

HOUSE BILL No. 2321

By Committee on Agriculture and Natural Resources

2-13

1 AN ACT concerning health and environment; relating to graywater;
2 amending K.S.A. 65-165 and K.S.A. 2012 Supp. 65-171d and repealing
3 the existing sections.
4

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

6 New Section 1. (a) As used in this section,
7 (1) "Graywater" means wastewater from:
8 (A) Showers;
9 (B) bathtubs;
10 (C) clothes-washing machines;
11 (D) hand-washing lavatories; or
12 (E) sinks that are not used for disposal of hazardous or toxic
13 ingredients.

14 (2) "Graywater" does not include wastewater:
15 (A) That has come in contact with toilet waste;
16 (B) from the washing of material, including diapers, soiled with
17 human excreta;

18 (C) from sinks used for food preparation or disposal; or
19 (D) from dishwashers.
20 (b) A permit shall not be required for the domestic use of less than
21 400 gallons of graywater per day if:

22 (1) The user is connected to a public sewer system approved by the
23 department of health and environment; and

24 (2) the graywater:
25 (A) Originates from a private residence;
26 (B) is used at such residence;
27 (C) is used by the occupants of such residence for:
28 (i) Gardening, except graywater shall not be applied to food-
29 producing plants;

30 (ii) composting; or
31 (iii) landscaping;
32 (D) is collected using a system that overflows into a sewage
33 collection or on-site wastewater treatment and disposal system;

34 (E) is stored in tanks that:
35 (i) Are clearly labeled as non-potable water;
36 (ii) restrict access;

- 1 (iii) eliminate habitat for mosquitoes and other vectors; and
2 (iv) have the capacity to hold at least 90 days' worth of graywater.
3 Ninety days' worth of graywater is 40 gallons of graywater per day per
4 number of bedrooms at such residence;
5 (F) uses piping clearly identified as non-potable water conduit;
6 (G) is generated without the formation of ponds or pools of
7 graywater;
8 (H) does not create runoff across property lines or onto any paved
9 surface;
10 (I) is not applied to frozen or saturated soil; and
11 (J) is distributed by a surface drip irrigation system or subsurface
12 irrigation system that does not spray into the air.
13 (c) The department of health and environment may require a permit
14 for the use and reuse of graywater for the following:
15 (1) Irrigation and other agricultural purposes;
16 (2) commercial purposes;
17 (3) industrial purposes;
18 (4) domestic use of 400 gallons or more of graywater per day; or
19 (5) domestic use of less than 400 gallons of graywater per day if such
20 user is not connected to a public sewer system approved by the department
21 of health and environment.
22 (d) The secretary of health and environment shall adopt rules and
23 regulations for the use and reuse of graywater. Such rules and regulations
24 shall assure that the use or reuse of graywater is not a nuisance and does
25 not damage the quality of the waters of the state.

26 Sec. 2. K.S.A. 65-165 is hereby amended to read as follows: 65-165.
27 (a) Upon application made to the secretary of health and environment by
28 the public authorities having by law the charge of the sewer system of any
29 municipality, township, county or legally constituted sewer district, or any
30 person, company, corporation, institution, municipality or federal agency,
31 the secretary of health and environment shall consider the case of a sewage
32 discharge or sewer system, otherwise prohibited by this act from
33 discharging sewage into any of the waters of the state, or the extension of a
34 sewer system. The secretary shall issue a permit for the extension of the
35 sewer system or for the discharge of sewage, or both, if the secretary
36 determines that: (1) The general interests of the public health would be
37 served ~~thereby~~ or the discharge of such sewage would not detract from the
38 quality of the waters of the state for their beneficial uses for domestic or
39 public water supply, agricultural needs, industrial needs, recreational needs
40 or other beneficial use; and (2) such discharge meets or will meet all
41 applicable state water quality standards and applicable federal water
42 quality and effluent standards under the provisions of the federal water
43 pollution control act ~~and amendments thereto~~, as in effect on ~~January 1,~~

1 1998 July 1, 2013. The secretary shall stipulate in the permit the conditions
2 on which such discharge will be permitted and shall require such treatment
3 of the sewage as determined necessary to protect beneficial uses of the
4 waters of the state in accordance with the statutes and rules and regulations
5 defining the quality of the water affected by such discharge and may
6 require treatment of the sewage in accordance with rules and regulations
7 predicated upon technologically based effluent limitations. Indirect
8 dischargers shall comply with all applicable pretreatment regulations and
9 water quality standards.

