

**STATE ENVIRONMENTAL LAWS
AFFECTING
KANSAS AGRICULTURE**

*(See NASDA's website for
Federal Environmental Laws Affecting Agriculture)*

A Project of the

**National Association of State Departments
of Agriculture Research Foundation**

through the

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Research and Information**



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The Project Participants

National Association of State Departments of Agriculture Research Foundation

The National Association of State Departments of Agriculture (NASDA) is a nonprofit, nonpartisan association of public officials comprised of the Commissioners, Secretaries, and Directors of the fifty State Departments of Agriculture in the fifty states and the territories of Puerto Rico, Guam, American Samoa, and the Virgin Islands. NASDA's mission is to represent the State Departments of Agriculture in the development, implementation, and communication of sound public policy and programs which support and promote the American agricultural industry while protecting consumers and the environment. The NASDA Research Foundation is a 501(c)(3) nonprofit, tax-exempt corporation for educational and scientific purposes.

National Center for Agricultural Law Research and Information

The National Center for Agricultural Law Research and Information (Center) was created in 1987 under Public Law 100-202, 101 Stat. 1329-30 to address the complex legal issues that affect American agriculture. The Center focuses its efforts on research, writing, publishing, development of library services, and the dissemination of information to the public. The Center is located at the University of Arkansas School of Law in Fayetteville, Arkansas.

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS), is a federal agency within the U.S. Department of Agriculture (USDA). NRCS conservationists work with private landowners and operators to help them protect their natural resources.

U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) is a federal agency with primary responsibility for implementation of most federal laws designed to protect, enhance, and conserve the nation's natural resources.

Disclaimer

This guide is designed for use by farmers, ranchers, landowners, and their consultants in understanding the effect environmental laws have on agricultural operations. It is not a substitute for individual legal advice. Producers should always confer with their own attorneys, consultants, or advisors as well as federal, state, and local authorities responsible for the applicable environmental laws.

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The contents and views expressed in this guide are those of the authors and do not necessarily reflect the policies or positions of the United States Department of Agriculture (USDA) NRCS or EPA.

Although every effort has been made to ensure the accuracy of the information contained in this book, environmental statutes, regulations, and ordinances are constantly changing. In addition, the overwhelming complexity and extent of environmental law make it impossible for a single book to describe in complete detail and depth all of the environmental laws and regulations impacting agricultural operations. The following material is simply a basic primer on environmental law for agricultural producers. For these reasons, the utilization of these materials by any person constitutes an agreement to hold harmless the authors, the National Center for Agricultural Law Research and Information, the University of Arkansas, the United States Department of Agriculture, the National Association of State Departments of Agriculture Research Foundation, the Natural Resources Conservation Service, and the United States Environmental Protection Agency for any liability, claims, damages, or expenses that may be incurred by any person or organization as a result of reference to, or reliance on, the information contained in this book.

The background research and final documents were completed in March 2001. Updates of the information contained in the guide will occur on an as needed basis and be available on the Internet.

Anyone with comments concerning the guide should contact the NASDA Research Foundation at 1156 15th Street, N.W., Suite 1020, Washington, D.C. 20005, or phone (202) 296-9680.

Quick Reference Guide

Producer Note: The following chart is intended as a quick reference guide to permits which may be necessary for a particular operation. If a permit is necessary, refer to the page numbers listed referencing this document for further information and contact the agencies listed in the final column for information on applications and procedures for securing a permit for an operation. A list of agencies and contact information is also provided in Appendix A.

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 1-6</i>	Livestock and aquaculture operations, depending on size	NPDES and state specific or general permits or land disposal permit	Environmental Protection Agency (EPA) Regional Office and Kansas Department of Health and Environment (KDHE)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 permit	U.S. Army Corps of Engineers with EPA and Kansas approval
	Discharge of sewage	State site specific or general permit	KDHE
	Feedlot	Annual license and fee	KDHE
	Land application of animal waste	Permit may be required in very limited situations and NRCS requirements must be followed	KDHE
Groundwater <i>pp. 7-10</i>	Supplying water to the public	Public water supply system permit	KDHE
	Underground well injection	Permit required following the Federal Safe Drinking Water Act	KDHE
	Operating oil and gas wells	State permit required when disposing of salt water, oil, or waste into surface ponds	Kansas State Corporation Commission

Regulatory Area	Type of Activity	Permit Required	Agency
Air Quality <i>pp. 10-13</i>	Grain terminals and grain elevators	Permit required	EPA Regional Office or KDHE
	General agricultural operations including odor, dust, or flies	Permit may be required for certain facilities, certain activities may be subject to nuisance suits	KDHE
	Burning	Permit may be required in certain circumstances	KDHE
Solid Waste and Hazardous Waste <i>pp. 13-15</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for disposal, treatment, or storage activities	EPA Regional Office and KDHE
	Public notice of hazardous waste	Not Applicable	Local Emergency Planning Committee, Kansas Department of Labor, and KDHE
	Storage tanks	Permit may be required for certain storage tanks	KDHE
	Waste lagoons	Permit may be required depending on size of operation and activity involved	KDHE
Pesticides and Chemigation <i>pp. 16-19</i>	Sales, distribution, and transportation of pesticides	License and registration for restricted-use pesticides	EPA and Kansas Department of Agriculture (DOA)
	Application of pesticides	Training, certificate, fee, plus restrictions and record keeping	DOA
	Chemigation	Registration, record keeping, and permit required	DOA
Wildlife Protection <i>pp. 19-20</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service and KDWP
	Migratory birds	No permit, but a migratory waterfowl habitat stamp may be required	Kansas Game and Fish and KDWP
	Commercial harvest of wildlife	Commercial harvest permit may be required	KDWP

