

HOUSE BILL No. 2372

By Committee on Agriculture and Natural Resources

2-8

1 AN ACT concerning agriculture; relating to confined feeding facilities for
2 swine; regulating the land application of swine manure and wastewater;
3 amending K.S.A. 65-1,182 and repealing the existing section.
4

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

6 Section 1. K.S.A. 65-1,182 is hereby amended to read as follows: 65-
7 1,182. (a) The department of health and environment shall not issue or
8 renew a permit for any swine facility that has an animal unit capacity of
9 1,000 or more and that applies manure or wastewater to land unless:

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

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

15 (b) (1) If the manure management plan prepared pursuant to K.S.A.
16 65-1,181, and amendments thereto, provides for land application of
17 manure or wastewater:

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

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

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

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

36 (B) crop rotations on the land application areas;

- 1 (C) annual records of soil tests, manure nutrient analyses, and
- 2 calculations required by subsection (c);
- 3 (D) nutrient budgets for the land application areas;
- 4 (E) rates, methods, frequency and timing of application of manure,
- 5 wastewater and other nutrient sources to the land application areas;
- 6 (F) the amounts of nitrogen and phosphorus applied to the land
- 7 application areas;
- 8 (G) precipitation records and the amounts of irrigation and other
- 9 water applied;
- 10 (H) records of inspections and preventive maintenance of equipment
- 11 required by subsection ~~(f)(6)~~ (f);
- 12 (I) copies of all landowner agreements for land that is not owned by
- 13 the swine facility and is scheduled to receive manure or wastewater;
- 14 (J) names of employees and contractors whom the operator of the
- 15 swine facility has identified pursuant to subsection ~~(f)(7)~~ (f) to supervise
- 16 the process of transferring manure or wastewater to land application
- 17 equipment and the process of land application;
- 18 (K) records of training of all personnel who supervise and conduct
- 19 the land application of manure or wastewater, as required by subsection ~~(f)~~
- 20 ~~(7)~~ (f); and
- 21 (L) any other information required by the secretary of health and
- 22 environment to facilitate approval.
- 23 (3) (A) A swine facility that is required to have a nutrient utilization
- 24 plan shall amend such plan whenever warranted by changes in the facility,
- 25 soil test results or other conditions affecting the facility.
- 26 (B) Amendments to the nutrient utilization plan must be approved by
- 27 the secretary of health and environment.
- 28 (4) A swine facility that is required to have a nutrient utilization plan
- 29 shall maintain such plan in accordance with K.S.A. 65-1,185, and
- 30 amendments thereto.
- 31 (c) (1) Each swine facility that has a manure management plan that
- 32 includes land application of manure or wastewater shall:
- 33 (A) Conduct soil tests, including but not limited to tests for nitrogen,
- 34 phosphate, chloride, copper and zinc, on the land application areas prior to
- 35 preparation of the nutrient utilization plan and at least annually thereafter,
- 36 or as often as required by best available soil science and standards relative
- 37 to the soils of, and crops to be grown on, the land application areas or as
- 38 required by the secretary of health and environment; and
- 39 (B) include the results of such tests in its nutrient utilization plan.
- 40 (2) Each swine facility that has a manure management plan that
- 41 includes land application of manure or wastewater or sells or gives manure
- 42 or wastewater to third persons pursuant to ~~subsection (h)~~ of K.S.A. 65-
- 43 1,181(h), and amendments thereto, shall:

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

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

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

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

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

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

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

30 (f) (1) Each swine facility that is required to have a nutrient
31 utilization plan shall include in such plan, and thereafter comply with, the
32 requirements ~~that manure or wastewater shall not be applied on bare~~
33 ~~ground by any process, other than incorporation into the soil during the~~
34 ~~same day, within 1,000 feet of any habitable structure, wildlife refuge or~~
35 ~~city, county, state or federal park, unless:~~

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

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

43 ~~(C) the owner of the habitable structure has provided a written waiver~~

1 to the facility.

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

9 ~~(3)—(2)~~ *Except as otherwise provided in this subsection, when using*
10 *equipment and techniques approved by the secretary of health and*
11 *environment, no swine wastewater shall be applied to land by means of*
12 *guns, nozzles or similar devices except for low-pressure drop nozzles that*
13 *apply swine wastewater within an average height of three feet or less*
14 *above ground level.*

15 *(3) No swine wastewater shall be applied to any land having a slope*
16 *of 8% or greater unless such wastewater is directly injected beneath the*
17 *soil surface by use of equipment and techniques approved by the secretary*
18 *of health and environment.*

19 *(4) No swine wastewater shall be applied on land having a slope of*
20 *3% or greater unless such land has grassed contour buffer strips planted*
21 *and maintained as follows:*