10 (b) The secretary of health and environment may establish, by rules
11 and regulations, a program of annual certification of public sanitary sewer
12 systems to approve, without the necessity of securing an additional permit
13 from the secretary, sewer extensions for which the plans:

14 (1) Are prepared by a professional engineer, as defined by K.S.A. 74-
15 7003, and amendments thereto; and

16 (2) conform to the minimum standards of design for water pollution
17 control facilities published by the secretary. A public sanitary sewer system
18 shall qualify for such certification only if the secretary determines that the
19 system has staff, or persons under contract, qualified to approve sewer
20 extensions and the system complies with any conditions that the secretary
21 establishes to effectively monitor and control the certification process,
22 including, but not limited to, such periodic reporting of sewer extensions
23 approved or sewer connection permits issued, or both, as the secretary may
24 require.

25 (c) If, in the opinion of the secretary of health and environment,
26 issuance of general permits is more appropriate than issuance of individual
27 permits, the secretary may establish, by rule and regulation, procedures for
28 issuance of general permits to the following sources and facilities if such
29 sources and facilities involve similar types of operations, discharge the
30 same types of wastes or engage in the same types of sludge use or disposal
31 practices, require similar monitoring requirements or require the same
32 effluent limitations, operating conditions, or standards for sewage sludge
33 use or disposal:

34 (1) A category of point and nonpoint sources of sewage such as storm
35 water;

36 (2) other categories of point and nonpoint sources of sewage; or

37 (3) categories of facilities treating domestic sewage.

38 Availability of general permits shall be limited to areas defined by
39 geographical or political boundaries such as, but not limited to, city,
40 county or state boundaries, state or county roads and highways or natural
41 boundaries such as drainage basins. The secretary may establish, by rule
42 and regulation, procedures for the issuance, revocation, modification and
43 change, reissuance or termination of general permits in the manner

1 provided by law.

2 (d) (1) Any permit application may be denied and every permit for
3 the discharge of sewage shall be revocable, or subject to modification and
4 change, by the secretary of health and environment, upon *proper* notice
5 ~~having been~~. *Such notice shall be served on:*

6 (A) The public authorities having, by law, the charge of the sewer
7 system any municipality, township, county or legally constituted sewer
8 district; or ~~on~~

9 (B) the person, company, corporation, institution, municipality or
10 federal agency owning, maintaining or using the sewage system.

11 (2) The length of time after receipt of the notice within which the
12 discharge of sewage shall be discontinued may be stated in the permit, but
13 in no case shall it be less than 30 days or ~~exceed more than~~ two years;. If
14 the length of time is not specified in the permit, it shall be 30 days. On the
15 expiration of the period of time prescribed, *and* after the service of notice
16 of denial, revocation, modification or change from the secretary of health
17 and environment, the right to discharge sewage into any of the waters of
18 the state shall cease and terminate, and the prohibition of this act against
19 such discharge shall be in full force, as though no permit had been granted;
20 ~~but~~. A new permit may ~~thereafter again~~ be granted, as ~~hereinbefore~~
21 provided *herein*.

22 (e) Any permittee or permit applicant upon whom notice of denial,
23 revocation, modification or change has been served pursuant to subsection
24 (d) may appeal to the secretary within 30 days after service of the notice.
25 All permit applications and requests for appeal are subject to the
26 provisions of the Kansas administrative procedure act.

27 (f) *The provisions of this section shall not apply to the discharge of*
28 *graywater as required by section 1, and amendments thereto.*

29 Sec. 3. K.S.A. 2012 Supp. 65-171d is hereby amended to read as
30 follows: 65-171d. (a) For the purpose of preventing surface and subsurface
31 water pollution and soil pollution detrimental to public health or to the
32 plant, animal and aquatic life of the state, and to protect designated uses of
33 the waters of the state and to require the treatment of sewage predicated
34 upon technologically based effluent limitations, the secretary of health and
35 environment shall make such rules and regulations, including registration
36 of potential sources of pollution, as may in the secretary's judgment be
37 necessary to: (1) Protect the soil and waters of the state from pollution
38 resulting from underground storage of liquid petroleum gas and
39 hydrocarbons, other than underground porosity storage of natural gas; (2)
40 control the disposal, discharge or escape of sewage as defined in K.S.A.
41 65-164, and amendments thereto, *not including graywater as defined in*
42 *section 1, and amendments thereto*, by or from municipalities,
43 corporations, companies, institutions, state agencies, federal agencies or

1 individuals and any plants, works or facilities owned or operated, or both,
2 by them; and (3) establish water quality standards for the waters of the
3 state to protect their designated uses. In no event shall the secretary's
4 authority be interpreted to include authority over the beneficial use of
5 water, water quantity allocations, protection against water use impairment
6 of a beneficial use, or any other function or authority under the jurisdiction
7 of the Kansas water appropriation act, K.S.A. 82a-701, and amendments
8 thereto.

