

Regulations Applicable to Swine and Related Waste Control

K.A.R.	Topic
<u>28-18a-1.</u>	Definitions
<u>28-18a-2.</u>	Registration and application requirements
<u>28-18a-3.</u>	Separation distance requirements
<u>28-18a-4.</u>	Filing of applications and payment of fees
<u>28-18a-5.</u>	Transfer of a permit or certification
<u>28-18a-6.</u>	Development of a draft permit
<u>28-18a-7.</u>	Public notice of permit actions and public hearings
<u>28-18a-8.</u>	Permit; terms and conditions
<u>28-18a-9.</u>	Certification; terms and conditions
<u>28-18a-10.</u>	Permits; monitoring and reporting
<u>28-18a-11.</u>	Confined feeding facilities; federal requirements
<u>28-18a-12.</u>	Design and construction of swine waste management and swine pollution control systems
<u>28-18a-13.</u>	Manure management plan for swine
<u>28-18a-14.</u>	Nutrient utilization plan for swine
<u>28-18a-15.</u>	Odor control plan for swine
<u>28-18a-16.</u>	Emergency response plan for swine
<u>28-18a-17.</u>	Dead swine handling plan
<u>28-18a-18.</u>	Groundwater monitoring for swine facilities
<u>28-18a-19.</u>	Operation of swine waste management and swine pollution control systems
<u>28-18a-20.</u>	Denial, suspension, revocation, or termination of a permit or certification for swine facilities
<u>28-18a-21.</u>	Inspections
<u>28-18a-22.</u>	Swine facility closure requirements
<u>28-18a-23.</u>	Financial assurance for swine facility closure
<u>28-18a-24.</u>	Financial assurance for swine waste-retention lagoon or pond closure
<u>28-18a-25.</u>	Variance of specific requirements
<u>28-18a-26.</u>	Requirements for swine facility operator certification
<u>28-18a-27.</u>	Eligibility for swine facility operator certification
<u>28-18a-28.</u>	Swine facility operator certification examinations
<u>28-18a-29.</u>	Noncertified operators responsible for the operation and management of swine facilities, swine waste management systems, or pollution control systems
<u>28-18a-30.</u>	Issuance of certificate of competency
<u>28-18a-31.</u>	Swine operator certification fees
<u>28-18a-32.</u>	Swine waste-retention lagoons in sensitive groundwater areas (Revoked)
<u>28-18a-33.</u>	Groundwater protection requirements for swine waste-retention lagoons or ponds, swine waste management systems, and waste treatment facilities

Kansas Administrative Regulations
Agency 28
Kansas Department of Health and Environment
Article 18a.—Swine and Related Waste Control

28-18a-1. Definitions. The following terms, and abbreviations shall have the following meanings, unless otherwise defined in an individual regulation or unless a different meaning is clear from the context in which it is used. Terms and abbreviations not provided in this article shall have the meanings specified in K.S.A. 65-101 et seq. and amendments thereto; articles 5, 16, 18, and 30; or the clean water act (CWA). If the same word is defined both in Kansas statutes or the regulations of this article and in any federal regulation adopted by reference in these regulations or in state regulations referenced in this article and the definitions are not identical, the definition prescribed in Kansas statutes or the regulations of this article shall control.

(a) "Agronomic application rates" has the meaning specified in K.S.A. 2-3302, and amendments thereto, and is regulated by the secretary of the Kansas department of agriculture.

(b) "Animal unit" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(c) "Animal unit capacity" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(d) "Best available technology for swine facilities" has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(e) "Best management practices for swine facilities" has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(f) "Certification" means a document issued by the secretary in lieu of a water pollution control permit, indicating that the facility meets applicable animal waste management statutes and regulations and does not represent a significant water pollution potential.

(g) "Change in operation" and "modification" mean any of the following:

(1) Expansion or enlargement of a facility beyond the scope or boundaries established by registration, permit, certification, or approved plans and specifications;

(2) any increase in the animal unit capacity beyond that authorized by a permit or certification; or

(3) a change in construction or operation of a swine facility that affects the collecting, storage, handling, treatment, utilization, or disposal of swine or other process wastes.

(h) "Clean water act" and "CWA" mean the federal water pollution control act, 33 U.S.C. 1251 et seq., as in effect on November 27, 2002.

(i) "Confined feeding facility" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(j) "Dead swine handling plan" means a written document that identifies the procedures by which the operator of a swine facility shall handle dead swine, to minimize the potential for the generation of nuisance, environmental, or public health threats.

(k) "Department" and "KDHE" mean the Kansas department of health and environment.

(l) "Director" means the director of the division of environment of the Kansas department of health and environment.

(m) "Division" means the division of environment, Kansas department of health and environment.

(n) "Emergency response plan for swine" means a written document that identifies the following procedures to be implemented by the operator of a swine facility if an emergency occurs:

(1) Actions to contain or manage an unauthorized discharge, spill, or release of swine or other process wastes;

(2) notification of the department; and

(3) any actions required to mitigate the adverse effects of an emergency.

(o) "Entity," for the purposes of these regulations, means a person, individual, association, company, corporation, institution, group of individuals, joint venture, partnership, or federal, state, county, or municipal

agency or department.

(p) "Environmental protection agency" and "EPA" mean the United States environmental protection agency.

(q) "Equus Beds," for the purposes of these regulations, means an aquifer underlying the sections of land listed in the following table:

County	Range	Township	Section
Harvey	01W	22S	06, 07, 18, 19, 30, 31
Harvey	01W	23S	06, 07, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	01W	24S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	02W	22S	All sections
Harvey	02W	23S	All sections
Harvey	02W	24S	All sections
Harvey	03W	22S	All sections
Harvey	03W	23S	All sections
Harvey	03W	24S	All sections
McPherson	01W	19S	31, 32, 33, 34, 35
McPherson	01W	20S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33
McPherson	01W	21S	05, 06, 07, 18, 19, 30, 31
McPherson	02W	21S	12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	03W	18S	28, 29, 30, 31, 32, 33
McPherson	03W	19S	04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
McPherson	03W	20S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35
McPherson	03W	21S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	04W	18S	20, 21, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36
McPherson	04W	19S	01, 02, 03, 04, 09, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
McPherson	04W	20S	01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36
McPherson	04W	21S	01, 02, 03, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
Reno	04W	22S	All sections
Reno	04W	23S	All sections
Reno	04W	24S	All sections
Reno	04W	25S	All sections
Reno	04W	26S	All sections
Reno	05W	22S	All sections
Reno	05W	23S	All sections
Reno	05W	24S	All sections
Reno	05W	25S	All sections
Reno	05W	26S	All sections

Reno	06W	22S	All sections
Reno	06W	23S	All sections
Reno	06W	24S	All sections
Reno	06W	25S	All sections
Reno	06W	26S	All sections
Reno	07W	22S	All sections
Reno	07W	23S	All sections
Reno	07W	24S	All sections
Reno	07W	25S	All sections
Reno	07W	26S	All sections
Sedgwick	01E	26S	06, 07, 08, 17, 18, 19, 20
Sedgwick	01W	25S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
Sedgwick	01W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32
Sedgwick	01W	27S	05, 06
Sedgwick	02W	25S	All sections
Sedgwick	02W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36
Sedgwick	02W	27S	01
Sedgwick	03W	25S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12,
Sedgwick	03W	26S	01, 02, 03, 04, 11, 12

(r) "Existing swine facility" has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(s) "Federal permit," "national pollutant discharge elimination system permit," and "NPDES permit" mean an authorization, license, or equivalent control document issued by the EPA or an approved state to implement the requirements of 40 C.F.R. Parts 122, 123, 124, and 412.

(t) "Food animals" means swine produced for consumption.

(u) "Fur animals" means swine raised for the skin, pelt, or hair.

(v) "Groundwater," as used in this article, means water located under the surface of the land that is or can be the source of supply for wells, springs, seeps, or streams, or that is held in aquifers. For the purposes of this article, groundwater shall be considered capable of being a source of supply for wells if at least one of the following conditions is met:

(1) The groundwater can be produced at a rate of 10 gallons or more per hour from a borehole with a diameter of nine or fewer inches. In determining the groundwater production rate for an excavation, borehole, or existing water or monitoring well, the quantity of produced water shall be adjusted for comparison purposes to the surface area of a borehole with a diameter of nine inches.

(2) The groundwater is currently being used within ½ mile of the proposed lagoon, regardless of the rate at which water can be produced.

(3) There is evidence of past groundwater use within ½ mile of the proposed lagoon.

(w) "Habitable structure" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(x) "Impermeable synthetic membrane liner" means a commercially manufactured membrane liner composed of synthetic materials commonly identified as being plastic, plastic polymer, or other synthetic materials that, when installed, provide for the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of 1/64 inch per day; or

(2) the liner manufacturer's criteria for the maximum monitored or calculated seepage rate for the installed

membrane liner, expressed in units of volume per unit area per unit of time (gallons per square foot per day).

(y) "Land application" means the distribution of swine or other process wastes onto, or incorporation into, the soil mantle for the purpose of disposal or utilization by crops or vegetation.

(z) "Liner" means any designed barrier in the form of in situ, layer, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between swine or other process wastes that are controlled or retained by swine waste management systems and waters of the state.

(aa) "Manure management plan for swine" means a written document that identifies the procedures by which the operator of a swine facility shall operate, manage, and maintain a swine waste management system. This plan shall describe the methods for the handling and either disposal or utilization of all swine or other process wastes generated by the swine facility.

(bb) "Maximum soil liner seepage rate" and "specific discharge" mean the flow rate of water through the liner of a swine waste-retention lagoon or pond and shall be expressed as velocity (distance/time). The maximum seepage rate shall be calculated as $v = k(h/d)$, in which "k" is the hydraulic conductivity (coefficient of permeability) and "(h/d)" is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance "h" measured from the liquid surface to the liner bottom divided by the thickness of the soil liner "d." When calculating the maximum seepage rate, the maximum design depth, not considering design freeboard, shall be used.

(cc) "Minimum standards of design, construction, and maintenance" means the following:

- (1) Effluent standards and limitations;
- (2) other performance standards for treatment or utilization; and
- (3) other standards of design, construction, and maintenance for confined feeding facilities or swine pollution control systems published by KDHE.

(dd) "Monitoring" means all procedures using any of the following methods:

- (1) Either systematic inspection or collection and analysis of data on the operational parameters of a swine facility or swine pollution control system; or
- (2) the systematic collection and analysis of data on the quality of the swine or other process wastes, groundwater, surface water, or soils on or in the vicinity of the swine facility or swine pollution control system.