22 *(A) Buffer strips shall take the form of terraces planted to grasses,*
23 *the planting of contour grass strips or any other plantings approved by the*
24 *secretary of health and environment that will reduce or eliminate the*
25 *potential for runoff of swine wastewater from the area of application;*

26 *(B) buffer strips shall be installed in accordance with the criteria to*
27 *reduce the transport of sediment and waste borne contaminants in the*
28 *natural resources conservation service conservation practice standard,*
29 *code 332; and*

30 *(C) lands shall have a permanent grass strip at least 35 feet wide*
31 *planted and maintained as a buffer along and within the sides and along*
32 *the lower elevation boundary of such lands.*

33 *(5) No swine wastewater shall be applied in any manner or under*
34 *any condition that results in wastewater runoff that extends outside the*
35 *boundaries of the application area designated on the approved nutrient*
36 *management plan field map.*

37 *(6) Swine wastewater:*

38 *(A) May be applied 100 feet or more from the property line of the*
39 *land and 100 feet or more from the right-of-way of any county, state or*
40 *federal road or highway if applied by low-pressure drop nozzles or by*
41 *direct injection beneath the soil, using equipment and techniques approved*
42 *by the secretary of health and environment;*

43 *(B) may be applied 300 feet or more from the property line of the*

1 land and 300 feet or more from the right-of-way of any county, state or
2 federal road or highway if applied by a method other than low-pressure
3 drop nozzle or direct injection that is approved by the secretary of health
4 and environment;

5 (C) shall not be applied closer than 1,000 feet from any habitable
6 structure, wildlife refuge or city, county, state or federal park, regardless
7 of the method of application, except that swine wastewater may be applied
8 not closer than 500 feet from a habitable structure if the owner of the
9 habitable structure, and any tenant thereof, has provided written waiver to
10 the facility and the wastewater is applied by direct injection or by low-
11 pressure drop nozzles where waste is incorporated into the soil during the
12 same day of application; and

13 (D) shall not be applied within 100 feet of any down-gradient surface
14 water, open tile line intake structure, sinkhole, agricultural wellhead or
15 other conduits to surface water, except that the facility may substitute,
16 upon approval of the secretary of health and environment, the 100-foot
17 setback with a 35-foot-wide vegetative buffer.

18 (7) All applications of swine wastewater shall be done in a manner
19 and under conditions that will prevent the occurrence of nuisance
20 conditions, including, but not limited to, odors, disease vectors, such as
21 flies and rodents, spray drift and contamination of air, water and soils.

22 (8) Slopes shall be based upon contour lines, at intervals of 10 feet or
23 less, using United States geological survey 7.5 minutes topographic maps.
24 Fields shall be as described in the approved nutrient management plan
25 and as shown on the permit application map designating the area for
26 swine wastewater application.

27 (9) The provisions of subsections (f)(2) and (f)(3) shall not apply to
28 applications of fields listed by an existing confined animal feeding facility
29 in its approved nutrient management plan or waste management plan on
30 or before July 1, 2025.

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

33 (A) To lands classified as highly erodible according to the
34 conservation compliance provisions of the federal food security act of
35 1985, as in effect on the effective date of this act, and classified as highly
36 erodible on the basis of erosion resulting from water runoff, except where
37 soil conservation practices to control erosion and runoff in compliance
38 with the requirements of this section are identified in the facility's nutrient
39 utilization plan and are followed by the facility;

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

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

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

7 ~~(4)~~(11) Swine facilities that are required to have a nutrient utilization
8 plan shall follow procedures and precautions in the land application of
9 manure or wastewater to prevent discharge of manure or wastewater to
10 surface water and groundwater due to excess infiltration, penetration of
11 drainage tile lines, introduction into tile inlets or surface runoff, including
12 appropriate soil conservation practices to protect surface water from runoff
13 carrying eroded soil and manure particles.

14 ~~(5)~~(12) Swine facilities that are required to have a nutrient utilization
15 plan and that conduct wastewater irrigation shall:

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

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

20 ~~(6)~~(13) Each swine facility that is required to have a nutrient
21 utilization plan and that land applies manure or wastewater shall ensure
22 that any equipment used in the land application process is properly
23 maintained and calibrated and monitor the use of the equipment so that
24 any malfunction that develops during the land application process is
25 detected and the process ceases until the malfunction is corrected.

26 ~~(7)~~(14) The operator of each swine facility that is required to have a
27 nutrient utilization plan and that land applies manure or wastewater shall:

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

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

34 (15) *As used in this subsection, "low-pressure" means 30 psi or lower*
35 *as measured at the pivot point.*

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

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

1 *(i) Regardless of any otherwise available adequate remedy at law or*
2 *in equity, a person aggrieved by any alleged violation of this section may*
3 *bring an action for damages against the operator of the applicable swine*
4 *facility.*

5 Sec. 2. K.S.A. 65-1,182 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its
7 publication in the statute book.