

65-1,182. Nutrient utilization plan; requirements for land application of manure or wastewater.

(a) The department of health and environment shall not issue or renew a permit for any swine facility that has an animal unit capacity of 1,000 or more and that applies manure or wastewater to land unless:

(1) The land application process complies with the applicable requirements of this section; and

(2) the nutrient utilization plan required by this section is approved by the secretary of health and environment as specified by K.S.A. 2014 Supp. 2-3318, and amendments thereto.

(b) (1) If the manure management plan prepared pursuant to K.S.A. 65-1,181, and amendments thereto, provides for land application of manure or wastewater:

(A) The applicant for a permit for construction of a new swine facility or for expansion of an existing swine facility shall submit with the application for a permit a nutrient utilization plan on a form prescribed by the secretary of health and environment as applicable and shall comply with the plan when the permit is issued by the department of health and environment; and

(B) the operator of an existing swine facility shall submit to the department of health and environment, within six months after the rules and regulations implementing this act are adopted, a nutrient utilization plan on a form prescribed by the secretary of health and environment, for approval by the secretary of health and environment and shall comply with the plan by a date established by the secretary of health and environment.

(2) Each nutrient utilization plan shall address site-specific conditions for land application of manure, wastewater and other nutrient sources, comply with the requirements of this section and contain, at minimum, the following:

(A) A site map of all land application areas, including section, township and range;

(B) crop rotations on the land application areas;

(C) annual records of soil tests, manure nutrient analyses, and calculations required by subsection (c);

(D) nutrient budgets for the land application areas;

(E) rates, methods, frequency and timing of application of manure, wastewater and other nutrient sources to the land application areas;

(F) the amounts of nitrogen and phosphorus applied to the land application areas;

(G) precipitation records and the amounts of irrigation and other water applied;

(H) records of inspections and preventive maintenance of equipment required by subsection (f)(6);

(I) copies of all landowner agreements for land that is not owned by the swine facility and is scheduled to receive manure or wastewater;

(J) names of employees and contractors whom the operator of the swine facility has identified pursuant to subsection (f)(7) to supervise the process of transferring manure or wastewater to land application equipment and the process of land application;

(K) records of training of all personnel who supervise and conduct the land application of manure or wastewater, as required by subsection (f)(7); and

(L) any other information required by the secretary of health and environment to facilitate approval.

(3) (A) A swine facility that is required to have a nutrient utilization plan shall amend such plan whenever warranted by changes in the facility, soil test results or other conditions affecting the facility.

(B) Amendments to the nutrient utilization plan must be approved by the secretary of health and environment.

(4) A swine facility that is required to have a nutrient utilization plan shall maintain such plan in accordance with K.S.A. 65-1,185, and amendments thereto.

(c) (1) Each swine facility that has a manure management plan that includes land application of manure or wastewater shall:

(A) Conduct soil tests, including but not limited to tests for nitrogen, phosphate, chloride, copper and zinc, on the land application areas prior to preparation of the nutrient utilization plan and at least annually thereafter, or as often as required by best available soil science and standards relative to the soils of, and crops to be grown on, the land application areas or as required by the secretary of health and environment; and

(B) include the results of such tests in its nutrient utilization plan.

(2) Each swine facility that has a manure management plan that includes land application of manure or wastewater or sells or gives manure or wastewater to third persons pursuant to subsection (h) of K.S.A. 65-1,181, and amendments thereto, shall:

(A) Conduct manure nutrient analyses of its manure and wastewater prior to preparation of its nutrient utilization plan and at least every two years thereafter; and

(B) include the results of such analyses in its nutrient utilization plan.

(3) Each swine facility that has a manure management plan that includes land application of manure or wastewater shall:

(A) Compare the manure nutrient analyses required by subsection (c)(2) with the soil tests required by subsection (c)(1) to calculate needed fertility and application rates for pasture production and crop target yields on the land application areas prior to the preparation of the nutrient utilization plan and each time thereafter when new soil tests or manure nutrient analyses are conducted; and

(B) include such calculations in the nutrient utilization plan.