Regulatory Area	Type of Activity	Permit Required	Agency
Pest Control <i>p. 22</i>	Nurseries	No permit, but certification required	DOA
Dead Animal Disposal <i>p. 25</i>	Disposal of animals and transportation	License required to operate dead animal disposal plant and permit required to transport dead animals in certain circumstances	Kansas State Livestock Commission

ENVIRONMENTAL LAWS AFFECTING KANSAS AGRICULTURE

Producer Note: Agricultural producers are faced with many challenges in today's rapidly changing world. Changes in industrialization, use of computer-based technology, governmental involvement in market dynamics, and environmental regulation are affecting producers in a number of ways. Environmental regulation is a complex area with both federal and state government involvement. Staying informed is the producer's most useful instrument for meeting the challenges of today's agriculture. This information on environmental regulation is provided to educate producers of the breadth and scope of environmental laws which may impact daily production activities.

I. WATER QUALITY

Producer Note: In order for agricultural producers to maintain compliance with water quality legislation, they must be aware of state water quality standards, NPDES permit requirements, state and local nonpoint source pollution programs, wetlands permits, oil spill liability, and whether or not there are waters requiring special protection in the area. The states take active roles in ensuring that producers comply with these requirements.

A. Kansas Water Quality Laws and Regulations

1. *Kansas Overview*

Most states have enacted clean water legislation. Many of these state statutes contain similar requirements to the federal Clean Water Act (CWA), but some impose more restrictive requirements than the federal law since states can also pass their own special water quality legislation. The CWA authorizes Environmental Protection Agency (EPA) to delegate the National Pollution Discharge Elimination System (NPDES) permit program to individual states. Where states assume this responsibility, state statutes must closely track the CWA. Thus, CWA enforcement requirements often come through state statutes and procedures. State administrative agencies then promulgate regulations to implement the state laws. These state regulations usually contain provisions similar to those found in the parallel federal regulations, but there may be significant differences.

Caution: Because environmental laws and regulations change frequently, agricultural producers must stay in contact with both state and federal officials in order to remain in compliance and aware of changes in the law.

Several state agencies in Kansas have water responsibilities. The Kansas Department of Health and Environment (KDHE) has authority for water quality; the Division of Water Resources within the Kansas Department of Agriculture (KDOA) has authority for water appropriation rights, well drilling, levees, dams, water supply, and recreation; the Kansas Water Office (KWO) has authority for the state water plan, and the Kansas Geological Survey has authority for data collection and water research.

Regarding water quality and the harmful effects of water pollution within the state of Kansas, the legislature has given the KDHE the responsibility for setting standards pursuant to

the CWA for the prevention, control, abatement, and enforcement of water pollution.¹ The Kansas legislature has declared that the pollution of waters:

- Constitutes a menace to public health;
- Creates public nuisances;
- Is harmful to wildlife, fish, and aquatic life; and
- Impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water.

To prevent surface and subsurface water and soil pollution that is harmful to the public, plants, animals, or aquatic life, the KDHE sets forth water quality standards based on the determination of water uses of various segments of the state waters. The KDHE also sets forth rules and regulations pursuant to the CWA based upon technology based effluent limitations. and requires registration of potential sources of water pollution.

Producer Note: Agricultural producers should check with the KDHE to determine what requirements concerning water pollution permits may apply to their water discharge activities.

2. *Kansas Concentrated Animal Feeding Operations*

Producer Note: A common by-product of livestock operations is animal waste which must be stored and disposed of properly. Many states are becoming more involved in the regulation of storage, treatment, handling, and land application of waste through regulations, recommendations, pollution prevention plans, and best management practices (BMPs).

Kansas laws and regulations governing water quality permits and the administration of the NPDES program are basically no different than federal regulations. Federal regulations are incorporated by reference into the Kansas statutes.²

Any facility with an animal unit (AU) capacity greater than 300 must register with the KDHE. Registrations must be accompanied by a registration fee.

Any facility with an animal unit capacity of 1,000 or more must obtain a livestock waste management permit. Additionally, any size facility that presents a significant water pollution potential, as determined by the KDHE, must obtain a permit. Thus, livestock waste management permits are generally required in Kansas for almost all, new or expanding, confined animal feeding operations (CAFOs). A CAFO is defined as any lot, pen, pool, or pond which is:

- Used for the confined feeding of animals or fowl for the purpose of food, fur, or pleasure;

¹ KAN. STAT. ANN. § 65-3301 *et seq.* (1992).

² KAR 28-18-11.

- Not normally used for raising crops; and
- Not used for growing vegetation intended for animal food.

Producer Note: Livestock waste management permits are required for all CAFOs with AU capacities of 1000 or more and for any size CAFO if The KDHE determines that the operation has significant water pollution potential. Confined animal feeding operations with AU greater than 300 are required to register with the KDHE and pay a registration fee.

Before any new construction of a CAFO with an AU capacity of 300 or more can commence, the person in control of the facility must pay a fee and register with the KDHE in order that a determination may be made (within 30 days) as to whether the CAFO has significant water pollution potential or any separation distance violations. If either a significant water pollution potential or a separation distance violation exists, a livestock waste management permit is required. CAFOs smaller than an AU capacity of 300 may register but are not required to register.

Animal waste systems that require a livestock waste management permit or that represent a significant water pollution potential must have approval from the KDHE for construction plans and manure management plans. In most instances, a professional engineer or consultant must be involved in design plans and specifications. The engineer or consultant must be licensed in Kansas and insured against errors and omissions. Agricultural producers, engineers, or consultants should check with the KDHE for details and other requirements.³ Variances may be granted upon written request to the KDHE when site-specific conditions or proposals are in keeping with the purpose and intent of the regulation.⁴

Animal waste management systems are also subject to inspection by the KDHE. Operators are responsible for providing all necessary or specialized equipment, clothing, or appurtenances to enable a KDHE inspector to enter and conduct an inspection.⁵

a. Separation Distances

When constructing or expanding any CAFO (other than for swine), separation distances from any habitable structures must be followed:

- Facilities with AU capacity of 300 to 999 must be at least 1,320 feet from any habitable structure; and
- Facilities with AU capacities of 1,000 or more must be 4,000 feet away from any habitable structure.