(ee) "National pollutant discharge elimination system" and "NPDES" mean the national system for the issuance of permits under 33 U.S.C. section 1342, and shall include any state or interstate program that has been approved by the EPA administrator, in whole or in part, pursuant to 33 U.S.C. section 1342.

(ff) "Nutrient management plan" means a written document that identifies the practices and procedures that the operator of a swine facility that is required to obtain a federal permit plans to use to operate and maintain the swine waste management and pollution control system and to manage the handling, storage, utilization, and disposal of wastes generated by the swine facility.

(gg) "Nutrient utilization plan for swine" means a written document, on a form prescribed by the secretary of the Kansas department of agriculture, addressing site-specific conditions for the land application of manure, wastewater, and other nutrient sources from swine facilities, at agronomic application rates.

(hh) "Odor control plan for swine" means a written document for swine facilities that describes site-specific and facility-specific design considerations, operational activities and procedures, maintenance activities and procedures, and management practices to be employed to minimize the potential for or limit odors from a swine facility, swine waste management, or swine pollution control system.

(ii) "Oil or gas well" shall have the meaning assigned to the term "well" in K.S.A. 55-150, and amendments thereto.

(jj) "Pleasure animals," as used in this article, means swine that are not produced for consumption or their skin, pelts, or hair.

(kk) "Point source" has the meaning specified in K.A.R. 28-16-28b.

(ll) "Pollution" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(mm) "Precipitation runoff" means the rainwater or the meltwater that is derived from snow, hail, sleet, or other

forms of atmospheric precipitation and that flows by gravity over the surface of the land.

(nn) (1) "Process wastes" means any of the following:

- (A) Excrement from swine, wastewater, or swine carcasses;
- (B) precipitation that comes into contact with any manure, litter, bedding, or other material used in or resulting from the production of swine;
- (C) spillage or overflow from watering systems;
- (D) wastes from washing, cleaning, or flushing pens, barns, manure pits, equipment, trucks, trailers, or other associated swine facilities;
- (E) wastes from washing swine or spraying swine for cooling;
- (F) wastes from dust control;
- (G) boiler blowdown and water softener regenerate wastes;
- (H) precipitation runoff from confinement, loading, and unloading areas;
- (I) spillage of feed, swine wastes, or any other process wastes described in this regulation;
- (J) discharges from land application fields that occur during application;
- (K) precipitation runoff from land application fields, if liquid or concentrated liquid wastes are applied during frozen, snow-covered, or saturated soil conditions without approval by the department;
- (L) raw, intermediate, or finished materials associated with wastes or contaminated storm water runoff from swine waste or dead swine composting operations; or
- (M) flows or runoff from waste storage areas.

(2) Process wastes shall not include swine wastes spilled by trucks transporting livestock on city, township, county, state, or federal streets, roads, or highways.

(oo) "Public livestock market" has the meaning specified in K.S.A. 47-1001, and amendments thereto. For the purposes of these regulations, this term shall include public livestock markets where federal veterinary inspections are regularly conducted.

(pp) "Registration" means any required fee and the properly completed and executed documents designated by the division and any additional required documents or information necessary for determining the need for a water pollution control permit.

(qq) "Salt solution mining well" has the meaning specified in K.S.A. 55-1,120, and amendments thereto.

(rr) "Secretary" means the secretary of the Kansas department of health and environment.

(ss)(1) "Sensitive groundwater areas," for the purpose of these regulations, means aquifers generally comprised of alluvial aquifers, the area within the boundaries of the Equus Beds groundwater management district no. 2 (GMD #2), and the dune sand area located south of the great bend of the Arkansas River. Each sensitive groundwater area shall be any section of land listed in "Kansas sensitive groundwater areas for wastewater lagoons," prepared by KDHE and dated January 1, 2005, which is adopted by reference in K.A.R. 28-16-160.

(2) Any operator proposing a new swine waste-retention lagoon or pond or expansion of an existing swine waste-retention lagoon or pond may request that the director make a site-specific sensitive groundwater area determination. The request shall be made in writing to the director. The request shall contain supporting data and information and an explanation of why the area in question should not be considered to be a sensitive groundwater area, for the purpose of these regulations.

(tt) "Sewage" has the meaning specified in K.S.A. 65-164, and amendments thereto.

(uu) "Significant water pollution potential" means any of the following, as determined by the secretary:

(1) A swine feeding operation that utilizes structures designed and constructed to collect, control the flow of, and direct swine or other process wastes, tanks, manure pits, or other structures designed and constructed to collect or store swine or other process wastes, waste-retention lagoons or ponds, waste treatment facility or facilities, or a swine waste management system;

(2) lots, pens, or concentrated feeding areas with creeks, streams, intermittent waterways, or any other conveying channel or device that has the potential to carry pollutants to waters of the state running through or

proximate to the lots, pens, or concentrated feeding areas;

(3) any operation that cannot retain or control swine or other process wastes on the operator's facility or property, or adjacent property without the owner's permission; or

(4) a swine feeding operation determined to practice improper collection, handling, or disposal of swine or other process wastes that have the potential to degrade or impair the quality of any waters of the state.

(vv) "Surface waters," for water quality purposes, has the meaning specified in K.A.R. 28-16-28b.

(ww) "Suspend" and "suspension," as used in this article, mean, respectively, to abrogate temporarily and the temporary abrogation of a water pollution control permit or certification issued to a swine facility.

(xx) "Swine facility" has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(yy) "Swine facility closure plan" means a written document that identifies the practices and procedures that the operator of a swine facility is required to follow when closing the facility to protect public health and safety and the environment, and to prevent the escape of swine or other process wastes from the facility.

(zz) "Swine operator" means an individual, association, company, corporation, municipality, group of individuals, joint venture, partnership, a state or federal agency or department, or any business owning, leasing, or having charge or control of one or more swine facilities.

(aaa) "Swine pollution control system" means any land, structures, or practices utilized for the collection, containment, storage, distribution, land application, or disposal of swine or other process wastes generated by swine facility operations. This term shall include any of the following:

- (1) Site grading to divert extraneous, uncontaminated precipitation runoff around the swine facility;
- (2) structures designed and constructed to collect, control the flow of, and direct swine or other process wastes;
- (3) vegetation cover utilized for controlling erosion or for filtering swine or other process wastes;
- (4) tanks, manure pits, or other structures designed and constructed to collect or store swine or other process wastes;
- (5) waste-retention lagoons or ponds;
- (6) land used for the application, utilization, or disposal of swine or other process wastes; and
- (7) waste treatment facilities.

(bbb) "Swine waste management system" is as defined in K.S.A. 65-1,178, and amendments thereto.

(ccc) "Swine waste-retention lagoon or pond" has the meaning specified in K.S.A. 65-1,178, and amendments thereto.

(ddd) "Variance" means the secretary's written approval or permit authorizing a proposed action that knowingly results in a lack of conformity with one or more provisions of these regulations or the minimum standards of design, construction, and maintenance. Each variance authorized by the secretary shall be deemed to protect public health and the environment and to comply with the intent of these regulations and with federal NPDES permit requirements.

(eee) "Waste management plan" means a written document that identifies the practices and procedures that the operator of a swine facility not required to obtain a federal permit plans to use to operate and maintain the swine waste management and pollution control system and to manage the handling, storage, utilization, and disposal of wastes generated by the swine facility.

(fff) "Waste-retention lagoon or pond" means excavated or diked structures, or natural depressions provided for or used for the purpose of containing or detaining swine or other process wastes. Discharges from waste-retention lagoons or ponds shall not be allowed, except as authorized by a water pollution control permit.

(ggg) "Waste treatment facilities" means structures or devices that collect, store, stabilize, treat, or otherwise control pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution will not occur, and public health and the waters of the state will be protected.

(hhh) "Water pollution control permit" and "permit" mean an authorization, license, or equivalent control document issued by the secretary. This term shall not include any document that has not yet been the subject of final action by the secretary.

(iii) "Water quality standards" means the Kansas surface water quality standards as specified in K.A.R. 28-16-28b through K.A.R. 28-16-28g.

(jjj) "Water well" has the meaning specified in K.S.A. 82a-1203, and amendments thereto.

(kkk) "Waters of the state" has the meaning specified in K.S.A. 65-161, and amendments thereto.

(lll) "Whole pond seepage test" means a measurement of the evaporation from, and the change in water level of the waste-retention lagoon, pond, or structure, or swine waste-retention lagoon, pond, or structure using either of the following:

(1) Any method that meets the requirements specified in "standards for measuring seepage from anaerobic lagoons and manure storages," which is adopted by reference in K.A.R. 28-18-1; or

(2) any equivalent method approved by the secretary.

(mmm) "Wildlife refuge" has the meaning specified in K.S.A. 65-171d, and amendments thereto. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 65-171a, K.S.A. 2005 Supp. 65-171d, K.S.A. 65-171h, 65-1,178, 65-1,179, 65-1,181, 65-1,182, 65-1,183, 65-1,184, 65-1,187, 65-1,189, 65-1,190 and 65-1,188; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-2. Registration and application requirements. (a) Each entity proposing the construction, modification, or expansion of an unregistered swine facility, public livestock market, collection center, or transfer station, and each swine operator of an existing unregistered swine facility, public livestock market, collection center, or transfer station shall submit a registration form for the facility to the secretary, if any of the following conditions is met:

(1) The proposed or existing unregistered facility has an animal unit capacity of 300 or more animal units.

(2) The proposed or existing unregistered facility presents a significant water pollution potential as defined in K.A.R. 28-18a-1.

(3) The entity or swine operator is required by statute to obtain a permit for the facility.

(4) The entity or swine operator elects to register the facility in order to obtain a permit or certification, even though there is no requirement to obtain a permit or certification.

(b) Each registration form that any entity or swine operator submits to the secretary shall be accompanied by the required \$25 fee.

(c) Each entity proposing the construction, modification, or expansion of a swine facility, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes and each swine operator of an unpermitted swine facility, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes shall submit a permit application for the facility to the secretary if any of the following conditions is met:

(1) The proposed or existing unpermitted facility presents a significant water pollution potential as defined in K.A.R. 28-18a-1.

(2) The entity or swine operator is required by statute to obtain a permit.

(3) The entity or swine operator proposing the construction, modification, or expansion of the facility or the swine operator of a facility that is not required to obtain a permit elects to obtain a permit.

(d) Each application that any entity or swine operator submits to the secretary shall be accompanied by the permit fee required pursuant to K.A.R. 28-16-56d.

