

**82a-301. Permit or consent of chief engineer required to construct, modify or add to dams or other water obstructions; exceptions; definitions.** (a) (1) Except as provided in subsections (c) and (d), without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to:

- (A) Construct, modify or add to any dam;
  - (B) construct, modify or add to any water obstruction in a designated stream; or
  - (C) change or diminish the course, current, or cross section of any designated stream within this state.
- (2) Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer.
- (3) Retentions for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

(b) As used in K.S.A. 82a-301 et seq., and amendments thereto:

(1) "Dam" means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and a storage volume at the top of the emergency spillway elevation of 50 or more acre feet. The height of a dam or barrier shall be measured from the lowest elevation of the streambed, downstream toe or outside limit of the dam to the elevation of the top of the dam.

(2) "Designated stream" means a natural or man-made channel that conveys drainage or runoff from a watershed having an area of:

- (A) One or more square miles in zone one, which includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick or Sumner counties;
- (B) two or more square miles in zone two, which includes all geographic points located west of zone one and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or
- (C) three or more square miles in zone three, which includes all geographic points located west of zone two.

(c) (1) The prior written consent or permit of the chief engineer shall not apply to water obstructions that meet the following requirements:

- (A) The change in the cross section of a designated stream is obstructed less than 5% and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length; or
- (B) (i) the water obstruction is not a dam as defined in subsection (b);
- (ii) the water obstruction is not located within an incorporated area;
- (iii) every part of the water obstruction, and any water impounded by such obstruction, is located more than 300 feet from any property boundary; and
- (iv) the watershed area above the water obstruction is five square miles or less.

(2) If the water obstruction does not meet the requirements of subsection (c)(1)(B)(iii), but meets all other requirements of subsection (c)(1)(B), such water obstruction may be exempted from the permitting requirements of subsection (a) if the chief engineer determines such water obstruction has minimal impact upon safety and property based upon a review of the information, to be provided by the owner, including:

- (A) An aerial photo or topographic map depicting the location of the proposed project, the location of the stream, the layout of the water obstruction, the property lines and names and addresses of adjoining property owners; and
- (B) the principal dimensions of the project including, but not limited to, the height above streambed.

(3) Notwithstanding any other provision of this section, the chief engineer may require a permit for any water obstruction described in this subsection if the chief engineer determines such permit is necessary for the protection of life or property.

(d) The prior written consent or permit of the chief engineer shall not be required for construction or modification of a hazard class A dam that:

- (1) Has a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125 acre feet, and the dam location and dimensions have been registered with the division of water resources in a written form prescribed by the chief engineer; or
- (2) is a wastewater storage structure for a confined feeding facility that has been approved by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto.

**History:** L. 1929, ch. 203, § 1; L. 1978, ch. 431, § 6; L. 2002, ch. 138, § 2; L. 2011, ch. 67, § 1; L. 2013, ch. 111, § 4; July 1.