

As Amended by House Committee

{As Amended by Senate Committee of the Whole}

As Amended by Senate Committee

Session of 2015

SENATE BILL No. 124

By Committee on Natural Resources

2-2

1 AN ACT concerning the department of health and environment;
2 relating to radioactive materials; by-product material; low-level
3 radioactive waste; naturally occurring radioactive material; water
4 and soil pollution; solid waste disposal; ~~relating to~~ land-spreading of
5 drilling waste; amending K.S.A. 48-1603 and 48-1620 and K.S.A.
6 2014 Supp. 65-171d and 65-3407c and repealing the existing section
7 sections.
8

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

10 **Section 1. K.S.A. 48-1603 is hereby amended to read as follows:**
11 **48-1603. As used in this act:**

12 (a) "By-product material" means: (1) Any radioactive material,
13 except special nuclear material, yielded in or made radioactive by
14 exposure to the radiation incident to the process of producing or
15 utilizing special nuclear material; ~~and~~

16 (2) the tailings or wastes produced by the extraction or
17 concentration of uranium or thorium from any ore processed
18 primarily for its source material content;

19 (3) (A) any discrete source of radium-226 that is produced, extracted
20 or converted after extraction for use for a commercial, medical or
21 research activity; or

22 (B) any material that:

23 (i) Has been made radioactive by use of a particle accelerator; and

24 (ii) is produced, extracted or converted after extraction for use for a
25 commercial, medical or research activity; or

26 (4) any discrete source of naturally occurring radioactive material,
27 other than source material, that:

28 (A) The secretary declares by order would pose a threat to the public
29 health and safety or the common defense and security similar to the threat
30 posed by a discrete source of radium-226 after the United States nuclear
31 regulatory commission, or any successor thereto, determines the same;
32 and

1 (B) is extracted or converted after extraction for use in a commercial,
2 medical or research activity.

3 (b) "Department" means the Kansas department of health and
4 environment.

5 (c) "Civil penalty" means any monetary penalty levied on a
6 licensee or registrant because of violations of statutes, regulations,
7 licenses or registration certificates, but does not include criminal
8 penalties.

9 (d) "Closure" or "site closure" means all activities performed at
10 a waste disposal site, such as stabilization and contouring, to assure
11 that the site is in a stable condition so that only minor custodial care,
12 surveillance and monitoring are necessary at the site following
13 termination of licensed operation.

14 (e) "Decommissioning" means final operational activities at a
15 facility to dismantle site structures, to decontaminate site surfaces and
16 remaining structures, to stabilize and contain residual radioactive
17 material and to carry out any other activities to prepare the site for
18 postoperational care.

19 (f) "Disposal of low-level radioactive waste" means the isolation
20 of such waste from the biosphere.

21 (g) "Electronic product" means any manufactured or assembled:
22 (1) Product which, when in operation, contains or acts as part of an
23 electronic circuit and emits, or in the absence of effective shielding or
24 other controls would emit, electronic product radiation; ~~or any~~
25 ~~manufactured or assembled~~ (2) article which is intended for use as a
26 component part, or accessory of a product described in this subsection
27 and which in operation emits, or in the absence of effective shielding
28 or other controls would emit, such radiation.

29 (h) "Electronic product radiation" means any ionizing or
30 nonionizing, electromagnetic or particulate radiation, or any sonic,
31 infrasonic, or ultrasonic wave, which is emitted from an electronic
32 product as the result of the operation of an electronic circuit in such
33 product.

34 (i) "General license" means a license effective pursuant to rules
35 and regulations promulgated by the secretary of health and
36 environment, without the filing of an application to transfer, acquire,
37 own, possess or use quantities of, or devices or equipment utilizing by-
38 product, source, special nuclear materials, or other radioactive
39 material occurring naturally or produced artificially.