(e) Each entity or swine operator proposing the construction, modification, or expansion of a swine facility and each swine operator of an unpermitted swine facility that is required by statute or regulation to obtain a federal permit shall apply to the secretary for a federal permit.

(f)(1) Each swine operator or entity proposing either the construction, modification, or expansion of a swine facility, swine waste management system, or swine pollution control system that is required to submit a registration form or apply for a permit shall not initiate construction until the swine operator or entity has obtained either of the following:

(A) The secretary's written approval of the application, construction plans, specifications, and waste

management plan, for each facility or system that the entity or swine operator proposes to be constructed, modified, or expanded; or

(B) a certification, issued by the secretary, for each facility or system that the entity or swine operator proposes to be constructed, modified, or expanded.

(2) Each swine operator or entity that is proposing the construction, modification, or expansion of a swine facility, swine waste management system, or swine pollution control system required to have a permit and that undertakes the construction, modification, or expansion before the issuance of a new or modified permit by the secretary shall be deemed to be undertaking the construction solely at the risk of the swine operator or entity.

(3) Before each swine operator or entity proposing the construction, modification, or expansion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes that is required to have a permit or certification begins the operation of the new, modified, or expanded portion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes, the swine operator or entity shall obtain a new or modified permit or certification issued by the secretary.

(4) Before each swine operator or entity proposing the construction, modification, or expansion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes that is required to have a permit or certification begins the stocking of a new, modified, or expanded portion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes at levels above the capacity authorized in the current permit or certification, the swine operator or entity shall obtain a new or modified permit or certification issued by the secretary. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2003 Supp. 65-166a, K.S.A. 2003 Supp. 65-171d, and K.S.A. 65-1,179; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-3. Separation distance requirements. (a) Separation distances between confined feeding facilities and any habitable structure, wildlife refuge, or city, county, state or federal park shall conform to the provisions and requirements of K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, secs. 1,15, and 18 and amendments thereto [K.S.A. 1998 Supp. 65-1, 192 and 65-1,194 and amendments thereto]. (b) The swine operator shall provide to the department any information required to ascertain the distance to the nearest habitable structure or determine which habitable structure is the nearest to the proposed or existing confined feeding facility. (c) The construction of a new swine facility or expansion of an existing swine facility shall comply with the separation distance requirements related to the 100-year floodplain, surface water bodies, private drinking water wells in active use, and publicly owned drinking water wells in active use, pursuant to L. 1998, ch. 143, secs. 4 and 18, and amendments thereto [K.S.A. 1998 Supp. 65-1,180 and 65- 1,194, and amendments thereto]. The reference to any freshwater reservoir or pond pursuant to L. 1998, ch. 143, sec. 2, and amendments thereto [K.S.A. 1998 Supp. 65-178, and amendments thereto], shall refer only to a freshwater reservoir or pond for which a swine operator has charge or control. (d) Each swine facility required to have a nutrient utilization plan shall comply with the separation distance requirements related to the sites utilized for the land application of swine or other process wastes, and the presence of any habitable structure, wildlife refuge, or city, county, state or federal park, pursuant to L. 1998, ch. 143, secs. 6, 15 and 18, and amendments thereto [K.S.A. 1998 Supp. 65-1,182, 65-1,192, and 65-1,194, and amendments thereto]. (e) When the animal unit capacity of a confined feeding facility is comprised of swine, in addition to other animals or fowl, the swine-specific separation distance requirements related to any habitable structure, wildlife refuge, or city, county, state or federal park shall be applied only to the animal unit capacity of the swine facility operation. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S. A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch 143, secs. 4, 6, 15, and 18 [K.S.A. 1998 Supp. 65-1,180, 65-1, 182, 65-1,192, and 65-1,194]; effective Jan. 15, 1999.)

28-18a-4. Filing of applications and payment of fees. (a) Each applicant for a swine facility permit shall submit the application required by K.A.R. 28-16-59 or K.S.A. 65-1,178 and amendments thereto, as applicable.

(b) In order for the department to provide adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a swine facility, each applicant for a swine facility permit shall provide to the secretary the name and mailing address of each of the following:

- (1) The United States post office or offices serving the immediate area of the swine facility; and
- (2) each owner of a habitable structure or any property located within one mile of the swine facility perimeter, pursuant to K.S.A. 65-171d and amendments thereto.

(c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a swine facility, each applicant for a swine facility permit shall submit the following information:

- (1) A map identifying the location and layout of the swine facility or the swine facility perimeter;
- (2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the swine facility or the swine facility perimeter;
- (3) a map identifying the location of any wildlife refuge within 16,000 feet of the swine facility or the swine facility perimeter;
- (4) a map identifying all water wells on the swine facility property;
- (5) a map identifying any streams and bodies of surface water within one mile of the swine facility or the swine facility perimeter;
- (6) for swine facilities that utilize a swine waste-retention lagoon or pond, any information that the applicant possesses indicating the presence of any unplugged oil, gas, or salt solution mining wells located at the proposed or existing swine facility;
- (7) a waste management plan, for any swine facility whose operator is not required to obtain a federal permit;
- (8) for swine facilities with an animal unit capacity of 1,000 animal units or more if the swine at the swine facility are not owned by the operator of the swine facility, a copy of the executed contract between the swine operator and the owner of the swine, specifying responsibility for management of the manure and wastewater generated at the swine facility; and
- (9) for swine facilities with an animal unit capacity of 1,000 animal units or more, the following information:
 - (A) A manure management plan;
 - (B) a nutrient utilization plan that meets the requirements of the Kansas department of agriculture, if the swine facility applies manure or wastewater to land;
 - (C) an emergency response plan;
 - (D) an odor control plan;
 - (E) a dead swine handling plan;
 - (F) a nutrient management plan;
 - (G) a groundwater monitoring plan, if required;
 - (H) a closure plan, if required; and
- (I) for swine facilities with an animal unit capacity of 3,725 animal units or more, financial assurance for closure of the swine facility and closure of the swine waste-retention lagoons or ponds.

(d)(1) If swine facilities adjoin and have a common swine waste management system or if the swine facilities do not adjoin but have a common swine waste management system, the swine facilities shall be classified as one swine facility.

(2) If swine facilities do not adjoin and do not have a common swine waste management system or if swine facilities adjoin but do not have a common swine waste management system the swine facilities shall be classified as separate swine facilities.

(e) Each applicant for a swine facility permit shall submit the application fee required by K.A.R. 28-16-56d.

(f) Each applicant shall sign the permit application as required by 40 C.F.R. 122.22, as adopted by reference in K.A.R. 28-18-4. (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, 65-166a, 65-171d, 65-171h, 65-1,179, 65-1,181, 65-1,184, 65-1,187, 65-1,188, 65-1,189, and 65-1,190; effective Jan. 15, 1999; amended March 16, 2007, amended August 6, 2021.)

28-18a-5. Transfer of a permit or certification. (a) The automatic transfer of a permit shall be prohibited. Each swine operator wanting to transfer a water pollution control permit of a confined feeding facility shall make application consistent with the provisions of the regulations in this article.

(b) The automatic transfer of a certification shall be prohibited. Each swine operator wanting to transfer a certification for a confined feeding facility shall register with the department, in accordance with this article.

(c) The existing permit or certification shall remain in effect until the department authorizes the transfer by letter or reissues the permit or certification. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18a-6. Development of a draft permit. Development of each draft permit shall be consistent with the requirements of K.A.R. 28-16-60. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18a-7. Public notice of permit actions and public hearings. (a) Public notice of permit actions and public hearings shall be consistent with the requirements of K.A.R. 28-16-61. Public hearings scheduled by the department shall address only those matters for which the secretary has authority.

(b) A swine operator proposing either new construction of a swine facility or new expansion of an existing swine facility shall meet the following requirements:

(1) Publish a single notice of application in the official county newspaper and in a newspaper regularly published and generally circulated serving the county and general area of the proposed or existing swine facility, notifying the public of the proposal. If the official county newspaper is regularly published and generally circulated throughout the county and general area of the proposed or existing swine facility, a single notice in the official county newspaper shall be adequate. If a proposed or existing facility site is within one mile of an adjoining county, a single notification shall also be provided in the official newspaper serving the adjoining county.

(A) Publication of the notice in the newspaper or newspapers by the swine operator shall be made before the department can place the permit on public notice in the Kansas register. The operator shall be responsible for the cost of publication in the newspaper or newspapers.

(B) The notice that the swine operator shall publish in the newspaper or newspapers shall contain the information pursuant to L. 1998, ch. 143, sec. 3, and amendments thereto [K.S.A. 1998 Supp. 65-1,179 (c), and amendments thereto].

(2) Notify the department verbally or by facsimile within two working days after the date of publication of the notice in the newspaper or newspapers to confirm that the notice has been published. Within 20 calendar days following the date of publication, the operator shall provide the department a publisher's affidavit of publication or certified copy of the publication. The processing of the permit shall be terminated by the department until the operator provides the publisher's affidavit or certified copy of the publication.

(3) Provide a copy of the notice to be published in the newspaper or newspapers to owners of habitable structures located within the prescribed separation distance for the swine facility. The notification shall be provided before the department places the permit on public notice in the Kansas register. The notice shall be provided by certified mail. The swine operator shall provide proof of this notification to the department within 20 calendar days of the notice being mailed.

(4) Provide a copy of the notice to be published in the newspaper or newspapers to the county commission representing the county in which the swine facility is or will be located. In addition, a copy of the notice shall be directed to the mayor of each municipality whose municipal boundary is located three miles or less from the swine facility or facility perimeter. Notification shall be made by certified mail before the department places the permit on public notice in the Kansas register. The swine operator shall provide proof of this notification to the department within 20 calendar days of the date the notice is mailed.

(c) Owners of habitable structures located within the applicable separation distance pertaining to habitable structures and either a proposed new swine facility or the proposed expansion of an existing swine facility that seek a public hearing shall meet the following requirements:

- (1) Request a public hearing either before or during the public comment period established in the public notice published in the Kansas register by the department;
- (2) request a public hearing in conformance with the provisions set forth in the public notice and shall also include the mailing address and telephone number of the habitable structure owner; and
- (3) provide proof, upon request and in a form satisfactory to the department, of ownership of the habitable structure. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 3 [K.S.A. 1998 Supp. 65-1,179]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 3; [K.S.A. 1998 Supp. 65-1,179] effective Jan. 15, 1999.)

28-18a-8. Permit; terms and conditions. (a) The terms and conditions of all permits shall be consistent with the requirements of K.A.R. 28-16-62, as appropriate.