³ KAR 28-18-12.

⁴ KAR 28-18-15.

⁵ KAR 28-18-14.

Distance requirements may not have to be met if:

- Written agreements with all owners of habitable structures within one mile of the CAFO are obtained stating that they are aware of the construction or expansion and have no objections to the construction or expansion;
- The Board of County Commissioners requests a reduction of distance; or
- The KDHE determines the facility is using technology that meets or exceeds the required effect of the separation distance.

Certain facilities are exempted and separation distance requirements do not apply to the following:

- Facilities which existed on July 1, 1994 (the effective date of the separation distance requirements) and were registered with the KDHE before July 1, 1996; or
- Facilities which obtained a permit before July 1, 1994; and
- Facilities that existed prior to the effective date of the separation distance requirements and that are expanding capacity in the following circumstances:
 - Facilities with an AU capacity of 1000 or more units that expand as long as the expansion does not decrease the distance from the existing facility and the nearest habitable structure; and
 - Facilities with an AU capacity of less than 1000 units that expand as long as the expansion does not increase beyond an AU of 2000.

b. Land Application of Wastes

Land application of animal or other process wastes is allowed under certain conditions:

- When applied at agronomic rates;
- When applied during dry weather, i.e., not raining;
- When applied to ground not frozen, snow covered, or water saturated; and
- When ongoing sampling and analysis of nutrient and salinity levels of the area occurs to determine waste utilization for protection of soil and water resources.⁶

c. Swine

For swine facilities or facilities including swine, separation distances from habitable structures in a park or wildlife refuge are more strict. Separation distances for parks are:

⁶ KAR 28-18-13.

- 1320 feet from habitable park structures for AU capacities of 300 to 999, and 4000 feet from habitable park structures for AUs of 1000 or more.
- For expansion of existing swine facilities, 4000 feet for AU capacity of 3725 or more;
- For new construction of new facilities, 5000 feet for AU capacity of 3725 or more;

For a wildlife refuge, required separation distances are:

- 10,000 feet from habitable refuge structures for new swine construction facilities with an AU capacity of 1000 to 3724 and 16,000 feet for new swine construction facilities with an AU capacity of 3725 or more.

Two exceptions apply for swine CAFOs with separation distance requirements greater than 4000 feet:

- 1) if an application for expansion was pending before March 1, 1998 or
- 2) if an application for new construction was pending before March 1, 1998.

Agricultural producers should check with the KDHE to determine which swine facilities or structures are used for distance measurements.

Producer Note: The KDHE may reduce the separation distance requirements between a CAFO and a habitable structure if no substantial objection from owners of habitable structures within one mile of the CAFO is received by the KDHE (notice to adjacent land owners must be by certified, return receipt mail), the Board of County Commissioners where the facility is located submits a written request to the KDHE seeking a reduction of the distance requirements, or the KDHE determines the facility is using technology that meets or exceeds the required effect of the separation distance.

Accidental discharges, emergency discharges, overflows, or unplanned releases of animal wastes or other process wastes must be reported to the KDHE within two hours of discovery (Emergency Spill Hotline, 785/ 296-3176).⁷ Each operator of a facility that discharges or releases such wastes must file a written report to the KDHE within three days of the incident.⁸

3. *Kansas Feedlots*

An agricultural producer must have a license from the Kansas Livestock Commissioner before operating a feedlot in Kansas. A feedlot is defined as a livestock feedlot or feed yard having more than 1000 head of livestock at one time during a year.⁹ A feedlot license requires the producer to:

⁷ KAR 28-18-8.

⁸ *Id.*

⁹ KAN. STAT. ANN. § 47-1501 *et seq.* (1992).

- Provide reasonable methods for the disposal of animal wastes;
- Provide a method for the eradication of pests;
- Provide adequate liability coverage;
- Provide veterinary services to control disease;
- Have available waste equipment for scraping, cleaning, and grading livestock areas; and
- Provide weather resistant aprons adjacent to all permanently affixed feed banks, water tanks, and feeding devices.

All feedlot licenses expire on June 30 of each year and may be renewed by paying an annual fee.

4. *Kansas Farm Ponds*

The KDHE has the authority to cease any pollution activity caused by refuse runoff from any surface pond. However, if a freshwater reservoir or farm pond is privately owned and the land bordering it is privately owned, the reservoir or pond is exempt from water quality standards unless there is seepage into other waters of the state.

5. *Kansas Public Access to Information*

Records, reports, data, and other information obtained from sources or potential sources of discharge of water pollutants is available to the public unless the KDHE determines that the disclosure would make trade secrets available.

6. *Kansas Violations and Penalties*

Any person who violates any term or condition of any discharge permit, effluent water quality standard, or requirement for filing, monitoring, reporting, or inspection may be subject to a penalty up to \$10,000 for each violation as well as criminal penalties. Additionally, any person who causes a reduction in the quality of the waters of the state or causes death or injury to fish, animals, vegetation, or other resources of the state is liable for all amounts which are necessary to correct the harm.

After receiving notice of a violation, an individual has 15 days to make a written request to the KDHE for a hearing.

Producer Note: Often the specifics of environmental laws are found in agency regulations. In addition, regulations are likely to be amended frequently. As a result, an agricultural producer must stay in contact with offices administering specific programs in order to keep up with all of the changes which may occur in a particular program.