40 (j) "High-level radioactive waste" means: (1) Irradiated reactor
41 fuel; (2) liquid wastes resulting from the operation of the first cycle
42 solvent extraction system, or equivalent, and the concentrated wastes
43 from subsequent extraction cycles, or equivalent, in a facility for

1 uranium processing irradiated reactor fuel; and (3) solids into which
2 such liquid wastes have been converted.

3 (k) "Low-level radioactive waste" means radioactive waste not
4 classified as:

5 (1) *NORM waste or TENORM waste at concentrations and from*
6 *sources established in rules and regulations adopted by the secretary on*
7 *or before July 1, 2016;*

8 (2) **high-level radioactive waste;**

9 (3) **transuranic waste;**

10 (4) **spent nuclear fuel; or**

11 (5) **by-product material as defined in subsection (a)(2).**

12 (l) "Person" means any individual, corporation, partnership,
13 firm, association, trust, estate, public or private institution, group,
14 agency, political subdivision of this state, or any other state or political
15 subdivision or agency thereof, and any legal successor, representative,
16 agency, or agency of the foregoing, other than the United States
17 nuclear regulatory commission, or any successor thereto, and other
18 than federal government agencies licensed by the United States
19 nuclear regulatory commission, or any successor thereto.

20 (m) "Radiation" means: (1) Ionizing radiation including gamma
21 rays, X-rays, alpha particles, beta particles, and including neutrons;
22 (2) any electromagnetic radiation other than ionizing radiation which
23 is generated during the operation of an electronic product; or (3) any
24 sonic, ultrasonic, or infrasonic wave which is emitted from an
25 electronic product as a result of the operation of an electronic circuit
26 in such product.

27 (n) "Radioactive material" means any material, solid, liquid or
28 gas, which emits ionizing radiation spontaneously. It includes
29 accelerator produced, by-product, naturally occurring, source and
30 special nuclear materials.

31 (o) "Secretary" means the secretary of the Kansas department of
32 health and environment.

33 (p) "Source material" means: (1) Uranium, thorium; or any other
34 material which the secretary declares by order to be source material
35 after the United States nuclear regulatory commission, or any
36 successor thereto, has determined the material to be such; or (2) ores
37 containing one or more of the foregoing materials, in such
38 concentration as the secretary declares by order to be source material
39 after the United States nuclear regulatory commission, or any
40 successor thereto, has determined the material in such concentration
41 to be source material.

42 (q) "Source material mill tailings" means the tailings or waste
43 produced by the extraction or concentration of uranium or thorium

1 from any ore processed primarily for its source material content,
2 including discrete surface wastes resulting from underground solution
3 extraction processes but not including underground ore bodies
4 depleted by such solution extraction process.

5 (r) "Source material milling" means any processing of ore,
6 including underground solution extraction of unmined ore, primarily
7 for the purpose of extracting or concentrating uranium or thorium
8 therefrom and which results in the production of source material mill
9 tailings.

10 (s) "Sources of radiation" means, collectively, radioactive
11 material and radiation generating equipment.

12 (t) "Special nuclear material" means: (1) Plutonium, uranium
13 233, uranium enriched in the isotope 233 or in the isotope 235, and
14 any other material which the secretary declares by order to be special
15 nuclear material after the United States nuclear regulatory
16 commission, or any successor thereto, has determined the material to
17 be such, but does not include source material; or (2) any material
18 artificially enriched by any of the foregoing, but does not include
19 source material.

20 (u) "Specific license" means a license issued after application, to
21 use, manufacture, produce, transfer, receive, acquire, own or possess
22 quantities of, or devices or equipment utilizing by-product, source,
23 special nuclear materials, or other radioactive material occurring
24 naturally or produced artificially.

25 (v) "Spent nuclear fuel" means irradiated nuclear fuel that has
26 undergone at least one year's decay since being used as a source of
27 energy in a power reactor. Spent nuclear fuel includes the special
28 nuclear material, by-product material, source material and other
29 radioactive material associated with fuel assemblies.