- (b) (1) Swine waste management and pollution control systems shall be designed, constructed, operated, and maintained in a manner that prevents pollution of waters of the state.
- (2) Each operator of a swine waste management and pollution control system for a swine facility with an animal unit capacity of 1,000 or more shall ensure that the swine waste management and pollution control system is designed, constructed, operated, and maintained to prevent the discharge of swine or other process wastes to surface waters of the state. Any operator of a swine waste management and pollution control system may discharge the following to surface waters of the state, whenever precipitation events, either chronic or catastrophic, cause an overflow from a swine waste management or pollution control system designed, constructed, operated, and maintained to contain all swine and other process wastes:
 - (A) Swine or other process wastes; and
 - (B) the direct precipitation and the runoff from a 25-year, 24-hour precipitation event for the location of the swine facility.
- (3)(A) Except as provided in paragraph (b)(3)(B), each swine waste management and pollution control system for any swine facility with an animal unit capacity of 999 or less shall be designed, constructed, operated, and maintained to prevent the discharge of swine or other process wastes to surface waters of the state as required in paragraph (b)(2).
- (B) Any operator of a swine waste management and pollution control system for a swine facility with an animal unit capacity of 999 or less may discharge swine waste or other process wastes to surface waters of the state, consistent with the requirements of K.A.R. 28-16-28b through K.A.R. 28-16-28g, K.A.R. 28-16-57a, and K.A.R. 28-16-62, as appropriate, when specifically authorized by a permit.
- (c) For each emergency or accidental discharge, overflow, or unplanned release of swine or other process wastes, each swine operator shall report the incident to the department within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with swine or other process wastes to the director, using the telephone numbers provided by the department. Each operator shall submit a written report to the department within three days of the incident.
- (d) Each swine operator shall retain a copy of the current permit issued by the secretary at the site office for the facility or at a central records location.
- (e) Each swine operator shall be responsible for advising the secretary within 60 days of any changes in mailing address or telephone number regarding the facility or designated facility contact.
- (f) Each swine operator shall operate the facility in a manner to minimize or prevent any discharge that is in violation of the permit or that has a potential to adversely affect human health or the environment.
- (g) Each swine operator shall, at all times, properly operate and maintain the swine waste management and pollution control system and any related appurtenances that are installed or utilized by the swine operator to achieve compliance with the conditions of the permit.
- (h) Each operator of a swine facility with an animal unit capacity of 1,000 or more shall notify the department whenever the swine operator does not own all the swine at the swine facility, pursuant to K.S.A. 65-1,181, and amendments thereto.

- (i) Each operator of a swine facility with an animal unit capacity of 1,000 or more shall notify the department before the operator sells or gives manure or wastewater to a person that is not employed by the swine facility and whenever disposal is by means other than land application on areas covered by the approved nutrient utilization plan for the swine facility. When the approved manure management plan for the swine facility addresses the requirements in K.S.A. 65-1,181 and amendments thereto, notification to the department shall not be required.
- (j) Each operator of a swine facility with an animal unit capacity of 1,000 or more who land applies manure or wastewater shall comply with the nutrient utilization plan approved by the Kansas department of agriculture, pursuant to K.S.A. 65-1,182, and amendments thereto.
- (k) Each operator of a swine facility with an animal unit capacity of 1,000 or more who land applies manure or wastewater and is required to develop and to implement a nutrient utilization plan, as prescribed by the secretary of the Kansas department of agriculture, shall file the plan and any amendments to the plan with KDHE.
- (l) Each operator of a swine facility required to develop a swine facility closure plan or a swine waste-retention lagoon or pond closure plan, or both, shall comply with each plan, as approved by the secretary. The operator shall amend each plan whenever warranted by changes in the facility or in other conditions affecting the facility, pursuant to K.S.A. 65-1,189, and amendments thereto.
- (m) Each swine facility that is required to be permitted by the department and that has an animal unit capacity of 1,000 or more shall be staffed by a department-certified operator or an operator in training. (Authorized by K.S.A. 2005 Supp. 65-171d, K.S.A. 65-1,181, 65-1,183, and 65-1,184; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, K.S.A. 65-171h, K.S.A. 65-1,181, 65-1,182, 65-1,183, 65-1,184, 65-1,185; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-9. Certification; terms and conditions. (a) Each swine operator shall comply with all conditions, requirements, limitations, and operating provisions stipulated in the certification.

(b) Operation of a swine facility in violation of any conditions, requirements, limitations, and operating provisions of a certification, or in a manner that represents a significant water pollution potential, shall result in the revocation of the certification and any appropriate enforcement action. If a significant water pollution potential exists, as defined in K.A.R. 28-18-1, the swine operator shall apply for a permit. (Authorized by K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, and K.S.A. 2003 Supp. 65-171d; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-10. Permits; monitoring and reporting. (a) Any monitoring and reporting required by the department in the terms and conditions of a permit, certification, order, directive, or consent agreement shall be conducted consistent with the provisions of K.A.R. 28-16-63, as appropriate.

(b) The emergency or accidental discharge, overflow, or unplanned release of swine or other process wastes into surface waters of the state shall be reported to the department, pursuant to K.A.R. 28-16-27, within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with swine or other process wastes to the department using telephone numbers as provided by the department. Each operator shall submit a written report to the department within three days of the incident.

(c) Any analysis required by a permit, certification, order, directive, or consent agreement of the department shall be performed in accordance with the provisions of 40 C.F.R. Part 136, as in effect on July 1, 1998, or as approved by the department.

(d) Each analysis shall be performed by a laboratory that has been certified by the department pursuant to K.S.A. 65-1711, and amendments thereto, or as approved by the department.

(e) 40 C.F.R. Part 136, as in effect on July 1, 1998, is adopted by reference. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18a-11. Confined feeding facilities; federal requirements. For the purpose of issuing federal permits and administering NPDES program requirements, the following definitions and provisions, as in effect on July 1, 2006 and as amended by 72 Fed. Reg. 40250 on July 24, 2007, are hereby adopted by reference: (a) The concentrated animal feeding operation exclusions specified in 40 C.F.R. 122.3 (e) and 40 C.F.R. 122.3 (f); (b) the provisions addressing concentrated animal feeding operations specified in 40 C.F.R. 122.23(b), (c), and (e), and 122.42(e); (c) except for 40 C.F.R. 412.32, 412.44, and 412.46, the provisions addressing effluent limitations for concentrated animal feeding operations specified in 40 C.F.R. Part 412. (Authorized by K.S.A. 2006 Supp. 65-171d; implementing K.S.A. 65-165, K.S.A. 2006 Supp. 65-166a, K.S.A. 2006 Supp. 65-171d; effective Jan. 15, 1999; amended March 16, 2007; amended Jan. 4, 2008.)

28-18a-12. Design and construction of swine waste management and swine pollution control systems. (a) If a swine facility represents a significant water pollution potential or if the swine operator of the swine facility is required by statute or regulation to obtain a permit, as determined by the secretary, the swine operator shall provide a swine waste management or pollution control system that is designed in accordance with the minimum standards of design, construction, and maintenance and is constructed and operated in accordance with construction plans, specifications, and either a waste management plan or nutrient management plan approved by the secretary. If site topography, operating procedures, experience, and other available information indicate that more than the minimum standards of design, construction, and maintenance are required to effect adequate water pollution control, additional provisions may be required. Each applicant shall ensure that any new construction or new expansion of a swine facility, swine waste management system, or swine pollution control system meets the requirements of the "minimum standard of design, construction, and maintenance," as defined in K.A.R. 28-18a-1. (b) The swine operator shall not initiate operation of any new swine facility, new swine waste management system, or new swine pollution control system, or expanded portions of any existing swine facility, existing swine waste management system, or existing swine pollution control system, until after issuance of the new or modified permit by the secretary. Initiation of construction before the issuance of a new or modified permit by the secretary shall be deemed to be solely at the risk of the swine operator. (c) For the purpose of these regulations, each reference to a professional engineer or consultant shall be deemed to designate an individual offering a service for a fee for the design of a swine facility, swine waste management system, or swine pollution control system, exclusive of the nutrient utilization plan, soil or cropping consultations, hydrologic work involved in conducting hydrologic or geologic investigations, or in the siting, design, or construction of groundwater monitoring wells. Each reference to a professional engineer shall be deemed to designate an individual licensed to practice engineering in Kansas by the Kansas state board of technical professions. (d) Consultants that prepare plans and specifications for the new construction or new expansion of swine facilities that are submitted to comply with statutes and regulations shall provide KDHE with documentation that adequate general commercial liability insurance coverage addressing errors and omissions in the design plans and specifications has been obtained and is in effect. (e) (1) Each operator shall initiate any proposed new construction or new expansion of a swine facility that has been approved by the secretary and for which the required permit or permit modification has been issued, within two years after the date on which the permit or permit modification is effective or pursuant to the requirements of the permit issued by the secretary. Each operator shall complete any proposed new construction or new expansion of a swine facility that has been approved by the secretary and for which the required permit or permit modification is issued, within three years after the date on which the permit or permit modification is effective or as required by the permit issued by the secretary. (2) Failure to initiate the approved construction or expansion within two years and to complete the approved construction or expansion within three years after the effective date of the permit or permit modification shall void the secretary's approval of the construction plans, specifications, and other associated plans. If phased

construction is proposed, the initiation and completion of construction shall conform to the schedule stipulated by the secretary.

(3) If the approval becomes void, the permit or permit modification shall remain in effect for the term of the permit, but the operator shall resubmit the construction plans, specifications, and other associated plans to the secretary for review and consideration for approval before initiating the construction or expansion of the swine facility.

(f) Neither the approval of construction plans, specifications, or other required plans, nor the issuance of a permit or certification by the secretary shall prohibit the secretary from taking any enforcement action if the swine waste management or pollution control system fails to protect the waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, the secretary's approval of the plans or the secretary's issuance of a permit or certification shall not constitute a defense by the operator regarding violation of any statute, regulation, permit condition, or requirement.

(g) A new swine facility, swine waste management system, or swine pollution control system shall not be built in any stream, river, lake, reservoir, or water bodies meeting the definition of jurisdictional wetlands and consistent with the definition of "surface waters" in K.A.R. 28-16-28b.

(h) Each operator, when directed by the secretary, shall notify the department a minimum of two days before performing any soil sample collection activities or liner integrity testing.

(i) There shall be no deviation from plans and specifications submitted to and approved by the secretary, unless amended plans and specifications showing proposed changes have been submitted to the department and approved by the secretary.

