

HOUSE BILL No. 2693

By Committee on Agriculture and Natural Resources

Requested by Representative Featherston on behalf of the Kansas Sierra Club

2-4

AN ACT concerning agriculture; relating to the application of swine waste; prohibiting certain applications except with low-pressure drop nozzles within an average height of three feet and using secretary-approved methods; requiring contour buffer strips for application on land with slopes of 3% or greater; establishing setback rules for property lines, road rights-of-way, habitable structures, refuges and parks; requiring applicators to prevent nuisance conditions; amending K.S.A. 65-1,182 and repealing the existing section.

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

Section 1. K.S.A. 65-1,182 is hereby amended to read as follows: 65-1,182. (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. 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

1 for land application of manure, wastewater and other nutrient sources,
2 comply with the requirements of this section and contain, at minimum, the
3 following:

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

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

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

9 (D) nutrient budgets for the land application areas;

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

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

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

16 (H) records of inspections and preventive maintenance of equipment
17 required by subsection (f)(6)(13);

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

20 (J) names of employees and contractors whom the operator of the
21 swine facility has identified pursuant to subsection (f)(7)(14) to supervise
22 the process of transferring manure or wastewater to land application
23 equipment and the process of land application;

24 (K) records of training of all personnel who supervise and conduct
25 the land application of manure or wastewater, as required by subsection (f)
26 (7)(14); and

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

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

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

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

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

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

1 required by the secretary of health and environment; and

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

3 (2) Each swine facility that has a manure management plan that
4 includes land application of manure or wastewater or sells or gives manure
5 or wastewater to third persons pursuant to ~~subsection (h)~~ of K.S.A. 65-
6 1,181(h), and amendments thereto, shall:

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

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

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

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

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

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

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

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

42 (A) ~~The manure or wastewater has been subjected to physical,~~
43 ~~biological or biochemical treatment or other treatment method for odor~~

1 reduction approved by the department of health and environment;

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

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

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

15 ~~(3)(2) Except as otherwise provided in this section, no swine~~
16 ~~wastewater shall be applied to land by means of guns, nozzles or similar~~
17 ~~devices except for low-pressure drop nozzles that apply swine wastewater~~
18 ~~within an average height of three feet or less above ground level. As used~~
19 ~~in this section, "low pressure" means 30 psi, or lower, as measured at the~~
20 ~~pivot point.~~

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

25 (4) No swine wastewater shall be applied on land having a slope of
26 3% or greater unless such land has contour buffer strips planted and
27 maintained as follows in subparagraphs (A) through (C). Such buffer
28 strips shall:

29 (A) Take the form of terraces planted with grasses, the planting of
30 contour grass strips or any other plantings approved by the secretary of
31 health and environment to reduce or eliminate the potential for swine
32 wastewater runoff;

33 (B) be installed in accordance with the criteria to reduce the
34 transport of sediment and waste-borne contaminants in NRCS code 332;
35 and

36 (C) be at least 35 feet wide when planted and maintained as a buffer
37 along and within the sides and along the lower elevation boundary of such
38 lands.

39 (5) No swine wastewater shall be applied in any manner or under
40 any conditions that result in wastewater runoff reaching the outside the
41 boundaries of the application area designated on the approved nutrient
42 management plan field map.

43 (6) Swine wastewater:

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

6 (B) may be applied 300 feet or more from the property line of the
7 land and 300 feet or more from the right-of-way of any county, state or
8 federal road or highway if applied by a method other than low pressure
9 drop nozzle or direct injection that is approved by the secretary of health
10 and environment;

11 (C) shall not be applied closer than 1,000 feet from any habitable
12 structure, wildlife refuge or city, county, state or federal park regardless of
13 the method of application unless such swine wastewater is applied not
14 closer than 500 feet from a habitable structure and the owner or primary
15 resident of such habitable structure has provided a written waiver to the
16 facility and the wastewater is applied by direct injection or by low
17 pressure drop nozzles in a manner that results in the waste being
18 incorporated into the soil during the same day of application; and

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

24 (7) All applications of swine wastewater shall be done in a manner
25 and under conditions that will prevent the occurrence of nuisance
26 conditions, including, but not limited to:

27 (A) Odors;

28 (B) disease vectors such as flies and rodents;

29 (C) spray drift; and

30 (D) contamination of air, water and soils.

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

36 (9) Until July 1, 2027, the provisions of subsections (f)(2) and (3)
37 shall not apply to applications to any field that is listed by an existing
38 swine facility in such facility's approved nutrient management plan or
39 waste management plan.

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

42 (A) To lands classified as highly erodible according to the
43 conservation compliance provisions of the federal food security act of

1 1985, as in effect on the effective date of this act, and classified as highly
2 erodible on the basis of erosion resulting from water runoff, except where
3 soil conservation practices to control erosion and runoff in compliance
4 with the requirements of this section are identified in the facility's nutrient
5 utilization plan and are followed by the facility;

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

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

14 (D) to any areas to which the separation distance requirements of *this*
15 subsection ~~(F)~~ apply.

16 ~~(4)~~(11) Swine facilities that are required to have a nutrient utilization
17 plan shall follow procedures and precautions in the land application of
18 manure or wastewater to prevent discharge of manure or wastewater to
19 surface water and groundwater due to excess infiltration, penetration of
20 drainage tile lines, introduction into tile inlets or surface runoff, including
21 appropriate soil conservation practices to protect surface water from runoff
22 carrying eroded soil and manure particles.

23 ~~(5)~~(12) Swine facilities that are required to have a nutrient utilization
24 plan and that conduct wastewater irrigation shall:

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

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

29 ~~(6)~~(13) Each swine facility that is required to have a nutrient
30 utilization plan and that land applies manure or wastewater shall ensure
31 that any equipment used in the land application process is properly
32 maintained and calibrated and monitor the use of the equipment so that
33 any malfunction that develops during the land application process is
34 detected and the process ceases until the malfunction is corrected.

35 ~~(7)~~(14) The operator of each swine facility that is required to have a
36 nutrient utilization plan and that land applies manure or wastewater shall:

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

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

43 (g) Each swine facility that is required to have a nutrient utilization

1 plan shall amend such plan whenever warranted by changes in conditions.
2 The operator of the facility shall file such plan and any amendments to
3 such plan with the department of health and environment.

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

8 (i) *In addition to any other remedy provided by statute or common*
9 *law, a person aggrieved by any alleged violation of this section may bring*
10 *an action for damages against the operator of the applicable swine*
11 *facility.*

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

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