23 the effective date of this act; or

24 (3) expansion of a swine facility if an application for the expansion
25 has been received before the effective date of this act.

26 (c) The separation distances required by subsection (a)(3) shall not
27 apply to any freshwater reservoir or farm pond that is privately owned if
28 complete ownership of land bordering the reservoir or pond is under
29 common private ownership. Such separation distances shall apply to any
30 waters that flow from such reservoir or pond. The secretary shall have the
31 authority provided by ~~subsections (d) and (e) of K.S.A. 65-171d~~, and
32 amendments thereto, with respect to any such reservoir or pond as
33 necessary to protect the public health, the soils or waters of the state and
34 wildlife.

35 (d) The separation distance required by subsection (a)(4) shall not
36 apply to any private drinking water well that is located within the
37 perimeter from which separation distances are determined pursuant to
38 ~~subsection (k) of K.S.A. 65-171d~~, and amendments thereto, but, if the
39 facility has an animal unit capacity of 3,725 or more, the facility operator
40 shall test waters from such well and annually report the test results to the
41 department.

42 Sec. 4. K.S.A. 65-1,188 is hereby amended to read as follows: 65-
43 1,188. (a) Every swine facility that has a capacity of 1,000 or more animal

1 units shall file with the department a plan for the handling of dead swine.
2 The secretary shall adopt rules and regulations establishing minimum
3 standards, including requirements that:

4 (1) No dead swine shall be left where visible from municipal roads or
5 habitable structures;

6 (2) before disposal, all dead swine shall be kept within the perimeter
7 from which separation distances are determined pursuant to ~~subsection (k)~~
8 ~~of~~ K.S.A. 65-171d, and amendments thereto, unless otherwise approved by
9 the department; and

10 (3) carcasses shall be picked up within 48 hours under normal
11 circumstances.

12 (b) Each swine facility that is required to submit a plan for handling
13 dead swine shall amend such plan whenever warranted by changes in the
14 facility or in other conditions affecting the facility.

15 Sec. 5. K.S.A. 65-1,194 is hereby amended to read as follows: 65-
16 1,194. A qualified swine facility, as defined by K.S.A. ~~2002~~ 2012 Supp.
17 79-32,204, that expands to an animal unit capacity of 3,725 or more shall
18 be subject to the provisions of this act applicable to a swine facility having
19 an animal unit capacity of 1,000 to 3,724 if:

20 (a) The department determines that the swine waste management
21 system of such facility on the effective date of this act has the capacity to
22 accommodate the expanded capacity;

23 (b) the expansion is located within the perimeter from which
24 separation distances are determined pursuant to ~~subsection (k)~~ of K.S.A.
25 65-171d, and amendments thereto, or the written agreements required by
26 ~~subsection (i)(1)~~ of K.S.A. 65-171d, and amendments thereto, are
27 obtained; and

28 (c) the expansion does not exceed the lesser of:

29 (1) An animal unit capacity that is $\frac{1}{3}$ greater than the capacity of such
30 facility on the effective date of this act; or

31 (2) an animal unit capacity of 4,499.

32 Sec. 6. K.S.A. 65-1,179, 65-1,180, 65-1,188 and 65-1,194 and K.S.A.
33 2012 Supp. 65-171d are hereby repealed.

34 Sec. 7. This act shall take effect and be in force from and after its
35 publication in the statute book.