(j) Each construction plan shall indicate the location of any active, abandoned, or plugged water, oil, gas, or salt solution mining well within 600 feet of any planned location for a swine waste-retention lagoon or pond. If the operator is unable to confirm the exact location of any well or wells, the construction plan shall contain a note indicating the potential for the well or wells to be located in the vicinity of any proposed swine waste-retention lagoon or pond. Each active, abandoned, or plugged water, oil, gas, or salt solution mining well that is encountered during construction and that was not identified or located on the construction plan shall be reported to the department within 48 hours of discovery. Construction activities that would impact the well or wells or that would be in the immediate vicinity of the well or wells shall be immediately terminated until the secretary determines that the appropriate steps, including plugging the well, have been taken to protect public health and the environment.

(k) Following the completion of the proposed construction or proposed expansion, if requested by the secretary, each swine operator shall certify that the swine waste management system or swine pollution control system, or both, were constructed in accordance with the plans approved by the secretary. If the swine operator utilized a professional engineer or consultant to monitor the construction of the swine waste management system or swine pollution control system, or both, then the certification shall also be signed by the professional engineer or the consultant who monitored the construction or installation of each system, including any swine waste-retention lagoon or pond liner. The certification shall be based on actual observations during construction and any field or laboratory data developed during or following construction. The certification shall be maintained on-site or at a central records location and shall be made available to the department, along with any supporting information, upon request. (Authorized by K.S.A. 2005 Supp. 65-171d and K.S.A. 65-1,181; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-1,181; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-13. Manure management plan for swine. (a) A manure management plan shall be developed and implemented for any proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181 and amendments thereto]. When submitting manure management plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) The manure management plan shall describe the methods for, and shall account for, the disposal of all swine or other process wastes generated by the swine facility. The plan shall include a description of the following:

- (1) The source or sources and volume of swine or other process wastes generated by the swine facility;
- (2) the method for collecting the swine or other process wastes by the swine facility;
- (3) the manner in which the swine or other process wastes shall be directed to any treatment or storage system;
- (4) a description of each treatment system utilized;
- (5) a description of each storage system utilized;
- (6) the location of any sites, including the legal description, where land application of swine or other process wastes will take place;
- (7) the method of ultimate disposal or utilization of the swine or other process wastes; and
- (8) the procedures to be employed and the information to be retained and provided, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181, and amendments thereto], if swine or other process waste is to be sold or given to a person not employed by the facility and is to be disposed of by means other than land application on areas covered by the facility nutrient utilization plan.

(c) Each swine facility required to develop and implement a manure management plan shall amend the plan and submit the plan to the department for approval whenever specifically directed by the department or whenever warranted by one or more of the following:

- (1) Changes in operation of the swine facility;
- (2) a change or modification in the swine waste management or pollution control system; or
- (3) other conditions affecting the swine facility, waste management system, or pollution control system.

(d) Whenever the operator of a swine facility required to develop a manure management plan does not own all the swine at the facility, the operator shall provide, as a part of the manure management plan, a copy of the executed contract with the owner of the swine that specifies responsibility for management of the swine or other process wastes, pursuant to L. 1998, ch. 143, sec. 5, and amendments thereto [K.S.A. 1998 Supp. 65-1,181 and amendments thereto].

(e) The manure management plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous three years' versions of the plan and any associated records, data, or other information. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 5 and 14 [K.S.A. 1998 Supp. 65-1,181 and 65-1,191]; effective Jan. 15, 1999.)

28-18a-14. Nutrient utilization plan for swine. (a) A nutrient utilization plan shall be developed and implemented for each proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more that applies swine or other process wastes to the land, pursuant to L. 1998, ch. 143, sec. 6, and amendments thereto [K.S.A. 1998 Supp. 65-1,182, and amendments thereto]. When submitting nutrient utilization plans to the department, each swine operator shall submit at least five copies of the plan.

(b) Each swine facility required to develop and implement a nutrient utilization plan shall amend the plan and submit the plan to the department whenever specifically directed by the department or whenever warranted by one or more of the following:

- (1) Changes in operation of the swine facility;
- (2) a change or modification in the swine waste management or pollution control system; or
- (3) other conditions affecting the swine facility, waste management system, or pollution control system.

(c) The nutrient utilization plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous five years' versions of the plan and

any associated records, data, or other information. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 3, 5, 6, 9, and 14 [K.S.A. 1998 Supp. 65-1,179, 65-1,181, 65-1,182, 65-1,185, and 65-1,191]; effective Jan. 15, 1999.)

28-18a-15. Odor control plan for swine. (a) An odor control plan shall be developed for each proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 11, and amendments thereto [K.S.A. 1998 Supp. 65-1,187, and amendments thereto]. When submitting odor control plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) Each swine facility required to develop and implement an odor control plan shall amend the plan and submit the plan to the department for approval, whenever specifically directed by the department or whenever warranted by one or more of the following:

(1) Changes in operation of the swine facility;

(2) a change or modification in the swine waste management or pollution control system; or

(3) other conditions affecting the swine facility, waste management system, or pollution control system.

(c) Each operator of a swine facility shall implement the approved odor control plan consistent with any schedule of compliance established in the permit.

(d) The type and layout design of any vegetative screening utilized to minimize or control odors shall be approved by the department.

(e) The odor control plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous three years' versions of the plan and any associated records, data, or other information. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 11 [K.S.A. 1998 Supp. 65-1,187]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 11 and 14; [K.S.A. 1998 Supp. 65-1,187 and 65-1,191]; effective Jan. 15, 1999.)

28-18a-16. Emergency response plan for swine. (a) An emergency response plan shall be developed and implemented for each proposed new swine facility, proposed expansion for an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 8, and amendments thereto [K.S.A. 1998 Supp. 65-1,184, and amendments thereto]. When submitting emergency response plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) The emergency response plan for swine shall include, at a minimum, the following information:

(1) A description of potential sources, activities, and materials that may reasonably be expected to or could potentially result in pollution from an unauthorized discharge, spill, or release of swine or other wastes from the swine facility;

(2) a map, indicating an outline of the potential discharge area of the facility and existing structural control measures designed to contain or control any unauthorized discharge, spill, or release of swine or other process wastes from the swine facility;

(3) a spill contingency plan for swine or other process wastes;

(4) procedures for notification of the department;

(5) procedures to mitigate any adverse impacts of the emergency event; and

(6) training requirements for employees or contractors.

(c) Each swine facility required to develop and implement an emergency response plan shall amend the plan and submit the plan to the department for approval, whenever specifically directed by the department or whenever

warranted by one or more of the following:

- (1) Changes in operation of the swine facility;
- (2) a change or modification in the animal or swine waste management system; or
- (3) other conditions affecting the swine facility, waste management system, or pollution control system.
- (d) The swine operator shall provide for and keep current the training of employees and contractors who are responsible for implementing the plan.
- (e) The emergency response plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous three years' versions for the plan and any associated records, data, or other information.
- (f) A copy of the emergency response plan shall be maintained at the facility, in a location readily accessible to all employees or contractors responsible for implementing the plan. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 8 [K.S.A. 1998 Supp. 65-1,184]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 8 and 14 [K.S.A. 1998 Supp. 65-1,184 and 65-1,191]; effective Jan. 15, 1999.)

28-18a-17. Dead swine handling plan. (a) A dead swine handling plan shall be developed and implemented for each proposed new swine facility, proposed expansion of an existing swine facility, or existing swine facility with an animal unit capacity of 1,000 or more, pursuant to L. 1998, ch. 143, sec. 17, and amendments thereto [K.S.A. 1998 Supp. 65-1,188, and amendments thereto]. When submitting dead swine handling plans to the department for approval, each swine operator shall submit at least four copies of the plan.

(b) The dead swine handling plan shall include, at a minimum, the following information:

- (1) A description of how dead swine are to be handled before disposal, to decrease the possibility of spreading disease and preclude contamination of waters of the state. The description shall address the handling of carcasses associated with both normal mortality and a major disease outbreak or other situation that results in deaths significantly higher than normal mortality;
- (2) the method of and location or locations at the facility to be utilized for temporary storage of the swine carcasses;
- (3) the ultimate method or methods of disposal that will be utilized for the facility, including burial, rendering, incineration, composting or other methods as approved by the Kansas animal health department;
- (4) procedures to be utilized to minimize the potential for pests and odors; and
- (5) training requirements for employees and contractors.

(c) Each swine facility required to develop and implement a dead swine handling plan shall amend the plan and submit the plan to the department for approval whenever specifically directed by the department or whenever warranted by one or more of the following:

- (1) Changes in operation of the swine facility;
- (2) a change or modification in the swine waste management or pollution control system; or
- (3) other conditions affecting the swine facility, waste management system, or pollution control system.
- (d) The handling of dead swine shall be consistent with the provisions in L. 1998, ch. 143, sec. 17, and amendments thereto. [K.S.A. 1998 Supp. 65-1,188, and amendments thereto]
- (e) The operator shall provide for and keep current the training of employees and contractors who are responsible for implementing the plan.
- (f) The dead swine handling plan and any associated records, data, or other information shall be retained at the facility's site office, in a manner that is accessible to inspection by representatives of the department. The operator shall retain, at the facility's site office, the current and previous three years' versions of the plan and any associated records, data, or other information.

(g) A copy of the dead swine handling plan shall be maintained at the facility at a location readily accessible to

all employees or contractors who are responsible for implementing the plan.

(h) The disposal of dead swine shall be conducted in conformance with the provisions of, and regulations adopted pursuant to, K.S.A. 47-1201, et seq., and amendments thereto. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec 17 [K.S.A. 1998 Supp. 65-1,188]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 14 and 17 [K.S.A. 1998 Supp. 65-1,191 and 65-1,188]; effective Jan. 15, 1999.)

28-18a-18. Groundwater monitoring for swine facilities. (a) The installation and sampling of groundwater monitoring wells shall be conducted pursuant to L. 1998, ch. 143, secs. 4 and 5, and amendments thereto [K.S.A. 65-1,180 and 65-1,181, and amendments thereto].

(b) Any swine facility shall, when required by the department, provide for the installation and sampling of groundwater monitoring wells or the sampling of existing wells in the vicinity of waste-retention lagoons or ponds, waste treatment systems, land application sites, or other areas either known to be or potentially impacted by swine or other process wastes, or where warranted by groundwater, geologic, or construction conditions.

(c) Where a groundwater monitoring system is required by the department, the proposed location and design of the monitoring wells shall be approved by the department before being constructed.