9 (b) The secretary of health and environment may adopt by reference
10 any regulation relating to water quality and effluent standards promulgated
11 by the federal government pursuant to the provisions of the federal clean
12 water act and amendments thereto, as in effect on January 1, 1989, which
13 the secretary is otherwise authorized by law to adopt.

14 (c) For the purposes of this act, including K.S.A. 65-161 through 65-
15 171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and
16 rules and regulations adopted pursuant thereto:

17 (1) "Pollution" means: (A) Such contamination or other alteration of
18 the physical, chemical or biological properties of any waters of the state as
19 will or is likely to create a nuisance or render such waters harmful,
20 detrimental or injurious to public health, safety or welfare, or to the plant,
21 animal or aquatic life of the state or to other designated uses; or (B) such
22 discharge as will or is likely to exceed state effluent standards predicated
23 upon technologically based effluent limitations.

24 (2) "Confined feeding facility" means any lot, pen, pool or pond: (A)
25 Which is used for the confined feeding of animals or fowl for food, fur or
26 pleasure purposes; (B) which is not normally used for raising crops; and
27 (C) in which no vegetation intended for animal food is growing.

28 (3) "Animal unit" means a unit of measurement calculated by adding
29 the following numbers: The number of beef cattle weighing more than 700
30 pounds multiplied by 1.0; plus the number of cattle weighing less than 700
31 pounds multiplied by 0.5; plus the number of mature dairy cattle
32 multiplied by 1.4; plus the number of swine weighing more than 55
33 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or
34 less multiplied by 0.1; plus the number of sheep or lambs multiplied by
35 0.1; plus the number of horses multiplied by 2.0; plus the number of
36 turkeys multiplied by 0.018; plus the number of laying hens or broilers, if
37 the facility has continuous overflow watering, multiplied by 0.01; plus the
38 number of laying hens or broilers, if the facility has a liquid manure
39 system, multiplied by 0.033; plus the number of ducks multiplied by 0.2.
40 However, each head of cattle will be counted as one full animal unit for the
41 purpose of determining the need for a federal permit. "Animal unit" also
42 includes the number of swine weighing 55 pounds or less multiplied by 0.1
43 for the purpose of determining applicable requirements for new

1 construction of a confined feeding facility for which a permit or
2 registration has not been issued before January 1, 1998, and for which an
3 application for a permit or registration and plans have not been filed with
4 the secretary of health and environment before January 1, 1998, or for the
5 purpose of determining applicable requirements for expansion of such
6 facility. However, each head of swine weighing 55 pounds or less shall be
7 counted as 0.0 animal unit for the purpose of determining the need for a
8 federal permit. Except as otherwise provided, animal units for public
9 livestock markets shall be determined by using the average annual animal
10 units sold by the market during the past five calendar years divided by
11 365. Such animal unit determination may be adjusted by the department if
12 the public livestock market submits documentation that demonstrates that
13 such adjustment is appropriate based on the amount of time in 24-hour
14 increments or partials thereof that animals are at the market.

15 (4) "Animal unit capacity" means the maximum number of animal
16 units which a confined feeding facility is designed to accommodate at any
17 one time.

18 (5) "Habitable structure" means any of the following structures which
19 is occupied or maintained in a condition which may be occupied and
20 which, in the case of a confined feeding facility for swine, is owned by a
21 person other than the operator of such facility: A dwelling, church, school,
22 adult care home, medical care facility, child care facility, library,
23 community center, public building, office building or licensed food service
24 or lodging establishment.

25 (6) "Wildlife refuge" means Cheyenne Bottoms wildlife management
26 area, Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des
27 Cygnes and Kirwin national wildlife refuges.