II. GROUNDWATER

A. Kansas Groundwater Laws and Regulations

1. *Kansas Regulation of Groundwater Wells*

The Kansas Water Appropriation Act (KWAA)¹⁰ is the principal law under which Kansas water is governed. Kansas is a “prior appropriation” state as to water rights. It is illegal to use water for any purpose, except for domestic use,¹¹ without having a vested right or a permit from the Division of Water Resources within the Kansas Department of Agriculture (KDOA) to appropriate water.¹² The DWR keeps all water rights records for Kansas. Agricultural producers should contact DWR for information about required permits before beginning any water use activity.

All water is considered owned by the state but dedicated to citizens’ use under the principal of “first in time, first in right.” In times of shortages, any water restrictions are first applied to the water rights last or most recently acquired, then applied to the next to last acquired, and so on. However, in addition to this priority principle, other management techniques are allowed in special areas called Intensive Groundwater Use Control Areas (IGUCAs) established by the DWR.

Local entities called groundwater management districts (GMDs) have authority to develop regulations or policies to manage groundwater supplies in that area as long as they are not inconsistent with the KWAA. Agricultural producers should check with the local GMDs to assure compliance with all rules, regulations, policies, and procedures regarding all their water use activities.

a. *Dams*

The DWR must approve any construction plans for dams that would impound more than 30 acre-feet of water.¹³ Factors considered for approval of dams include proper design, potential for property damage, potential downstream danger to human safety, location, size of reservoir, hydrology, geology, and soils are taken into account for approval. The DWR also approves general plans for watershed districts as well as individual plans for watershed district projects.

To protect groundwater resources from waste and pollution, Kansas has declared that all water well contractors in the state must be licensed and follow certain requirements.¹⁴ These requirements include describing the location, drilling, and the type of water well to be used; plugging abandoned wells and test holes; and providing water source information to the KDHE through well logs, well pumping tests, and water quality tests. The KDHE issues these licenses which are valid for one year. An annual fee must accompany a license renewal.

¹⁰ KAN STAT. ANN. § 82a-701 *et seq.* (1992).

¹¹ Domestic use includes water for household purposes, lawn and garden purposes (up to two acres in size), or livestock on pasture.

¹² A vested right is a beneficial use of water begun before June 28, 1945 that has been continued by right.

¹³ The measurement is taken at the low point of the top of the dam.

¹⁴ KAN. STAT. ANN. § 82a-1020 *et seq.* (1992).

Producer Note: Well contractors should contact the KDHE for requirements of construction, reconstruction, treatment, and the plugging of water wells.

The KDHE or any other person may make a complaint against a contractor for not following the KDHE requirements. Notice of complaints are given to the contractor along with a reasonable time to correct the problem. Contractors are entitled to an administrative hearing before a license is revoked or suspended.

All contractors must keep an accurate log of the construction, reconstruction, or plugging of each well and furnish a record of the log to the KDHE within 30 days of the activity's completion. Each log must contain the following information:

- The name and address of the landowner and the legal description of the location of the well;
- The kind and depth of the rock encountered;
- The depth at which water was found;
- The static water level of the completed well;
- A copy of the record of pumping tests;
- The construction or reconstruction details of the well; and
- The amount, type, and placement of plug materials.

Contractors that violate the KDHE requirements may be fined up to \$5,000 for each violation and face criminal penalties. Private persons may also bring claims against violators through citizen suits.

Producer Note: All abandoned water wells must be plugged by the landowner in accordance with the requirements of the KDHE. However, if the KDHE determines that a well does not threaten to pollute groundwater, the contractor or landowner may be exempt from plugging the well.

2. *Kansas Public Water Supply Systems*

A permit must be obtained from the KDHE in order to operate a public water supply system.¹⁵ A public water supply system is defined as a system which provides piped water for human consumption to the public with at least ten service connections or a system which regularly serves an average of at least 25 individuals daily at least 60 days out of the year. For agricultural producers, this normally would only apply to those who furnish farm employees water from wells located on the farm.

¹⁵ KAN. STAT. ANN. § 65-163 *et seq.* (1992).

Each water supply permit application must include:

- A copy of the plans and specifications of the construction of the water supply system;
- A description of the source of the water; and
- The manner of storage, purification, or treatment.

Producer Note: Operators of public water supply systems should contact the KDHE in order to get information about the state primary drinking water standards. This information will alert operators as to the maximum level of contaminants acceptable, water treatment techniques, monitoring requirements, and proper water sampling.

The KDHE may grant variances or exemptions from certain drinking water standards if maximum contaminant levels cannot be met despite the application of the best technology treatment techniques and the variance or exemption will not result in an unreasonable risk to health. Costs to the operator are also considered in granting variances.

Violators of the KDHE requirements may be fined up to \$5,000 for each violation and liable for environmental clean up costs and private monetary damages.

3. Kansas Underground Injection Well Control

The KDHE requirements regarding underground well injection control primarily follow the federal requirements of the federal Safe Drinking Water Act.

Producer Note: Individuals should check with the KDHE for information regarding permit applications, permit deviations, testing and monitoring requirements, possible exemptions, hazardous wastes injection, and possible fines and liabilities resulting from violations.

4. Kansas Oil and Gas Wells

The KDHE has established regulations to monitor and inspect oil and gas facilities. Every operator of an oil or gas well must file an application of intent to drill with the State Corporation Commission (SCC) before drilling. The SCC determines whether the proposed construction of the well will protect groundwater. The SCC, upon approval of the application, specifies requirements concerning pipe amounts and plugging requirements.