(d) All water supply or groundwater monitoring wells shall be constructed by a water well contractor or driller licensed in Kansas, in conformance with regulations adopted pursuant to the Kansas groundwater exploration and protection act, K.S.A. 82a-1201 et seq., and amendments thereto.

(e) For the construction of a new swine facility, groundwater monitoring wells shall be sampled and analyzed to establish background concentrations of chemical parameters designated by the department before the facility is populated. For the installation of monitoring wells at existing facilities, each monitoring well shall be monitored within two months of installation to establish a baseline for the chemical parameters designated by the department.

(f) Background, baseline, and other data from monitoring wells shall be maintained for the life of the facility. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 65-169, 65-170, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 4 and 5 [K.S.A. 1998 Supp. 65-1,180 and 65-1,181]; effective Jan. 15, 1999.)

28-18a-19. Operation of swine waste management and swine pollution control systems. (a) Each swine waste management system and swine pollution control system shall be designed, constructed, maintained, and operated to prevent pollution of waters of the state and to protect public health and the environment.

(b) Each swine waste management system and each swine pollution control system shall be operated according to the plans approved by the secretary.

(c) When a liner is installed or constructed, the operator shall maintain the liner to comply with the minimum standards of design, construction, and maintenance. When soil liners are utilized, no trees or other deep-rooted vegetation shall be allowed to grow within 100 feet of the liner. Any mechanical or structural damage to the liner shall be reported to the department within two workdays of identification and shall be repaired in a time frame approved by the secretary and designed to protect public health and the environment.

(d) Each operator shall haul or transport swine or process wastes to land application sites in a manner that prevents loss or spillage during transport.

(e) When land application of swine or other process wastes is practiced, the application shall be conducted at agronomic rates.

(f) Irrigation practices shall be managed to minimize ponding or puddling of swine or other process wastes at the land application site. Irrigation practices shall be managed to ensure that swine or other process wastes are

not discharged from the application sites.

(g) Adequate equipment and land application areas shall be available for removal of swine or other process wastes and contaminated storm water runoff from the swine facility to comply with the provisions of the permit and these regulations.

(h) (1) Unless approved in advance by the secretary, liquid waste, concentrated liquid swine waste, or other liquid process waste shall not be land applied when the ground is frozen, snow-covered, or saturated, or during a precipitation event. Land application of swine or other process wastes during these periods may be authorized by the secretary for use in filtering swine or other process wastes from retention structures that are properly operated and maintained and that are in imminent danger of overflow to surface waters of the state due to a chronic or catastrophic precipitation event.

(2) Solid swine or other process wastes may be applied to frozen ground only if the proposed application site and practices ensure that the wastes will be retained at the application site.

(i) (1) Each swine operator, as required by the facility permit issued by the secretary, shall conduct sampling and analysis of swine or process wastes or sites utilized for the application of swine or process wastes from confined swine feeding facilities, to determine nutrient and salinity levels, to confirm utilization of the swine or process wastes at agronomic rates, and to ensure that public health and the environment are protected.

(2) (A) Each swine operator of a swine facility with 999 animal units or less shall sample the soil of each field identified in the waste management plan for the swine facility if both of the following conditions are met:

(i) The field is identified by KDHE as located in a sensitive groundwater area or over the Equus Beds.

(ii) The field has received manure or wastewater in one or more of the previous five years.

(B) The sampling and analysis shall be conducted in accordance with the procedures approved by the secretary. The test results shall be sent to the department within 30 days of receipt of the test results.

(3) Each swine operator required to obtain a federal permit shall conduct soil and waste sampling and analysis in accordance with the nutrient management plan. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-171d, K.S.A. 65-171h, and K.S.A. 65-1,181; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-20. Denial, suspension, revocation, or termination of a permit or certification for swine facilities. (a) A permit or certification may be denied, suspended, revoked, or terminated, pursuant to K.S.A. 1997 Supp.65-171d, as amended by L. 1998, ch. 143, sec. 1, L. 1998, ch. 143, sec. 16, and amendments thereto [K.S.A. 1998 Supp. 65-171d, K.S.A. 1998 Supp. 65-1,193, and amendments thereto].

(b) A permit or certification may be denied, suspended, revoked, or terminated for any of the following reasons:

(1) Misrepresentation or omission of a significant fact by the swine operator, either in the application for the permit or in information subsequently reported to the department;

(2) improper operation of the confined feeding facility, swine waste management system, or pollution control system, including any land application areas that cause pollution or a public health hazard;

(3) violation of any provision of K.S.A. 65-159 et seq. and amendments thereto, any regulations of article 16 and article 18, or other restrictions set forth in the permit, certification, or waiver; or

(4) failure to comply with an order or modified permit issued by the secretary.

(c) Procedures and provisions for the denial, suspension, revocation, or termination of a permit shall be pursuant to the provisions of K.A.R. 28-16-62.

(d) Any swine operator aggrieved by the denial, suspension, revocation, or termination of a permit or certification may request a hearing in accordance with the provisions of the Kansas administrative procedure act, K.S.A. 77-501 et seq. and amendments thereto.

(e) If a confined feeding facility is required to terminate operations or reduce the number of animal units at the facility, the swine operator may be allowed by the secretary to finish feeding existing swine at the facility at the time of notification by the department, until the facility is permitted or certified, or complies with the provisions of these regulations. However, in no case shall the termination of operations or the reduction of the animal unit number exceed five months from the initial notification to terminate operations by the department. (Authorized

by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 16 [K.S.A. 1998 Supp. 65-1,193]; effective Jan. 15, 1999.)

28-18a-21. Inspections. (a) Each swine operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable a department inspector to enter the facility for inspection.

(b) Each swine operator that develops or modifies the biosecurity protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department within 30 days of establishing or modifying the biosecurity protocols.

(c) If any department inspector conducting an inspection of a confined feeding facility complies with the facility's biosecurity protocol, that inspector shall be allowed to access the animal waste management system to conduct inspections. Biosecurity protocols shall not restrict the reasonable access of any department inspector. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-1,191; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-22. Swine facility closure requirements. (a) Each swine operator of a swine facility permitted by the department shall notify the department of any plans to cease operation of, close, or abandon the swine facility.

(b) Each swine operator shall maintain and comply with a valid water pollution control permit for the swine facility until closure of the swine facility is complete and all materials representing a threat to public health and the environment are removed.

(c)(1) Each permit applicant for each proposed new swine facility or new swine waste-retention lagoon or pond, proposed expansion of an existing swine facility, or proposed expansion of an existing swine waste-retention lagoon or pond shall develop and implement a swine facility closure plan or swine waste-retention lagoon or pond closure plan if either of the following conditions is met:

(A) (i) The new swine facility or expanded swine facility is proposed to have an animal unit capacity of 1,000 or more; and

(ii) the swine facility is proposed to be located over the Equus Beds; or

(B) The new swine facility, existing swine facility, or proposed expanded swine facility will have an animal unit capacity of 3,725 or more.

(2) Each swine operator of any existing swine facility or swine waste-retention lagoon or pond without a current swine facility or swine waste-retention lagoon or pond closure plan shall develop and implement a closure plan for the swine facility or swine waste-retention lagoon or pond if both of the following conditions are met:

(A) The existing swine facility has an animal unit capacity of 1,000 or more.

(B) The existing swine facility is located over the Equus Beds. The swine facility or swine waste-retention lagoon or pond closure plan shall be developed and submitted to the department with the next application for permit renewal or modification for the existing swine facility.

(d) When submitting a swine facility or swine waste-retention lagoon or pond closure plan to the department, each swine operator shall submit at least four copies of the plan.

(e) A swine facility or swine waste-retention lagoon or pond closure plan shall include, at a minimum, the following:

(1) A description of all swine waste management and swine pollution control system components utilized to contain, control, or store swine or other process wastes at the swine facility;

(2) a description of the procedures to be employed to remove and dispose of swine or other process wastes;

(3) a description of the maintenance, deactivation, conversion, or demolition of all swine waste-retention lagoons or ponds at the swine facility pursuant to K.S.A. 65-1,190, and amendments thereto, or the closure of any swine waste-retention lagoon or pond by one of the following methods:

(A) Removing the berms, and leveling and revegetating the site to provide erosion control;

- (B) leaving the structure or structures in place for use as a freshwater farm pond or reservoir;
- (C) retaining the structure or structures for future use as a part of a swine waste management or pollution control system; or
- (D) using any other method approved by the secretary; and
- (4) a description of, and detailed drawings for, the plugging of any water or groundwater monitoring wells at the swine facility.
- (f) Each swine operator of a swine facility required to have a swine facility closure plan and a swine waste-retention lagoon or pond closure plan shall amend each plan and submit the amended plans to the department for approval whenever specifically directed by the secretary or whenever warranted by one or more of the following:
 - (1) Any significant changes in operation of the swine facility;
 - (2) any significant change or modification in the swine waste management or swine pollution control systems; or
 - (3) any other significant conditions affecting the swine facility, swine waste management system, or swine pollution control system.
- (g) Each operator of a swine facility that is required to develop a swine facility or swine waste-retention lagoon or pond closure plan shall retain the current plan at the site office of the facility or at a central records location, in a manner that is accessible to inspection by representatives of the department.
- (h) The closure of a swine facility or swine waste-retention lagoon or pond shall be completed within six months of notification to the department of the proposed closure of the facility or termination of operations.
- (i) Each swine operator seeking an extension of time for closure shall submit a written request to the secretary. The request shall detail the reasons for the extension. Only weather conditions or the legal change in ownership of the swine facility shall be grounds for the secretary to consider granting an extension.
- (j) If the operator of a swine facility is unwilling or unable to properly close the swine facility, the owner of swine at the swine facility and the property owner shall be responsible for closing the swine facility in accordance with these regulations and in a manner that protects the waters of the state, public health, and the environment. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-171d, K.S.A. 65-1,189 and 65-1,190; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-23. Financial assurance for swine facility closure. (a) On or before July 1, 1999 and annually thereafter before January 1 of each year, each operator of a swine facility with an animal unit capacity of 3,725 or more shall provide evidence, satisfactory to the department, that the operator has the financial ability to cover the cost of closure of the swine facility, as required by the department.

(b) For new construction or new expansion of a swine facility with a proposed animal unit capacity of 3,725 or more, the swine operator shall provide evidence, satisfactory to the department, that the operator has the financial ability to cover the cost of closure of the proposed new construction or expansion at the time the application is submitted to the department for review.