30 (w) "Transuranic waste" means radioactive waste containing
31 alpha emitting transuranic elements, with radioactive half-lives
32 greater than five years, in excess of 10 nanocuries per gram.

33 (x) "*Naturally occurring radioactive material*" or "*NORM*" means
34 any nuclide that is radioactive in the nuclide's natural physical state.
35 "*NORM*" does not include accelerator produced, by-product, source or
36 special nuclear material.

37 (y) "*NORM waste*" means solid waste as defined in K.S.A. 65-3402,
38 and amendments thereto, that is contaminated with *NORM*.

39 (z) "*Technologically enhanced NORM*" or "*TENORM*" means *NORM*
40 whose radionuclide concentrations are increased by or as a result of past
41 or present human practices. "*TENORM*" does not include accelerator
42 produced, by-product, source or special nuclear material.

43 (aa) "*TENORM waste*" means solid waste as defined in K.S.A. 65-

1 3402, and amendments thereto, that is contaminated with TENORM.

2 **Sec. 2. K.S.A. 48-1620 is hereby amended to read as follows: 48-**
3 **1620. The hazardous waste disposal facility approval board secretary shall**
4 **review and grant or deny final approval for each low-level radioactive**
5 **waste disposal facility license in the same manner as provided in**
6 **K.S.A. 65-3433 et seq., and amendments thereto. The board secretary**
7 **shall not approve any such license which would permit the disposal of**
8 **low-level radioactive waste below the natural level of the disposal site**
9 **unless the board secretary, subject to legislative approval, has**
10 **determined that below grade disposal provides greater protection than**
11 **above grade disposal for the environment and public health for the**
12 **period of time for which such low-level radioactive waste may**
13 **continue to pose a hazard to the environment and public health.**

14 ~~Section 1.~~ **Sec. 3.** K.S.A. 2014 Supp. 65-3407c is hereby amended to
15 read as follows: 65-3407c. (a) The secretary may authorize persons to
16 carry out the following activities without a solid waste permit issued
17 pursuant to K.S.A. 65-3407, and amendments thereto:

18 (1) Dispose of solid waste at a site where the waste has been
19 accumulated or illegally dumped. Disposal of some or all such waste must
20 be identified as an integral part of a site cleanup and closure plan
21 submitted to the department by the person responsible for the site. No
22 additional waste may be brought to the site following the department's
23 approval of the site cleanup and closure plan.

24 (2) Perform temporary projects to remediate soils contaminated by
25 organic constituents capable of being reduced in concentration by
26 biodegradation processes or volatilization, or both. Soil to be treated may
27 be generated on-site or off-site. A project operating plan and a site closure
28 plan must be submitted to the department as part of the project approval
29 process.

30 (3) Dispose of demolition waste resulting from demolition of an
31 entire building or structure if such waste is disposed of at, adjacent to or
32 near the site where the building or structure was located. Prior to the
33 department's authorization, written approval for the disposal must be
34 obtained from the landowner and the local governmental or zoning
35 authority having jurisdiction over the disposal site. The disposal area must
36 be covered with a minimum of two feet of soil and seeded, rocked or
37 paved. The final grades for the disposal site must be compatible with and
38 not detract from the appearance of adjacent properties. In addition to the
39 factors listed in subsection (b), the secretary shall consider the following
40 when evaluating requests for off-site disposal of demolition waste:

41 (A) Public safety concerns associated with the building or structure
42 proposed to be demolished.

43 (B) Proposed plans to redevelop the building site which would be

1 impacted by on-site disposal of debris.

2 (C) The disposal capacity of any nearby permitted landfill.

3 (4) Dispose of solid waste generated as a result of a transportation
4 accident if such waste is disposed of on property adjacent to or near the
5 accident site. Prior to the department's authorization, written approval for
6 the disposal must be obtained from the landowner and the local
7 governmental or zoning authority having jurisdiction over the disposal
8 site. A closure plan must be submitted to the department as part of the
9 authorization process.