Agents of the KDHE have the right to enter upon any lands to clean up pollution resulting from oil or gas activities and to occupy these lands as necessary. Any agent entering upon any land to conduct cleanup activities is not responsible for harm to the land but is responsible for harm to crops, livestock, or any improvements on the land. Additionally, any person having control over underground petroleum storage tanks or wastewater storage tanks must submit a plan to the KDHE which shows that storage tanks will not cause water or soil pollution.

Upon a finding that the waters or soil of the state are not being protected from pollution caused by oil and gas activities, saltwater disposal or storage, or underground oil or gas storage reservoirs, the KDHE will order the activity to cease.

It is unlawful in Kansas to store or dispose of saltwater, oil, or waste in surface ponds unless a permit is obtained from the SCC. Operators must keep saltwater, oil, or waste safely confined in tanks, pipelines, or ponds in order to prevent seepage and overflow.

Producer Note: Agricultural producers constructing or expanding operations must carefully assess their water usage needs. If the gallons per day usage meets certain threshold standards set by the KDHE, a permit for water usage will be necessary for the operation. The KDHE has all necessary application forms and information regarding administrative hearing procedures and water usage permit requirements.

III. AIR QUALITY

A. Kansas Air Quality Laws and Regulations

A statewide program of air pollution prevention pursuant to the Clean Air Act (CAA) has been established in Kansas in order to maintain levels of air quality which protect human health and prevent injury to animal and plant life.¹⁶ Responsibility for air quality conservation and the control of air pollution lies with the KDHE.

1. *Kansas Air Pollution Permits*

An air pollution permit must be obtained from the KDHE before the construction, alteration, installation, or use of any machine, equipment, or facility if the KDHE determines that the equipment or facility will cause air pollution. Applications for permits must be accompanied by a fee, plans, specifications, and any other information that the KDHE finds necessary.

Any person who would be affected by the approval of a permit may, upon written request, ask that a public hearing be held on whether the permit should be granted. If the person affected by the action of the KDHE has requested a public hearing, the KDHE cannot deny, revoke, suspend, or fail to renew the permit prior to the hearing. Permits become void on their expiration date unless a completed application, along with the required fee, is filed with the KDHE on or before the expiration date.

Producer Note: The KDHE may grant general permits for sources of air pollution that are similar in nature. Agricultural producers, therefore, must check with the KDHE to determine if an operation requires a general or an individual permit.

Finally, persons who operate equipment or facilities that cause air pollution must make reports to the KDHE concerning location, size, and height of pollution outlets, the activity of the business, fuels used, and the time periods or durations of emissions of air pollution.

¹⁶ KAN. STAT. ANN. § 65-3001 *et seq.* (1992).

a. Variances

Producers may also apply for a variance from KDHE requirements for air pollution control pursuant to the CAA. The KDHE may grant a variance if:

- The level of emissions of air pollution occurring or proposed to occur do not endanger human health; and
- Compliance with the requirements for which the variance is requested would produce serious hardships to the applicant without greater benefits to the public.

All proposed variances must be preceded by a public hearing. The KDHE has discretion in granting variances. If a variance is granted based on grounds that there are no practicable ways known to control the air pollution, the variance will only be effective until new methods become available. Variances which are granted on the grounds that compliance with the KDHE's requirements would necessitate extreme measures due to high costs will last for a reasonable time.

2. *Kansas Local Air Quality Conservation Programs*

Any city, county, or combination of cities or counties may, upon approval by the KDHE, establish local air quality programs. The KDHE, in approving or disapproving a proposed local air quality program, will consider the following factors:

- The need for a local program based on the quality of air in the area;
- The likelihood that local authorities will be able to maintain air quality in the area; and
- Whether those with the responsibility for overseeing the local program have legal authority over the entire area covered by the proposed program.

The local program's air quality requirements must be at least as stringent as the requirements that the KDHE has already set for that area.

3. *Kansas Open Burning*

The KDHE's regulations prohibit open burning, but exemptions¹⁷ include:

- On premise burning incidental to residences, limited to five dwellings, unless a local authority prohibits the exemption;
- Burning for cooking or ceremonial purposes on ground regularly used for recreational purposes;

¹⁷ KAR 28-19-45, -647.

- Agricultural-type burning of grass, crop residue, woody species and other plant growth for the management of crops, pastures, ranges, wildlife, or watersheds as long as notification is given to the local fire control authority having jurisdiction over the area unless the local governing authority has established a policy that notification is not required; and
- Special KDHE-approved burnings for the disposal of materials with no other practicable means of disposal where the disposal would be in the public interest and the burnings are not prohibited by the local government or local fire authority.

Open burning is banned entirely:

- If there is injury to human health, animal or plant life, or property;
- If it unreasonably interferes with the enjoyment of life or property;
- If it is not supervised until it is extinguished;
- From two hours before sunset until one hour after sunrise;
- In cloudy, foggy, and inclement weather;
- When wind is less than 5 m.p.h. or greater than 15 m.p.h.;
- Within 1000 feet of an occupied dwelling without notification to the occupant;
- Within one mile of an airport without notification to the airport authorities;
- If the open burning causes a traffic or safety hazard; and
- If there is potential for smoke to blow toward a public roadway without adequate prior notification to highway patrol or the sheriff.

All open burning must consist of stockpiled materials that are as dry as possible and do not include other matter that inhibits good combustion or produces heavy smoke such as tires, heavy oils, and tarpaper.

<p>Producer Note: Agricultural producers who intend to do any type of open burning must check with the KDHE to ensure that no liability will result from the open burning.</p>

4. *Kansas Violations*

Violators of KDHE requirements concerning air pollution may be subject to fines up to \$10,000 for each violation plus criminal penalties. Private individuals may also sue violators for damages. Within 15 days of receiving notice of an alleged violation, a person alleged to have violated air quality standards may request a hearing.