(c) Each operator of a swine facility with an animal unit capacity of 3,725 or more shall submit, as a part of the evidence provided to the department, a detailed written estimate in current dollars of the cost to close the swine facility in a manner acceptable to the department. The estimate shall be prepared by a professional engineer or consultant approved by the department.

(d) Each operator shall develop an estimate of the cost to close the swine facility as follows:

- (1) The estimate shall be based on the cost charged by a third party to collect and dispose of all swine or other process wastes stored or retained at the swine facility, excluding the swine waste-retention lagoons or ponds, at a specifically identified off-site application area.
- (2) All waste management and pollution control system components shall be assumed to be at maximum capacity.
- (3) The costs attributable to the swine waste-retention lagoons or ponds shall be excluded from the estimate.

(e) Each swine operator shall increase the closure cost estimate and the amount of financial assurance provided if any change in the facility closure plan or in operation increases the maximum cost of closure at any time.

(f) Each swine operator shall provide continuous financial assurance coverage for closure until the department determines the facility closure to be acceptable.

(g) Mechanisms used to demonstrate financial assurance shall ensure that the funds necessary to meet the cost to close the swine facility, pursuant to K.A.R. 28-18-22 (d), are accessible to the department in a timely fashion when needed. In establishing financial assurance for the facility closure, swine operators shall utilize any of the

following options:

- (1) Trust fund;
- (2) surety bond guaranteeing payment or performance;
- (3) letter of credit;
- (4) insurance;
- (5) self-insurance; or
- (6) use of multiple mechanisms.

(h) Each operator that utilizes a trust fund shall meet the following requirements.

(1) Provide for a trustee. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be provided to the department.

(2) Provide authority for the department or person authorized by the department to implement the closure to request and obtain from the trustee reimbursement for closure expenditures. Requests for reimbursement shall be granted by the trustee, to the limit of the funds in the trust fund and proper documentation of the incurred costs are provided.

(3) Maintain the trust fund. The operator shall maintain the trust fund until an alternative financial assurance mechanism is approved by the department and is in place, or shall cease operations and close out the facility before the trust fund is terminated or if the operator is no longer required to demonstrate financial responsibility.

(i) Each swine operator that utilizes a surety bond guaranteeing payment or performance shall meet all of the following requirements:

(1) Obtain a surety bond, with the penal sum of the bond in an amount at least equal to the estimated facility closure cost;

(2) provide the department with a copy of the bond;

(3) obtain the bond from a company that is licensed to issue bonds in Kansas;

(4) provide in the bond that the surety shall become liable on the bond obligation when the operator fails to perform as guaranteed by the bond;

(5) establish a standby trust fund;

(6) provide that payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be made by the trustee to the limit of the bond amount when proper documentation of the incurred costs are provided; and

(7) obtain a bond providing that the surety may cancel the bond by sending notice of cancellation by certified mail to the operator and the department at least 120 days in advance of the cancellation. If the surety cancels the bond, the facility shall obtain alternative financial assurance before the cancellation or shall cease operations and close out the facility before the cancellation date of the bond, unless the operator is no longer required to demonstrate financial responsibility.

(j) Each swine operator that utilizes a letter of credit shall meet the following requirements:

(1) Obtain an irrevocable standby letter of credit by which the issuing institution shall be an entity that has authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The letter of credit shall be in a form that constitutes an unconditional promise to pay and shall be in a form negotiable by the department;

(2) provide the department with a copy of the letter of credit. Information contained in the letter of credit or provided by the operator shall include the name, location, and permit number of the facility and the amount of funds assured;

(3) provide an irrevocable letter of credit issued for a period of at least one year in an amount at least equal to the current cost estimate for closure of the facility. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least one year, unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the operator and department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner shall obtain alternative financial assurance before the cancellation or shall cease operations and close out the facility before the cancellation date of the letter of credit, unless the operator is no longer required to demonstrate financial

responsibility; and

(4) cancel the letter of credit only if alternative financial assurance, approved by the department, is substituted or if the operator is no longer required to demonstrate financial responsibility.

(k) Each operator that utilizes insurance shall meet all of the following requirements:

- (1) Obtain insurance coverage for a period of at least one year in an amount at least equal to the current cost estimate for closure of the facility;
- (2) obtain insurance from an insurer authorized to sell insurance in Kansas;
- (3) provide the department with a copy of the insurance policy;
- (4) ensure that the insurance policy guarantees that funds shall be available to close the facility in the event the operator is unable or unwilling to close the facility in accordance with the facility closure plan approved by the department;
- (5) ensure that the insurance policy provides that the insurer is responsible for the payment of the department or person authorized to close the facility. Payments by the insurer for the policy shall be made by the insurer to the limit of the policy amount when proper documentation of the incurred costs are provided;
- (6) ensure that the insurance policy provides that the insurer cannot cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the operator and the department 120 days in advance of the cancellation;
- (7) if the insurer cancels the policy, obtain alternative financial assurance before the cancellation, or cease operations and close out the facility before the cancellation date of the insurance policy, unless the operator is no longer required to demonstrate financial responsibility; and
- (8) cancel the insurance policy only if alternative financial assurance, approved by the department, is substituted or if the operator is no longer required to demonstrate financial responsibility.

(l) To establish evidence of financial ability for self-insurance, each swine operator shall meet the following requirements:

- (1) Submit a financial statement, prepared by a certified public accountant, listing tangible assets and total liabilities of the swine operator. The assets shall not include the value of the swine at the facility. The financial statement shall include a general release, by the swine operator, providing the department with authorization for verification with banks or other financial institutions; and
- (2) provide an indication on the financial statement of whether or not the tangible assets, less the total liabilities, are satisfactory to cover the estimated cost of closure. The financial statement shall note the estimated cost of closure utilized.

(m) Each swine operator that utilizes multiple financial assurance mechanisms shall meet the following requirements:

- (1) Use only the financial assurance mechanisms provided for in this regulation; and
- (2) provide that the total coverage of all the financial mechanisms utilized provides an amount at least equal to the current cost estimate for closure of the facility. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing L. 1998, ch. 143, sec. 12 [K.S.A. 1998 Supp. 65-1,189]; effective Jan. 15, 1999.)

28-18a-24. Financial assurance for swine waste-retention lagoon or pond closure. (a) Before January 15 each year, each swine operator of a swine facility with an animal unit capacity of 3,725 or more that utilizes swine waste-retention lagoons or ponds shall provide evidence, satisfactory to the department, that the swine operator has the financial ability to cover the cost of closure of the swine waste-retention lagoons or ponds as required by the department.

(b) For new construction or new expansion of a swine facility with a proposed animal unit capacity of 3,725 or more that employs the use of swine waste-retention lagoons or ponds, the swine operator shall provide evidence, satisfactory to the department, that the swine operator has the financial ability to cover the cost of closure of the proposed swine waste-retention lagoons or ponds at the time the application is submitted to the department for review.

(c) Each swine operator of a swine facility with an animal unit capacity of 3,725 or more shall submit, as a part of the evidence provided to the department, a detailed written estimate in current dollars of the cost to close the swine waste-retention lagoons or ponds in a manner acceptable to the department. The estimate shall be prepared by a professional engineer or consultant approved by the department.

(d) To estimate the cost to close the swine waste-retention lagoons or ponds, the swine operator shall consider the following:

(1) The cost of the swine waste-retention lagoons or ponds closure by determining the cost of a third party to collect and dispose of all swine or other process wastes stored or retained on-site in the lagoons or ponds at a specifically identified off-site application area; and

(2) all swine waste-retention lagoons or ponds to be 100 percent full, for the purpose of estimating costs.

(e) Each swine operator shall increase the closure cost estimate and the amount of financial assurance provided if changes in the facility closure plan addressing the swine waste-retention lagoons or ponds or a change in operation increase the maximum cost of closure at any time.

(f) Each swine operator shall provide continuous financial assurance for the cost of closure until the department determines the closure of the swine waste-retention lagoons or ponds to be acceptable.

(g) Mechanisms used to demonstrate financial assurance shall ensure that the funds necessary to meet the cost to close the swine waste-retention lagoons or ponds required by K.A.R. 28-18a-22 are accessible to the department in a timely fashion when needed. In establishing financial assurance for the swine waste-retention lagoons or ponds closure, swine operators shall utilize one or more of the following options:

(1) Trust fund;

(2) surety bond guaranteeing payment or performance;

(3) letter of credit;

(4) insurance; or

(5) self-insurance.

(h) If a swine operator utilizes a trust fund for financial assurance, the swine operator shall meet following requirements:

(1) The swine operator shall provide for a trustee that shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be provided to the department.

(2) The swine operator shall provide authority for the department or person authorized by the department to implement the closure to request and obtain reimbursement for closure expenditures from the trustee. Requests for reimbursement shall be granted by the trustee, to the limit of the funds in the trust fund and with proper documentation of the incurred costs.

(3) The swine operator shall maintain the trust fund until an alternative financial assurance mechanism is approved by the department and is in place, or shall cease operations and close the swine waste-retention lagoons or ponds before the trust fund is terminated, unless the operator is no longer required to demonstrate financial assurance.

(i) If a swine operator utilizes a surety bond guaranteeing payment or performance for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain a surety bond, with the penal sum of the bond in an amount at least equal to the estimated swine waste-retention lagoons or ponds closure cost;

(2) provide the department with a copy of the bond;

(3) obtain the bond from a company that is licensed to issue bonds in Kansas;

(4) provide in the bond that the surety becomes liable on the bond obligation when the swine operator fails to perform as guaranteed by the bond;

(5) establish a standby trust fund;

(6) provide that payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be made by the trustee to the limit of the bond amount when proper documentation of the incurred costs is provided; and

(7) obtain a bond providing that the surety may cancel the bond by sending notice of cancellation by certified mail to the swine operator and the department at least 120 days in advance of the cancellation. If the surety cancels the bond, the swine operator shall obtain alternative financial assurance before the cancellation or shall cease operations and close the swine waste retention lagoons or ponds before the cancellation date of the bond, unless the swine operator is no longer required to demonstrate financial assurance.

(j) If a swine operator utilizes a letter of credit for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain an irrevocable standby letter of credit by which the issuing institution shall be an entity that has authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The letter of credit shall be in a form that constitutes an unconditional promise to pay and shall be in a form negotiable by the department;

(2) provide the department with a copy of the letter of credit. Information contained in the letter of credit or provided by the swine operator shall include the name, location, and permit number of the swine facility and the amount of funds assured;

(3) provide an irrevocable letter of credit issued for at least one year in an amount at least equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds. The letter of credit shall provide that the expiration date shall be automatically extended for at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the swine operator and department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the swine operator shall obtain alternative financial assurance before the cancellation, or shall cease operations and close the swine waste-retention lagoons or ponds before the cancellation date of the letter of credit, unless the swine operator is no longer required to demonstrate financial assurance; and

(4) cancel the letter of credit only if alternative financial assurance, approved by the secretary, is substituted or if the swine operator is no longer required to demonstrate financial assurance.