10 (5) Dispose of whole unprocessed livestock carcasses on property at,
11 adjacent or near where the animals died if: (A) Such animals died as a
12 result of a natural disaster or their presence has created an emergency
13 situation; and (B) proper procedures are followed to minimize threats to
14 human health and the environment. Prior to the department's authorization,
15 written approval for the disposal must be obtained from the landowner and
16 the local governmental or zoning authority having jurisdiction over the
17 disposal site.

18 (6) Dispose of solid waste resulting from natural disasters, such as
19 storms, tornadoes, floods and fires, or other such emergencies, when a
20 request for disposal is made by the local governmental authority having
21 jurisdiction over the area. Authorization shall be granted by the department
22 only when failure to act quickly could jeopardize human health or the
23 environment. Prior to the department's authorization, written approval for
24 the disposal must be obtained from the landowner and the local
25 governmental or zoning authority having jurisdiction over the disposal
26 site. The local governmental authority must agree to provide proper
27 closure and postclosure maintenance of the disposal site as a condition of
28 authorization.

29 (7) Store solid waste resulting from natural disasters, such as storms,
30 tornadoes, floods and fires, or other such emergencies, at temporary waste
31 transfer sites, when a request for storage is made by the local
32 governmental authority having jurisdiction over the area. Authorization
33 shall be granted by the department only when failure to act quickly could
34 jeopardize human health or the environment. Prior to the department's
35 authorization, written approval for the storage must be obtained from the
36 landowner and the local governmental or zoning authority having
37 jurisdiction over the storage site. The local governmental authority must
38 agree to provide proper closure of the storage and transfer site as a
39 condition of authorization.

40 (8) (A) Dispose of solid waste generated by drilling oil and gas wells
41 by land-spreading in accordance with best management practices and
42 maximum loading rates ~~developed~~ *established in rules and regulations*
43 *adopted by the secretary and published on the department website.*

1 (B) For any area that annually receives more than 25 inches of
2 precipitation, as determined by the department, any solid waste disposed
3 of by land-spreading shall be incorporated into the soil. No land-spreading
4 shall occur on any area where the water table is less than 10 feet or on any
5 area where there is documented groundwater contamination as determined
6 by the department.

7 (C) (i) Each separate land-spreading location shall require submission
8 of an application to land-spread drilling waste, complete with all
9 information required on the application form developed by the secretary.
10 The contents of the application form shall include, but are not limited to,
11 the land-spreading location, soil characteristics, waste characteristics,
12 waste volumes, drilling mud additives, land-spreading method and post-
13 land-spreading report. A separate land-spreading application and a post-
14 land-spreading report shall be submitted for each location.

15 (ii) For the purposes of protecting the health, safety and property of
16 the people of the state, and preventing surface and subsurface water
17 pollution and soil pollution detrimental to public health or to the plant,
18 animal and aquatic life of the state, a land-spreading application may not
19 be approved for the same location unless a minimum of three years has
20 passed since the previous land spreading occurred.

21 (iii) A fee of \$250 shall be paid to the state corporation commission
22 with each drilling waste land-spreading application. The fee shall be
23 remitted to the state treasurer in accordance with K.S.A. 75-4215, and
24 amendments thereto, to be credited to the conservation fee fund.

25 (D) The secretary and the state corporation commission shall enter
26 into a memorandum of agreement for the purposes of:

27 (i) Administering the land-spreading application and approval
28 process;

29 (ii) monitoring compliance; and

30 (iii) establishing mechanisms for enforcement and remedial actions.

31 (E) ***The seller of any property where land-spreading has occurred***
32 ***within the previous three years pursuant to this paragraph shall***
33 ***disclose such land-spreading and the date thereof to any potential***
34 ***purchaser of such property prior to closing.***

35 (F) On or before January 1, 2014, the secretary, in coordination with
36 the state corporation commission, shall adopt rules and regulations
37 governing land-spreading of waste generated by drilling oil and gas wells.
38 In developing such rules and regulations, the secretary and the state
39 corporation commission shall seek advice and comments from
40 groundwater management districts and other groups or persons
41 knowledgeable and experienced in areas related to this paragraph.

