

HOUSE BILL No. 2682

By Committee on Agriculture and Natural Resources

Requested by Representative Fairchild on behalf of Representative Barrett

2-4

AN ACT concerning public health and the environment; relating to solid waste; enacting the Kansas organic waste land application accountability act; regulating the land application of biosolids and organic waste materials, except when applied by a bona fide farmer conducting normal farming operations on land owned or leased by such farmer; establishing the permitting, testing, sampling, documentation, setbacks, operational limitations, odor and dust abatement requirements; defining nuisance conditions; authorizing the secretary of health and environment or the applicable county to issue cease and desist orders or impose civil penalties in response to any violation of the act; authorizing counties to adopt additional restrictions and investigate complaints, conduct inspections, collect samples and enforce the act concurrently with the secretary.

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

Section 1. Sections 1 through 10, and amendments thereto, shall be known and may be cited as the Kansas organic waste land application accountability act.

Sec. 2. As used in this act, unless the context requires otherwise:

(a) "Act" means the Kansas organic waste land application accountability act.

(b) "Biosolids" means treated sewage sludge that has been generated from a wastewater treatment facility and is intended for land application.

(c) "Chain of custody" means written documentation that tracks a sample from collection through laboratory analysis, including sampler identity, date and time of collection, sample preservation methods, temperature control and laboratory receipt.

(d) "Frozen soil" means soil containing ice at any depth that restricts infiltration or nutrient uptake.

(e) "Industrial waste residuals" means residual solids, sludges or liquid byproducts from industrial or commercial processes, including food-processing operations, whether generated on site or collected from multiple generators.

(f) "Land application" means the spraying, spreading, injecting, incorporation or placement of biosolids or organic waste onto or into the

1 land surface by a land spreader.

2 (g) (1) "Land spreader" means any person or entity that transports,
3 distributes, applies or manages land spreading for compensation or as a
4 commercial service.

5 (2) "Land spreader" does not include a bona fide farmer conducting
6 normal farming operations.

7 (h) (1) "Normal farming operation" means customary agricultural
8 practices conducted by a farmer on land owned or leased by such farmer.

9 (2) "Normal farming operation" does not include the commercial
10 importation, sale, commingling or third-party application of biosolids or
11 organic waste generated off site.

12 (i) "Organic waste" means residual waste materials, including, but not
13 limited to, food-processing wastewater residuals, sludges and similar
14 byproducts intended for land application as a soil amendment.

15 (j) "PFAS" means perfluoroalkyl and polyfluoroalkyl substances,
16 including, but not limited to, perfluorooctanoic acid and perfluorooctane
17 sulfonate.

18 (k) (1) "Residence" means a dwelling intended for human habitation,
19 including homes, apartments and manufactured housing.

20 (2) "Residence" does not include agricultural outbuildings.

21 (l) "Saturated soil" means soil at or above field capacity such that
22 additional liquid application would reasonably result in runoff, ponding or
23 off-site movement.

24 (m) "Secretary" means the secretary of the department of health and
25 environment.

26 Sec. 3. (a) No land spreader shall conduct land applications in this
27 state without first obtaining a land application permit issued by the
28 secretary.

29 (b) Each permit application shall include:

30 (1) Site location and acreage;

31 (2) source identification for all waste generators contributing to the
32 material;

33 (3) characterization of the waste, including whether materials are
34 commingled from multiple generators;

35 (4) agronomic rate calculations supported by crop type, realistic yield
36 goals and planting dates;

37 (5) a proposed application schedule;

38 (6) an odor and dust abatement plan;

39 (7) certification that land application shall not occur within 1,000 feet
40 of a residence;

41 (8) a waste sampling and analysis plan, including sampling frequency
42 and chain-of-custody procedures;

43 (9) a documentation and recordkeeping plan for manifests, bills of

1 lading, waste volumes and transport records.

2 Sec. 4. (a) (1) Land application of biosolids or organic waste by a
3 land spreader shall not occur within 1,000 feet of any residence.

4 (2) Such setback requirement shall not be waived by private
5 agreement.

6 (b) Land application shall be prohibited on frozen or saturated soils.

7 (c) Land application shall be prohibited when weather conditions
8 reasonably indicate risk of runoff, ponding or off-site movement.

9 (d) Land application shall not occur on native grasslands unless the
10 secretary determines, based on agronomic evidence, that such application
11 will not degrade native species composition or increase invasive species.