5. *Small Business Assistance Program*

The KDHE administers the Small Business Assistance Program so businesses can reduce wastes and emissions and achieve regulatory compliance. A qualifying small business is one with no more than 100 employees that is considered not to be a major stationary source of air pollutants, i.e., the business emits less than 50 tons per year of any regulated air pollutant and less than 75 tons per year of all regulated air pollutants.

Under the program, free, non-regulatory technical assistance including pollution prevention practices such as material substitution, process optimization, waste minimization, and recycling is available for small businesses in Kansas to meet state and federal air quality standards as provided in the CAA Amendments of 1990 (CAAA). The program, as mandated under CAAA, is administered by the Pollution Prevention Institute at Kansas State University for the KDHE. The program addresses air, water, and land concerns. Services are strictly confidential and provided through:

- Confidential on-site assessments and telephone assistance;
- Training seminars, workshops, and presentations; and
- Fact sheets, publications, and reports.

6. *Kansas Grain Handling and Storage*

Producer Note: Agricultural producers involved in handling or storing grain must check with the KDHE to determine what requirements the KDHE may have concerning the control of grain elevators and related facilities.

IV. SOLID WASTE AND HAZARDOUS WASTE

A. **Kansas Solid Waste and Hazardous Waste Laws and Regulations**

Producer Note: While most farmers and ranchers are not generators, transporters, or disposers of hazardous waste, it is important to check with state officials concerning the definitions of solid waste to determine whether an operation's activities could be regulated under state solid waste or hazardous waste statutes.

1. *Kansas Nonhazardous Solid Wastes*

Before any person constructs, alters, or operates a nonhazardous solid waste processing facility or nonhazardous solid waste disposal area, a permit must be obtained from the KDHE.¹⁸ Each applicant must show that KDHE requirements for the activity will be met. The KDHE conducts a background investigation of each applicant before awarding the permit. The investigation will consider the financial, technical, and management capabilities of the applicant. Each applicant's plans and designs must be prepared by a licensed Kansas engineer and submitted to the KDHE for approval before any activity begins.

¹⁸ KAN. STAT. ANN. § 65-3407 *et seq.* (1992).

Producer Note: Each permit will contain limitations on the types and quantities of waste to be disposed or processed. The permits are not transferable to other persons and may be discontinued by the KDHE at any time.

No permits are issued for locations within 1/2 mile of a navigable stream or within one mile of any public water source.

Producer Note: It is not unlawful to use nonhazardous solid wastes in normal farming operations or to dump or deposit nonhazardous solid wastes from household or agricultural activities onto the surface of one's owned or leased land as long as these actions do not create a public nuisance or threaten public health.

Violators of any requirements regarding disposal of nonhazardous solid wastes may result in fines up to \$5000 for each violation plus criminal penalties.

Producer Note: Certain activities, such as commercial hog farming and dairy farming, require lagoons for the proper management of animal waste. Agricultural producers should check with the KDHE to ensure that applicable rules and regulations concerning waste lagoons are met.

2. *Kansas Hazardous Wastes*

KDHE requirements regarding the disposal or processing of hazardous wastes do not apply to household wastes, mining wastes, or agricultural wastes returned to the soil as fertilizers.¹⁹ The KDHE has a hazardous waste list and the requirements for processing, storage, disposal, and transporting those wastes. Every hazardous waste permit contains conditions regarding the types and quantities of hazardous wastes which can be stored, treated, or disposed at the permitted location.

Producer Note: Permits must be obtained from the KDHE before any person disposes hazardous wastes or constructs, modifies, or operates a hazardous waste facility. The KDHE will investigate each permit applicant and inspect the location of any proposed waste facility or area. Plans and designs of any proposed hazardous waste treatment, storage, or disposal facility must be made by a licensed Kansas engineer and sent to the KDHE before the construction, modification, or operation of any facility begins.

Burial of certain types of hazardous wastes is prohibited unless an exception is granted by the KDHE. Exceptions are granted only when it is shown that underground burial is the only economical and feasible storage method available.

Violators of KDHE requirements concerning hazardous waste treatment, disposal, or storage may be fined up to \$25,000 for each violation, charged with criminal penalties, and sued by private individuals through citizen suits. Violators are also responsible for cleanup costs.

¹⁹ KAN. STAT. ANN. § 65-3430 *et seq.* (1992).

3. *Kansas Storage Tank Act*

The KDHE has established requirements for both aboveground and underground storage tanks and for their repair, closure, and disposal. A person must obtain a permit from the KDHE before the construction, installation, modification, or operation of any storage tank. Furthermore, each owner of a storage tank must notify the KDHE of the tank's existence, size, type, age, location, and associated equipment and uses.

Aboveground storage tanks are defined as any storage tank that is above or upon the surface of the floor in a basement, cellar, tunnel, or mine shaft or any storage tank in which greater than 90 percent of the tank volume, including volume of any piping, is not below the surface of the ground. Storage tanks that do not meet the above definition are defined as underground storage tanks (USTs).²⁰

Producer Note: Many agricultural producers buried USTs on their property many years ago. If a producer has an UST, special controls may be necessary to regulate the substances contained in those tanks. In some cases, removal of the tank may be necessary.

The Kansas Storage Tank Act and its requirements do not apply to the following:

- Farm or household tanks with a capacity of 1100 gallons or less used for storing motor fuel;
- Tanks storing heating oil for household use;
- Pits, ponds, septic tanks, or lagoons;
- Aboveground storage tanks containing agricultural materials regulated by the KDOA; and
- Aboveground tanks with a capacity less than 660 gallons.

Producer Note: Any USTs registered with the KDHE on May 18, 1989 or any aboveground tanks registered with KDHE on July 1, 1992 are deemed permitted.