28 (d) In adopting rules and regulations, the secretary of health and
29 environment, taking into account the varying conditions that are probable
30 for each source of sewage and its possible place of disposal, discharge or
31 escape, may provide for varying the control measures required in each
32 case to those the secretary finds to be necessary to prevent pollution. If a
33 freshwater reservoir or farm pond is privately owned and where complete
34 ownership of land bordering the reservoir or pond is under common
35 private ownership, such freshwater reservoir or farm pond shall be exempt
36 from water quality standards except as it relates to water discharge or
37 seepage from the reservoir or pond to waters of the state, either surface or
38 groundwater, or as it relates to the public health of persons using the
39 reservoir or pond or waters therefrom.

40 (e) (1) Whenever the secretary of health and environment or the
41 secretary's duly authorized agents find that storage or disposal of salt water
42 not regulated by the state corporation commission or refuse in any surface
43 pond not regulated by the state corporation commission is causing or is

1 likely to cause pollution of soil or waters of the state, the secretary or the
2 secretary's duly authorized agents shall issue an order prohibiting such
3 storage or disposal of salt water or refuse. Any person aggrieved by such
4 order may within 15 days of service of the order request in writing a
5 hearing on the order.

6 (2) Upon receipt of a timely request, a hearing shall be conducted in
7 accordance with the provisions of the Kansas administrative procedure act.

8 (3) Any action of the secretary pursuant to this subsection is subject
9 to review in accordance with the Kansas judicial review act.

10 (f) The secretary may adopt rules and regulations establishing fees for
11 plan approval, monitoring and inspecting underground or buried petroleum
12 products storage tanks, for which the annual fee shall not exceed \$5 for
13 each tank in place.

14 (g) Prior to any new construction of a confined feeding facility with
15 an animal unit capacity of 300 to 999, such facility shall register with the
16 secretary of health and environment. Facilities with a capacity of less than
17 300 animal units may register with the secretary. Any such registration
18 shall be accompanied by a \$25 fee. Within 30 days of receipt of such
19 registration, the department of health and environment shall identify any
20 significant water pollution potential or separation distance violations
21 pursuant to subsection (h). If there is identified a significant water
22 pollution potential, such facility shall be required to obtain a permit from
23 the secretary. If there is no water pollution potential posed by a facility
24 with an animal unit capacity of less than 300, the secretary may certify that
25 no permit is required. If there is no water pollution potential nor any
26 violation of separation distances posed by a facility with an animal unit
27 capacity of 300 to 999, the secretary shall certify that no permit is required
28 and that there are no certification conditions pertaining to separation
29 distances. If a separation distance violation is identified, the secretary may
30 reduce the separation distance in accordance with subsection (i) and shall
31 certify any such reduction of separation distances.

32 (h) (1) Any new construction or new expansion of a confined feeding
33 facility, other than a confined feeding facility for swine, shall meet or
34 exceed the following requirements in separation distances from any
35 habitable structure in existence when the application for a permit is
36 submitted:

37 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
38 999; and

39 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 or
40 more.

41 (2) A confined feeding facility for swine shall meet or exceed the
42 following requirements in separation distances from any habitable
43 structure or city, county, state or federal park in existence when the

1 application for a permit is submitted:

2 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
3 999;

4 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to
5 3,724;

6 (C) 4,000 feet for expansion of existing facilities to an animal unit
7 capacity of 3,725 or more if such expansion is within the perimeter from
8 which separation distances are determined pursuant to subsection (k) for
9 the existing facility; and

10 (D) 5,000 feet for: (i) Construction of new facilities with an animal
11 unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an
12 animal unit capacity of 3,725 or more if such expansion extends outside
13 the perimeter from which separation distances are determined pursuant to
14 subsection (k) for the existing facility.

15 (3) Any construction of new confined feeding facilities for swine
16 shall meet or exceed the following requirements in separation distances
17 from any wildlife refuge:

18 (A) 10,000 feet for facilities with an animal unit capacity of 1,000 to
19 3,724; and

20 (B) 16,000 feet for facilities with an animal unit capacity of 3,725 or
21 more.

22 (i) (1) The separation distance requirements of subsections (h)(1) and
23 (2) shall not apply if the applicant for a permit obtains a written agreement
24 from all owners of habitable structures which are within the separation
25 distance stating such owners are aware of the construction or expansion
26 and have no objections to such construction or expansion. The written
27 agreement shall be filed in the register of deeds office of the county in
28 which the habitable structure is located.

29 (2) (A) The secretary may reduce the separation distance
30 requirements of subsection (h)(1) if: (i) No substantial objection from
31 owners of habitable structures within the separation distance is received in
32 response to public notice; or (ii) the board of county commissioners of the
33 county where the confined feeding facility is located submits a written
34 request seeking a reduction of separation distances.