(k) If a swine operator utilizes insurance for financial assurance, the swine operator shall meet the following requirements:

(1) Obtain insurance coverage for at least one year in an amount at least equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds;

(2) obtain insurance from an insurer authorized to sell insurance in Kansas;

(3) provide the department with a copy of the insurance policy;

(4) ensure that the insurance policy guarantees that funds shall be available to close the swine waste-retention lagoons or ponds if the swine operator is unable or unwilling to close the swine waste retention lagoons or ponds in accordance with the swine facility closure plan approved by the department;

(5) ensure that the insurance policy provides that the insurer is responsible for the payment of the department or person authorized to close the swine waste-retention lagoons or ponds. Payments by the insurer for the policy shall be made to the limit of the policy amount when proper documentation of the incurred costs is provided;

(6) ensure that the insurance policy shall provide that the insurer shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the swine operator and the department at least 120 days in advance of the cancellation;

(7) if the insurer cancels the policy, obtain alternative financial assurance before the cancellation, or cease operations and close the swine waste-retention lagoons or ponds before the cancellation date of the insurance policy, unless the swine operator is no longer required to demonstrate financial assurance; and

(8) cancel the insurance policy only if alternative financial assurance, approved by the department, is substituted or if the swine operator is no longer required to demonstrate financial assurance.

(l) If a swine operator utilizes self-insurance for financial assurance, the swine operator shall meet the following requirements:

(1) Submit a financial statement, prepared by a certified public accountant, listing tangible assets and total liabilities of the swine operator. The assets shall not include the value of the swine at the swine facility. The financial statement shall include a general release, by the swine operator, providing the department authorization for verification with banks or other financial institutions; and

(2) provide an indication, on the financial statement, of whether or not the tangible assets, less the total liabilities, are satisfactory to cover the estimated cost of closure. The financial statement shall note the estimated cost of closure utilized.

(m) Each swine operator that utilizes multiple financial assurance mechanisms shall meet both of the following requirements:

(1) Use only the financial assurance mechanisms specified in this regulation; and

(2) submit documentation to the department that confirms that the total coverage of all the financial mechanisms utilized provides an amount at least equal to the current cost estimate for closure of the swine waste-retention lagoons or ponds. (Authorized by and implementing K.S.A. 65-171d and 65-1,190; effective Jan. 15, 1999; amended Nov.19, 2021)

28-18a-25. Variance of specific requirements. (a) Each swine operator seeking a variance from the regulations in this article shall submit to the department a written request for variance from the regulations in this article and shall provide information relevant to the request.

(b) Each request shall specifically set forth why the variance should be considered and how the requested variance addresses the intent of this article.

(c) A variance may be granted by the department whenever site-specific conditions or proposals are in keeping with the purpose and intent of this article. (Authorized by and implementing K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, and K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; effective Jan. 15, 1999.)

28-18a-26. Requirements for swine facility operator certification. Each operator of a swine facility with an animal unit capacity of 1,000 or more that is required to have a permit shall obtain a swine waste management and swine pollution control system operator certificate. Each swine operator that desires or is required to obtain a swine facility operator certificate shall meet the following requirements:

(a) Each applicant shall be a swine facility operator who maintains or supervises a swine waste management or swine pollution control system.

(b) Each swine facility operator shall submit a complete application and the appropriate fee to the department. The application shall be received by the department at least two weeks before the scheduled examination date. Late applications shall not be accepted for the scheduled examination date.

(c) If an applicant provides false information on an application, the applicant shall not be accepted for examination, and the fee submitted with the application shall not be returned to the applicant. The applicant shall be notified of the decision denying acceptance for examination and shall not be allowed to take the examination for two consecutive years. (Authorized by K.S.A. 2003 Supp. 65-171d, K.S.A. 65-1,183, and K.S.A. 65-4512; implementing K.S.A. 65-1,183, 65-1,186, and 65-4512; effective Jan. 15, 1999; amended March 16, 2007.)

28-18a-27. Eligibility for swine facility operator certification. (a) Each applicant for certification shall meet the following requirements:

(1) Submit a completed application, on forms provided by the department and with the appropriate fees; and

(2) complete six hours of training, as approved by the department.

(b) Certified swine operators shall acquire a minimum of six hours of approved training every five years as a condition for renewal of the certification. (Authorized by K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-28. Swine facility operator certification examinations. (a) Each applicant for a swine facility operator certificate shall pass a written examination administered by the department or a designee.

(b) Each swine operator who seeks to obtain a swine facility operator certification and who has allowed a certificate to lapse for a period of two years or more shall submit an application and fee, receive at least six hours of approved training, and pass a written examination. (Authorized by K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-29. Noncertified operators responsible for the operation and management of swine facilities, swine waste management systems, or pollution control systems. (a) Each noncertified operator of a new or proposed swine facility with an animal unit capacity of 1,000 or more shall notify the department within 30 days of the initial start-up of the facility that the operator is the designated facility operator. The operator shall be designated as an “operator in training (OIT).” The operator shall obtain six hours of approved training and shall obtain the certification within one year of the notification to KDHE. Each noncertified operator of a swine facility with an animal unit capacity of 1,000 or more shall notify the department within 30 days of assuming responsibility for the operation of the swine facility.

(b) The OIT designation shall be renewed only once, if it is demonstrated to the department that the operator is attending training sessions or studying correspondence courses in preparation to retake the examination. (Authorized by K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-30. Issuance of certificate of competency. (a) Upon fulfillment of the requirements in K.A.R. 28-18-26, 28-18-27, and 28-18-28, a certificate shall be issued to the applicant. The certificate shall designate that the swine operator is qualified to operate and maintain a swine facility, swine waste management system, and pollution control system. This certificate shall be effective for five years from the date of issuance.

(b) A certificate may be issued, through reciprocity, to an applicant who has been issued a swine operator, or equivalent, certification in another state when the department determines that the standards for training and certification meet or exceed the requirements of the department. The swine operator shall provide any information that the department requires to determine whether or not a certificate may be issued through reciprocity. (Authorized by K.S.A. 65-4504, K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-31. Swine operator certification fees. (a) Fees for swine operator certification shall be as follows:

- (1) Operator in training (one-year certificate)..... No charge
- (2) operator in training (renewal of one year)..... \$5.00
- (3) examination fee \$25.00
- (4) five-year renewal of certificates.....\$50.00
- (5) reinstatement of lapsed certificate up to one year after renewal date\$70.00
- (6) reinstatement of lapsed certificate between one and two years after renewal date.....\$80.00
- (7) reciprocity fee \$65.00

(b) Fees from applicants who are ineligible to take the certification examination, for reasons other than providing false information on the application, shall be returned.

(c) Fees from applicants who fail the examination shall not be returned.

(d) Each operator required to retake an examination shall submit a new application and fee.

(e) Fees for department-sponsored training sessions shall be established by the department. (Authorized by K.S.A. 65-4504, K.S.A. 65-4512, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7 [K.S.A. 1998 Supp. 65-1,183]; implementing L. 1998, ch. 143, secs. 7 and 10 [K.S.A. 1998 Supp. 65-1,183 and 65-1,186]; effective Jan. 15, 1999.)

28-18a-32. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; effective Jan. 15, 1999; revoked March 16, 2007.)

28-18a-33. Groundwater protection requirements for swine waste-retention lagoons or ponds, swine waste management systems, and waste treatment facilities. (a) The provisions of this article shall not apply to any permitted swine waste-retention lagoon or pond or swine waste management system, or waste treatment facility that is in existence or that the secretary approved for construction before the effective date of this regulation, unless information becomes available showing that the swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility presents an imminent threat to public health or the environment.

(b)(1) The provisions of this article shall not apply to any existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility located at a swine facility if all of the following conditions are met:

(A) The swine facility existed on July 1, 1994 and is still in existence as defined in K.S.A. 65-1,178, and amendments thereto.

(B) The swine operator registered the swine facility with the secretary before July 1, 1996.

(C) The capacity of the existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility is no larger than that necessary to serve the facility as described in the registration application submitted before July 1, 1996.

(D) The separation distance from the bottom of the existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility to groundwater is less than 10 feet.

(2) Each operator of a swine facility meeting the requirements of paragraph (b)(1) of this regulation and proposing to use a swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility shall propose site-specific groundwater protection measures for the secretary's consideration for approval.

(c) Each new or expanded portion of a swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility other than those described in subsections (a) and (b) shall be located a minimum of 10 feet above the static groundwater level, as measured from the lowest elevation of the finished interior grade of the swine waste-retention lagoon or pond, the swine waste management system, or the waste-treatment facility. Each swine operator or permit applicant for a swine facility shall notify the department at least two days before performing any site investigations to determine the static groundwater level at the site.

(d) Each swine operator or permit applicant shall ensure that each liner for a new or expanded portion of a swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility meets the following requirements:

(1) If the new or expanded portion of the swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility is not located over the Equus Beds or in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than $\frac{1}{4}$ inch per day, except as required by K.S.A. 65-1,181, and amendments thereto.

(2) If the new or expanded portion of the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility is located in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than $\frac{1}{10}$ inch per day.

(3) If the new or expanded portion of the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility is located over the Equus Beds, either an impermeable synthetic membrane liner shall be used or the material used for the liner shall consist of either of the following:

(A) Two or more layers of compacted soil designed to have a seepage rate of no more than $\frac{1}{10}$ inch per day. To demonstrate that this seepage requirement is met, the soil liner seepage rate shall be determined within 12 months of placing the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility into operation. The test method used shall be the whole pond seepage test; or

(B) any material that has been approved through the variance process in accordance with K.A.R. 28-18a-25.

(e) Each permit applicant or operator that conducts testing to determine the seepage rate shall submit four copies of the test results to the department.

(f) For the purpose of K.A.R. 28-18a-1 through K.A.R. 28-18a-33, an imminent threat to public health or the environment may be deemed to exist if physical, chemical, biological, or radiological substances or a combination of these substances is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the “Kansas surface water quality standards: table of numeric criteria,” dated December 6, 2004, which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numerical criterion, the background concentration shall be considered the criterion. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective March 16, 2007.)