4. *Kansas Emergency Planning and Community Right to Know*

Producer Note: The agricultural producer may have specific responsibilities designed to advise the public of potentially hazardous situations. These responsibilities depend on the size of the operation and whether or not large quantities of hazardous chemicals are stored on the property. Producers should contact the KDHE to determine what information, if any, should be provided to the community.

²⁰ KAN. STAT. ANN. § 65-34,100 *et seq.* (1992).

V. PESTICIDES AND CHEMIGATION

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes. Most states have some form of licensing or certification requirements controlling those who use pesticides. In addition, if a producer employs agricultural workers, there are regulations which address safety concerns about pesticide use around those workers or by those workers.

A. Kansas Pesticide and Chemigation Laws and Regulations

Producer Note: Kansas, like most states, has laws designed to control the use of pesticides. The laws are designed to closely monitor the distribution and ultimate use of these substances within the state.

1. *Kansas Private Applicators*

A private applicator certificate is sufficient for persons who want to use restricted-use pesticides in most cases. For example, a person producing an agricultural commodity on property owned or rented by that person or that person's employer or a person producing an agricultural commodity on the property of another for no compensation other than the trading of personal services can do so with a private applicator certificate. This pesticide policy also applies to restricted-use pesticides controlling ornamental shrubbery pests or turf pests on a person's rented or owned land.

Producer Note: Private applicator certificates may be obtained by persons who pass a test showing they have practical knowledge of pest problems and proper storage, use, handling, and disposal. Educational materials are available at county extension offices.

2. *Kansas Commercial Applicators*

A pesticide that has been designated as a restricted-use pesticide by the KDOA cannot be lawfully used unless that person has received a commercial applicator certificate from the KDOA. Applications for a commercial applicator certificate must be made on supplied forms and accompanied by a fee.

A 60-day temporary permit for a commercial applicator certificate may be obtained if the following requirements are met:

- An application for a temporary permit has been completed;
- All required fees have been paid; and
- The licensee has passed an emergency examination given by the county extension personnel.

The following persons do not require a commercial applicator certificate to use restricted-use pesticides:

- Those applying restricted-use pesticides under a private applicator certification;
- Employees of a person or company having a pesticide business license who utilize only nonaerial methods of pesticide application and who work under the supervision of a certified commercial applicator;
- Veterinarians and physicians; and
- Laboratory personnel employed by recognized pesticide research facilities.

3. *Kansas Pesticide Businesses*

All persons who apply pesticides to someone else's property in exchange for compensation must receive a pesticide business license from the KDOA.²¹ It is unlawful to advertise, sell, offer for sale, or perform any service for the control of a pest on another's property or apply a pesticide to another's property for compensation unless a pesticide business license has been obtained.

Applications for a pesticide business license should be made on forms provided by the KDOA. Applications must be accompanied by a fee corresponding to the category of pesticide (general-use or restricted-use) for which the license is requested. Furthermore, each applicant must file a bond or proof of insurance with the KDOA. A pesticide business license is issued after the business owner or an employee is certified as a commercial applicator in the categories of pesticide use for which a business license is sought.

Persons who handle, mix, or apply pesticides for the control of wood destroying pests, structural pests, ornamental pests, or turf pests must be registered pest control technicians and have had training according to the requirements of the KDOA.

Producer Note: Pesticide business licenses are not required for state or federal personnel using pesticides or pest control services involved in pesticide research, for veterinarians or physicians using pesticides in their professional services, or for any person or employee who uses pesticides on personally owned or leased land.

Any person with a pesticide business license who violates any of the KDOA requirements may be fined up to \$5,000 for each violation. Within 20 days after receiving notice of a violation, a person may request a hearing on the alleged violations by written request to the KDOA.

²¹ KAN. STAT. ANN. § 2-2438a *et seq.* (1992).

4. *Kansas Pesticide Equipment*

Producer Note: The KDOA may require that certain equipment used in commercial applications of pesticides be registered. Persons conducting commercial applications should contact the KDOA to determine what equipment must be registered. The KDOA may make surprise inspections of pesticide equipment to determine if requirements concerning pesticide applications are being met. If faulty equipment is discovered, the KDOA may order repairs.

5. *Kansas Pesticide Dealers*

Pesticide dealers must register with the KDOA. However, licensed pesticide businesses that dispense pesticides using their own equipment and those that sell general-use pesticides for household use are not required to register.

6. *Kansas Pesticide Management Areas*

The KDOA may designate certain areas as pesticide management areas. These areas become pesticide management areas when the KDOA, EPA, or KDHE determines that a particular pesticide threatens the public health or natural resources of a particular area of the state. Pesticide management plans are set up in these areas to regulate the methods and quantities of pesticide application. Agricultural producers should check with the KDOA to determine where pesticide management areas are located.

7. *Kansas Pesticide Complaints*

Any person who is harmed by a pesticide application should file a complaint with the KDOA within 60 days after the harm is discovered. These complaints must name the person responsible for the pesticide application, the name of the owner or renter of the land to which the pesticide was applied, and the name of the complainant. However, this procedure does not prevent the person harmed from bringing a private lawsuit.

8. *Kansas General Unlawful Acts*

It is unlawful to use any pesticide in a way inconsistent with the pesticide's label or to discard or store any pesticide or pesticide container in a manner that harms humans, crops, vegetation, livestock, wildlife, or waters of the state.

9. *Kansas Chemigation Safety*

Producer Note: Chemigation is the process where one or more chemicals are added to irrigation water. Chemigation is controlled by laws at the state and federal levels. The EPA publication *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* encourages the reduction of pollution by timing delivery of chemicals via chemigation to the plants to meet crop needs at the optimum period. Other nonpoint pollution management measures include installing backflow preventers for wells, minimizing field edge discharges, and controlling deep percolation.