35 (B) The secretary may reduce the separation distance requirements of
36 subsection (h)(2)(A) or (B) if: (i) No substantial objection from owners of
37 habitable structures within the separation distance is received in response
38 to notice given in accordance with subsection (l); (ii) the board of county
39 commissioners of the county where the confined feeding facility is located
40 submits a written request seeking a reduction of separation distances; or
41 (iii) the secretary determines that technology exists that meets or exceeds
42 the effect of the required separation distance and the facility will be using
43 such technology.

1 (C) The secretary may reduce the separation distance requirements of
2 subsection (h)(2)(C) or (D) if: (i) No substantial objection from owners of
3 habitable structures within the separation distance is received in response
4 to notice given in accordance with subsection (l); or (ii) the secretary
5 determines that technology exists that meets or exceeds the effect of the
6 required separation distance and the facility will be using such technology.

7 (j) (1) The separation distances required pursuant to subsection (h)(1)
8 shall not apply to:

9 (A) Confined feeding facilities which were permitted or certified by
10 the secretary on July 1, 1994;

11 (B) confined feeding facilities which existed on July 1, 1994, and
12 registered with the secretary before July 1, 1996; or

13 (C) expansion of a confined feeding facility, including any expansion
14 for which an application was pending on July 1, 1994, if: (i) In the case of
15 a facility with an animal unit capacity of 1,000 or more prior to July 1,
16 1994, the expansion is located at a distance not less than the distance
17 between the facility and the nearest habitable structure prior to the
18 expansion; or (ii) in the case of a facility with an animal unit capacity of
19 less than 1,000 prior to July 1, 1994, the expansion is located at a distance
20 not less than the distance between the facility and the nearest habitable
21 structure prior to the expansion and the animal unit capacity of the facility
22 after expansion does not exceed 2,000.

23 (2) The separation distances required pursuant to subsections (h)(2)
24 (A) and (B) shall not apply to:

25 (A) Confined feeding facilities for swine which were permitted or
26 certified by the secretary on July 1, 1994;

27 (B) confined feeding facilities for swine which existed on July 1,
28 1994, and registered with the secretary before July 1, 1996; or

29 (C) expansion of a confined feeding facility which existed on July 1,
30 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000
31 or more prior to July 1, 1994, the expansion is located at a distance not less
32 than the distance between the facility and the nearest habitable structure
33 prior to the expansion; or (ii) in the case of a facility with an animal unit
34 capacity of less than 1,000 prior to July 1, 1994, the expansion is located at
35 a distance not less than the distance between the facility and the nearest
36 habitable structure prior to the expansion and the animal unit capacity of
37 the facility after expansion does not exceed 2,000.

38 (3) The separation distances required pursuant to subsections (h)(2)
39 (C) and (D) and (h)(3) shall not apply to the following, as determined in
40 accordance with subsections (a), (e) and (f) of K.S.A. 65-1,178, and
41 amendments thereto:

42 (A) Expansion of an existing confined feeding facility for swine if an
43 application for such expansion has been received by the department before

1 March 1, 1998; and

2 (B) construction of a new confined feeding facility for swine if an
3 application for such facility has been received by the department before
4 March 1, 1998.

5 (k) The separation distances required by this section for confined
6 feeding facilities for swine shall be determined from the exterior perimeter
7 of any buildings utilized for housing swine, any lots containing swine, any
8 swine waste retention lagoons or ponds or other manure or wastewater
9 storage structures and any additional areas designated by the applicant for
10 future expansion. Such separation distances shall not apply to offices,
11 dwellings and feed production facilities of a confined feeding facility for
12 swine.

13 (l) The applicant shall give the notice required by subsections (i)(2)
14 (B) and (C) by certified mail, return receipt requested, to all owners of
15 habitable structures within the separation distance. The applicant shall
16 submit to the department evidence, satisfactory to the department, that
17 such notice has been given.

18 (m) All plans and specifications submitted to the department for new
19 construction or new expansion of confined feeding facilities may be, but
20 are not required to be, prepared by a professional engineer or a consultant,
21 as approved by the department. Before approval by the department, any
22 consultant preparing such plans and specifications shall submit to the
23 department evidence, satisfactory to the department, of adequate general
24 commercial liability insurance coverage.

25 Sec. 4. K.S.A. 65-165 and K.S.A. 2012 Supp. 65-171d are hereby
26 repealed.

27 Sec. 5. This act shall take effect and be in force from and after its
28 publication in the statute book.