42 ~~(F) On or before January 30, 2013 and 2014, the state corporation~~
43 ~~commission shall present a report to the senate standing committees on~~

1 natural resources and ways and means and to the house standing
2 committees on agriculture and natural resources and appropriations. Such
3 report shall include, but not be limited to, information concerning the
4 implementation and status of land-spreading procedures and the costs
5 associated with the regulation of land-spreading pursuant to this
6 paragraph.

7 ~~(G)~~—The provisions of this paragraph shall expire on July 1, 2015.

8 *(G) On or before January 30 of each year, the state corporation*
9 *commission, in coordination with the Kansas department of health*
10 *and environment, shall present a report to the senate standing*
11 *committees on natural resources and ways and means and to the house*
12 *standing committees on agriculture and natural resources and*
13 *appropriations. Such report shall include, but not be limited to,*
14 *information concerning the implementation and status of land-*
15 *spreading procedures and the costs associated with the regulation of*
16 *land-spreading pursuant to this paragraph.*

17 ~~*(H) The provisions of this paragraph shall expire on July 1, 2018.*~~

18 (b) The secretary shall consider the following factors when
19 determining eligibility for an exemption to the solid waste permitting
20 requirements under this section:

21 (1) Potential impacts to human health and the environment.

22 (2) Urgency to perform necessary work.

23 (3) Costs and impacts of alternative waste handling methods.

24 (4) Local land use restrictions.

25 (5) Financial resources of responsible parties.

26 (6) Technical feasibility of proposed project.

27 (7) Technical capabilities of persons performing proposed work.

28 (c) The secretary may seek counsel from local government officials
29 prior to exempting activities from solid waste permitting requirements
30 under this section.

31 **Sec. 4. K.S.A. 2014 Supp. 65-171d is hereby amended to read as**
32 **follows: 65-171d. (a) For the purpose of preventing surface and**
33 **subsurface water pollution and soil pollution detrimental to public**
34 **health or to the plant, animal and aquatic life of the state, and to**
35 **protect designated uses of the waters of the state and to require the**
36 **treatment of sewage predicated upon technologically based effluent**
37 **limitations, the secretary of health and environment shall make such**
38 **rules and regulations, including registration of potential sources of**
39 **pollution, as may in the secretary's judgment be necessary to: (1)**
40 **Protect the soil and waters of the state from pollution resulting from**
41 **underground storage of liquid petroleum gas and hydrocarbons, other**
42 **than underground porosity storage of natural gas; (2) control the**
43 **disposal, discharge or escape of sewage as defined in K.S.A. 65-164,**

1 and amendments thereto, by or from municipalities, corporations,
2 companies, institutions, state agencies, federal agencies or individuals
3 and any plants, works or facilities owned or operated, or both, by
4 them; and (3) establish water quality standards for the waters of the
5 state to protect their designated uses, *including establishment of water*
6 *quality standards variances that may apply to specified pollutants,*
7 *permittees, or waterbody segments that reflect the highest attainable*
8 *condition during the specified time period for the variance. In no event*
9 *shall the secretary's authority be interpreted to include authority over*
10 *the beneficial use of water, water quantity allocations, protection*
11 *against water use impairment of a beneficial use, or any other function*
12 *or authority under the jurisdiction of the Kansas water appropriation*
13 *act, K.S.A. 82a-701, and amendments thereto.*

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

20 (c) For the purposes of this act, including K.S.A. 65-161 through
21 65-171h and K.S.A. 65-1,178 through 65-1,198, and amendments
22 thereto, and rules and regulations adopted pursuant thereto:

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

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

36 (3) "Animal unit" means a unit of measurement calculated by
37 adding the following numbers: The number of beef cattle weighing
38 more than 700 pounds multiplied by 1.0; plus the number of cattle
39 weighing less than 700 pounds multiplied by 0.5; plus the number of
40 mature dairy cattle multiplied by 1.4; plus the number of swine
41 weighing more than 55 pounds multiplied by 0.4; plus the number of
42 swine weighing 55 pounds or less multiplied by 0.1; plus the number
43 of sheep or lambs multiplied by 0.1; plus the number of horses

1 multiplied by 2.0; plus the number of turkeys multiplied by 0.018;
2 plus the number of laying hens or broilers, if the facility has
3 continuous overflow watering, multiplied by 0.01; plus the number of
4 laying hens or broilers, if the facility has a liquid manure system,
5 multiplied by 0.033; plus the number of ducks multiplied by 0.2.
6 However, each head of cattle will be counted as one full animal unit
7 for the purpose of determining the need for a federal permit. "Animal
8 unit" also includes the number of swine weighing 55 pounds or less
9 multiplied by 0.1 for the purpose of determining applicable
10 requirements for new construction of a confined feeding facility for
11 which a permit or registration has not been issued before January 1,
12 1998, and for which an application for a permit or registration and
13 plans have not been filed with the secretary of health and environment
14 before January 1, 1998, or for the purpose of determining applicable
15 requirements for expansion of such facility. Except as otherwise
16 provided, animal units for public livestock markets shall be
17 determined by using the average annual animal units sold by the
18 market during the past five calendar years divided by 365. Such
19 animal unit determination may be adjusted by the department if the
20 public livestock market submits documentation that demonstrates
21 that such adjustment is appropriate based on the amount of time in
22 24-hour increments or partials thereof that animals are at the market.

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

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

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

36 (d) In adopting rules and regulations, the secretary of health and
37 environment, taking into account the varying conditions that are
38 probable for each source of sewage and its possible place of disposal,
39 discharge or escape, may provide for varying the control measures
40 required in each case to those the secretary finds to be necessary to
41 prevent pollution. If a freshwater reservoir or farm pond is privately
42 owned and where complete ownership of land bordering the reservoir
43 or pond is under common private ownership, such freshwater

1 reservoir or farm pond shall be exempt from water quality standards
2 except as it relates to water discharge or seepage from the reservoir or
3 pond to waters of the state, either surface or groundwater, or as it
4 relates to the public health of persons using the reservoir or pond or
5 waters therefrom.

6 (e) (1) Whenever the secretary of health and environment or the
7 secretary's duly authorized agents find that storage or disposal of salt
8 water not regulated by the state corporation commission or refuse in
9 any surface pond not regulated by the state corporation commission is
10 causing or is likely to cause pollution of soil or waters of the state, the
11 secretary or the secretary's duly authorized agents shall issue an order
12 prohibiting such storage or disposal of salt water or refuse. Any
13 person aggrieved by such order may within 15 days of service of the
14 order request in writing a hearing on the order.

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

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

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

24 (g) (1) Prior to any new construction of a confined feeding facility
25 with an animal unit capacity of 300 or more, such facility shall register
26 with the secretary of health and environment. Such registration shall
27 be accompanied by a \$25 fee. The secretary shall acknowledge the
28 receipt of the registration in a form as designated by the secretary and
29 publish a notice of such receipt.

30 (2) Such registration shall indicate that the proposed construction
31 will occur within the prescribed tract of land and that the separation
32 distances from the tract boundaries or proposed facility footprint
33 comply with the requirements described in subsections (j), (l) and (m)
34 or exceptions described in (k).

35 (3) Within 30 days of receipt of such registration, the department
36 of health and environment shall identify any significant water
37 pollution potential or separation distance violations pursuant to
38 subsection (j).