12 (e) Land application shall only occur within the United States
13 department of agriculture federal crop insurance final planting dates that
14 are applicable to the county and crop.

15 (f) Crops used to justify agronomic rate calculations shall be planted
16 and harvested unless crop failure is documented and approved by the
17 secretary.

18 Sec. 5. (a) Prior to each land application event, the land spreader shall
19 obtain laboratory testing, at the land spreader's own expense, for:

20 (1) Pathogens;

21 (2) nutrients, including nitrogen, phosphorus and potassium;

22 (3) heavy metals that are regulated under 40 C.F.R. part 503; and

23 (4) PFAS compounds.

24 (b) (1) Sampling shall occur prior to each application event.

25 (2) For ongoing operations or commingled waste streams, composite
26 sampling shall occur not less than weekly during active application
27 periods.

28 (3) PFAS testing shall occur not less than quarterly.

29 (c) All samples shall be collected under documented chain-of-custody
30 procedures consistent with analytical methods that have been approved by
31 the United States environmental protection agency, including required
32 temperature control and holding times.

33 (d) The secretary may conduct independent confirmation testing at
34 the land spreader's expense.

35 (e) The secretary or any county may require submission of bills of
36 lading, manifests, generator identification, waste volumes and transport
37 records necessary to verify compliance.

38 (f) Any material exceeding contaminant limits established by rule
39 shall be prohibited from land application until compliance is demonstrated.

40 (g) (1) The secretary may require baseline and ongoing groundwater or
41 surface water monitoring where land application poses a risk to water
42 resources.

43 (2) Such monitoring costs shall be paid by the land spreader.

1 Sec. 6. (a) (1) Land spreaders shall conduct operations in a manner
2 that prevents, minimizes and promptly abates nuisances.

3 (2) The secretary or any county may impose operational restrictions
4 to reduce nuisances caused by land applications.

5 (b) (1) A nuisance exists when odor, gas, vapor, dust or particulate
6 matter from land application:

7 (A) Is offensive to a person of reasonable sensibilities;

8 (B) unreasonably interferes with the use or enjoyment of nearby
9 property; or

10 (C) is detectable beyond the site boundary on a sustained or recurring
11 basis.

12 (2) Proof of physical injury shall not be required to establish the
13 existence of a nuisance.

14 (3) Nuisance determinations may be based on resident complaints,
15 official observations or repeated odor events.

16 (4) Complaints from multiple households create a rebuttable
17 presumption of an existing nuisance.

18 Sec. 7. (a) (1) Any person who willfully violates any provision of this
19 act or any rules and regulations adopted thereunder is guilty of a class A
20 misdemeanor.

21 (2) In addition or in lieu of such criminal penalty and subject to the
22 requirements of the Kansas administrative procedure act the secretary or
23 the applicable county may:

24 (A) Issue a cease and desist order; and

25 (B) impose civil penalties of not less than \$1,000 per day.

26 (b) Continuing violations shall constitute separate offenses.

27 (c) (1) Any county may investigate complaints, conduct inspections,
28 collect samples and enforce this act concurrently with the secretary.

29 (2) Any county may adopt additional restrictions, including zoning or
30 land-use regulations, if such restrictions do not conflict with this act.

31 (3) State permitting shall not preempt county enforcement authority.

32 (d) If a cease and desist order is issued under this section, such
33 operations shall not resume until written authorization is issued by the
34 issuer of such order.

35 Sec. 8. This act shall not apply to normal farming operations
36 conducted by a farmer on land owned or leased by such farmer if the
37 activity does not involve third-party land spreaders, commercial waste
38 importation or creation of a nuisance.

39 Sec. 9. (a) The secretary shall adopt rules and regulations necessary
40 to implement this act.

41 (b) Nothing in this act shall limit the authority of the secretary to
42 adopt additional or more stringent regulations if such regulations are
43 adopted in accordance with the Kansas administrative procedure act and

1 do not conflict with this act.

2 Sec. 10. The provisions of this act are severable. If any portion of this
3 act is held by a court to be unconstitutional or invalid, or the application of
4 any portion of this act to any person or circumstance is held by a court to
5 be unconstitutional or invalid, the invalidity shall not affect other portions
6 of this act that can be given effect without the invalid portion or
7 application, and the applicability of such other portions of this act to any
8 person or circumstance remains valid and enforceable.

9 Sec. 11. This act shall take effect and be in force from and after its
10 publication in the statute book.