(d) If a swine facility is required to have a nutrient utilization plan and finds that the soil tests required pursuant to this act indicate that the phosphorus holding capacity for any soils in the facility's land application areas may be exceeded within five years, the facility shall promptly initiate the process to obtain access to the additional land application areas needed, or make other adjustments, to achieve the capability to apply manure or wastewater at appropriate agronomic rates.

(e) The Kansas department of health and environment may require a swine facility that is required to have a nutrient utilization plan to apply manure or wastewater on all or a portion of the facility's land application areas at a rate within the agronomic phosphorus needs of the crops or pasture, or the soil phosphorus holding capacity, in less than the time originally allowed in the approved nutrient utilization plan if the department of health and environment finds that the land application actions of the facility are contributing to the impairment of groundwater or surface water.

(f) (1) Each swine facility that is required to have a nutrient utilization plan shall include in such plan, and thereafter comply with, the requirements that manure or wastewater shall not be applied on bare ground by any process, other than incorporation into the soil during the same day, within 1,000 feet of any habitable structure,

wildlife refuge or city, county, state or federal park, unless:

(A) The manure or wastewater has been subjected to physical, biological or biochemical treatment or other treatment method for odor reduction approved by the department of health and environment;

(B) the manure or wastewater is applied with innovative treatment or application that is best available technology for swine facilities and best management practices for swine facilities or other technology approved by the department of health and environment; or

(C) the owner of the habitable structure has provided a written waiver to the facility.

(2) The separation distance requirements of subsection (f)(1) shall not apply to any structure constructed or park designated as a city, county, state or federal park after the effective date of this act, for swine facilities in existence on the effective date of this act, or any structure constructed or park designated as a city, county, state or federal park after submission of an application for a permit for a new swine facility or expansion of an existing swine facility.

(3) Swine facilities that are required to have a nutrient utilization plan shall not apply manure or wastewater:

(A) To lands classified as highly erodible according to the conservation compliance provisions of the federal food security act of 1985, as in effect on the effective date of this act, and classified as highly erodible on the basis of erosion resulting from water runoff, except where soil conservation practices to control erosion and runoff in compliance with the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility;

(B) during rain storms, except where soil conservation practices to control erosion and runoff in compliance with the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility;

(C) to frozen or saturated soil, except where soil conservation practices to control runoff in compliance with the requirements of this section are identified in the facility's nutrient utilization plan and are followed by the facility; and

(D) to any areas to which the separation distance requirements of subsection (f) apply.

(4) Swine facilities that are required to have a nutrient utilization plan shall follow procedures and precautions in the land application of manure or wastewater to prevent discharge of manure or wastewater to surface water and groundwater due to excess infiltration, penetration of drainage tile lines, introduction into tile inlets or surface runoff, including appropriate soil conservation practices to protect surface water from runoff carrying eroded soil and manure particles.

(5) Swine facilities that are required to have a nutrient utilization plan and that conduct wastewater irrigation shall:

(A) Employ measures to irrigate under conditions that reasonably prevent surface runoff; and

(B) use reasonable procedures and precautions to avoid spray drift from the land to which it is applied.

(6) Each swine facility that is required to have a nutrient utilization plan and that land applies manure or wastewater shall ensure that any equipment used in the land application process is properly maintained and calibrated and monitor the use of the equipment so that any malfunction that develops during the land application process is detected and the process ceases until the malfunction is corrected.

(7) The operator of each swine facility that is required to have a nutrient utilization plan and that land applies manure or wastewater shall:

(A) Identify, train and keep current the training of each employee and contractor who supervises the transfer of manure or wastewater to land application equipment and the conducting of land application activities; and

(B) train, and keep current the training of, all employees and contractors who conduct land application activities.

(g) Each swine facility that is required to have a nutrient utilization plan shall amend such plan whenever warranted by changes in conditions. The operator of the facility shall file such plan and any amendments to such plan with the department of health and environment.

(h) The secretary of health and environment shall make a determination to approve or disapprove a nutrient utilization plan not later than 45 days after the plan is received from the department of health and environment.

History: L. 1998, ch. 143, § 6; L. 2004, ch. 101, § 194; L. 2009, ch. 128, § 35; July 1.