39 (A) (i) If the proposed facility has an animal unit capacity of
40 1,000 or more, or if there is identified a significant water pollution
41 potential for a facility of less than 1,000 but more than 300, such
42 facility shall be required to obtain a permit from the secretary.

43 (ii) If there is no identified water pollution potential posed by a

1 facility with an animal unit capacity of 300 or more but less than
2 1,000, the secretary shall certify that no permit is required.

3 (B) If the secretary certifies that no permit is necessary pursuant
4 to subsection (g)(3)(A)(ii), the secretary shall take the following action
5 in regard to separation distances of such facility:

6 (i) If the separation distances comply with the requirements for
7 separation distances, the secretary shall certify the registration; or

8 (ii) if the separation distances do not comply with the
9 requirements for separation distances, the secretary:

10 (a) May reduce the separation distance requirements pursuant to
11 subsection (k) and certify the registration based on such reduction of
12 separation distances; or

13 (b) shall report the conditions necessary to receive certification to
14 the registrant.

15 (h) (1) Facilities with a capacity of less than 300 animal units may
16 register with the secretary of health and environment. Such
17 registration shall be accompanied by a \$25 fee.

18 (2) Within 30 days of receipt of such registration, the department
19 of health and environment shall identify any significant water
20 pollution potential. If there is identified a significant water pollution
21 potential, such facility shall be required to obtain a permit from the
22 secretary. If there is no water pollution potential posed by such
23 facility, the secretary may certify that no permit is required.

24 (i) (1) If a facility requires a permit pursuant to subsection (g)(3)
25 or (h)(2), the registrant shall submit an application for such permit
26 not later than 18 months after the date of receipt of registration or the
27 registration shall expire.

28 (2) Upon petition by the registrant, the secretary may extend the
29 application period, by no more than an additional 18 months, if the
30 secretary believes such an extension is reasonable under the
31 circumstances.

32 (3) Within 30 days of receipt of an application, the secretary shall
33 notify the registrant of whether the application is complete or
34 incomplete. If the application is incomplete, such notice shall state the
35 reasons why such application is incomplete. Once such registrant
36 submits an application properly addressing each reason listed as a
37 basis for the determination that the application is incomplete, the
38 secretary shall issue an acknowledgment of receipt of the completed
39 application within 30 days of properly addressing such reasons.

40 (4) Upon expiration of the application period or any extension
41 thereof, the secretary shall not accept any further registrations
42 pertaining to the same location for a period of not less than 180 days.

43 (j) (1) Any new construction or new expansion of a confined

1 feeding facility, other than a confined feeding facility for swine, shall
2 meet or exceed the following requirements in separation distances
3 from any habitable structure in existence when the registration is
4 received:

5 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
6 999; and

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

9 (2) A confined feeding facility for swine shall meet or exceed the
10 following requirements in separation distances from any habitable
11 structure or city, county, state or federal park in existence when the
12 registration is received:

13 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
14 999;

15 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to
16 3,724;

17 (C) 4,000 feet for expansion of existing facilities to an animal unit
18 capacity of 3,725 or more if such expansion is within the perimeter
19 from which separation distances are determined pursuant to
20 subsection (m) for the existing facility; and

21 (D) 5,000 feet for: (i) Construction of new facilities with an
22 animal unit capacity of 3,725 or more; or (ii) expansion of existing
23 facilities to an animal unit capacity of 3,725 or more if such expansion
24 extends outside the perimeter from which separation distances are
25 determined pursuant to subsection (m) for the existing facility.

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

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

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

33 (k) (1) The separation distance requirements of subsections (j)(1)
34 and (2) shall not apply if the registrant obtains a written agreement
35 from all owners of habitable structures which are within the
36 separation distance stating such owners are aware of the construction
37 or expansion and have no objections to such construction or
38 expansion. The written agreement shall be filed in the register of deeds
39 office of the county in which the habitable structure is located.

40 (2) (A) The secretary may reduce the separation distance
41 requirements of subsection (j)(1) if: (i) No substantial objection from
42 owners of habitable structures within the separation distance is
43 received in response to public notice; or (ii) the board of county

1 commissioners of the county where the confined feeding facility is
2 located submits a written request seeking a reduction of separation
3 distances.

4 (B) The secretary may reduce the separation distance
5 requirements of subsection (j)(2)(A) or (B) if: (i) No substantial
6 objection from owners of habitable structures within the separation
7 distance is received in response to notice given in accordance with
8 subsection (n); (ii) the board of county commissioners of the county
9 where the confined feeding facility is located submits a written request
10 seeking a reduction of separation distances; or (iii) the secretary
11 determines that technology exists that meets or exceeds the effect of
12 the required separation distance and the facility will be using such
13 technology.

14 (C) The secretary may reduce the separation distance
15 requirements of subsection (j)(2)(C) or (D) if: (i) No substantial
16 objection from owners of habitable structures within the separation
17 distance is received in response to notice given in accordance with
18 subsection (l); or (ii) the secretary determines that technology exists
19 that meets or exceeds the effect of the required separation distance
20 and the facility will be using such technology.

21 (l) (1) The separation distances required pursuant to subsection
22 (j)(1) shall not apply to:

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

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

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

38 (2) The separation distances required pursuant to subsections (j)
39 (2)(A) and (B) shall not apply to:

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

42 (B) confined feeding facilities for swine which existed on July 1,
43 1994, and registered with the secretary before July 1, 1996; or

1 (C) expansion of a confined feeding facility which existed on July
2 1, 1994, if: (i) In the case of a facility with an animal unit capacity of
3 1,000 or more prior to July 1, 1994, the expansion is located at a
4 distance not less than the distance between the facility and the nearest
5 habitable structure prior to the expansion; or (ii) in the case of a
6 facility with an animal unit capacity of less than 1,000 prior to July 1,
7 1994, the expansion is located at a distance not less than the distance
8 between the facility and the nearest habitable structure prior to the
9 expansion and the animal unit capacity of the facility after expansion
10 does not exceed 2,000.

11 (3) The separation distances required pursuant to subsections (j)
12 (2)(C) and (D) and (h)(3) shall not apply to the following, as
13 determined in accordance with subsections ~~(a), (e) and (f)~~ of K.S.A. 65-
14 1,178(a), (e) and (f), and amendments thereto:

15 (A) Expansion of an existing confined feeding facility for swine if
16 an application for such expansion has been received by the
17 department before March 1, 1998; and

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

21 (m) The separation distances required by this section for confined
22 feeding facilities for swine shall be determined from the exterior
23 perimeter of any buildings utilized for housing swine, any lots
24 containing swine, any swine waste retention lagoons or ponds or other
25 manure or wastewater storage structures and any additional areas
26 designated by the registrant for future expansion. Such separation
27 distances shall not apply to offices, dwellings and feed production
28 facilities of a confined feeding facility for swine.

29 (n) The registrant shall give the notice required by subsections (k)
30 (2)(B) and (C) by certified mail, return receipt requested, to all owners
31 of habitable structures within the separation distance. The registrant
32 shall submit to the department evidence, satisfactory to the
33 department, that such notice has been given.

34 (o) All plans and specifications submitted to the department for
35 new construction or new expansion of confined feeding facilities may
36 be, but are not required to be, prepared by a professional engineer or
37 a consultant, as approved by the department. Before approval by the
38 department, any consultant preparing such plans and specifications
39 shall submit to the department evidence, satisfactory to the
40 department, of adequate general commercial liability insurance
41 coverage.

42 Sec. ~~2~~ 5. K.S.A. 48-1603 and 48-1620 and K.S.A. 2014 Supp. 65-
43 171d and 65-3407c ~~is~~ are hereby repealed.

- 1 Sec. ~~3~~ **6**. This act shall take effect and be in force from and after its
- 2 publication in the statute book.