Chemigation is defined as any process where pesticides, fertilizers, other chemicals, or animal wastes are added to irrigation water and applied to land, crops, or both through an irrigation distribution system.²²

People applying any chemical by the chemigation process must perform the following:

- Register with the KDOA;
- Receive a chemigation user permit from the KDOA;
- Use antipollution devices; and
- Keep required records and reports.

Chemigation permits are effective for one year and may be renewed. Chemigation permits are only available to persons who are certified chemigation equipment operators or who employ someone who is. A certified chemigation equipment operator is someone who has passed the chemigation test given by the KDOA.

VI. PROTECTION OF WILDLIFE

Producer Note: Agricultural producers also have responsibilities concerning wildlife and migratory birds which may have habitat on the producer's property. Federal and state laws contain measures designed to protect or enhance wildlife or wildlife habitat.

A. Kansas Wildlife Protection Laws and Regulations

Producer Note: Many states have additional measures which either enhance protections under federal laws or address issues peculiar to wildlife found within the state. These states also may address common problems caused by wildlife. Kansas has laws protecting wildlife.

1. *Kansas Nongame and Endangered Species Act*

The KDHE determines and lists species of wildlife indigenous to Kansas that are threatened or endangered.²³ The KDHE has authority to acquire land or waters in order to conserve threatened or endangered species.

A special permit is required to possess, process, sell, offer for sale, deliver, carry, transport,²⁴ or ship any endangered species within the state of Kansas or to export any threatened or endangered species from Kansas.

²² KAN. STAT. ANN. § 23301 *et seq.* (1992).

²³ KAN. STAT. ANN. § 32-957 *et seq.* (1992).

²⁴ Transportation is unlawful unless the endangered species is being transported from outside of the state into the state, and a federal permit has been acquired by the transporter.

Producer Note: Agricultural producers should check with the KDHE in order to determine if any threatened and endangered species protected under state or federal law are located on the producer's property. If so, state and federal permits may be required before certain activities can take place on the property. The KDHE and the U.S. Fish and Wildlife Service have all application forms for permits. Failure to obtain proper permits may expose the producer to serious state or federal penalties if a protected species is harmed.

2. *Kansas Harvest Permits*

Harvest permits must be obtained from the KDHE before any wildlife may be harvested for a commercial purpose. However, producers with a fur dealer's license or who own private water fishing impoundments are not required to obtain a commercial harvest permit.

3. *Kansas Migratory Birds*

Migratory birds include wild geese, ducks, or mergansers. A state migratory waterfowl habitat stamp must be obtained before lawfully hunting any migratory waterfowl in Kansas unless that person is not otherwise required to have a hunting license.²⁵

VII. OTHER KANSAS STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential of impacting agricultural operations and their relationship to the environment. The following is a brief discussion of some of those laws in Kansas.

A. **Kansas Farmland Preservation**

1. *Kansas Zoning*

Although municipalities and counties can zone lands and designate the types of activities which may be performed on those lands, existing structures on land and existing agricultural operations on lands newly zoned are generally exempt from compliance with new zoning regulations.²⁶ To be certain of zoning laws, agricultural producers should check with local boards.

Producer Note: Agricultural operations frequently are controlled by local planning or zoning board activities. Since it is not possible to outline local area requirements, agricultural producers should check with local boards to determine these planning and zoning regulations which may affect an operation.

²⁵ KAN. STAT. ANN. § 32-939 *et seq.* (1992).

²⁶ KAN. STAT. ANN. § 19-2908 *et seq.* (1992).

2. *Kansas Conservation Easements*

Producer Note: Many states have passed laws allowing preservation or conservation of agricultural land through the use of conservation easements. When conservation easements are used for these purposes, the law frequently has certain requirements relating to the creation, compensation, and enforcement of the easement.

Conservation easements may be granted by owners of land to a governmental agency, charitable corporation, association, or trust to ensure that the natural, scenic, or open space value of the land will be preserved or that agricultural, forest, recreational, natural resources, historical, architectural, archeological, or cultural aspects of land will be preserved.²⁷

Conservation easements may be assigned, modified, or terminated like any other easement. However, only governmental agencies, charitable corporations, associations, or trusts may accept the easement and, in turn, can only assign those easement rights to a city, county, or the grantor's heirs.

B. *Kansas Nuisance Complaints and Right-to-Farm Defenses*

Producer Note: Agricultural producers may be confronted with complaints of local residents. These complaints may originate from dust or odor generated by the operation and result from a lack of knowledge of agricultural operations. While state or federal authorities usually do not become involved in complaints against agricultural operations, court actions can be brought against a nuisance. In some cases, however, a right-to-farm defense may apply.

1. *Kansas Nuisance*

Kansas law defines nuisance to mean "an annoyance, and any use of property by one which gives offense to or endangers the life or health, violates the laws of decency, unreasonably pollutes the air with foul, noxious odors or smoke, or obstructs the reasonable and comfortable use and enjoyment of the property of another" ²⁸ To be a nuisance, the act or facility complained of must substantially and unreasonably interfere with another's property or comfort. Factors that courts in Kansas consider in determining whether an act or facility constitutes a nuisance include:

- How close the complainant or complainant's property is to the operation or action;
- The frequency of the action;
- The duration of the action; and
- The damage done by the action or operation.

²⁷ KAN. STAT. ANN. § 58-3810 *et seq.* (1992).

²⁸ *Finlay v. Finlay*, 856 P.2d 183 (Kan. Ct. App. 1993).

2. *Kansas Protection of Farmland*

It is the policy of the state of Kansas to conserve and encourage the development and improvement of farmland for the production of agricultural products.²⁹ Therefore, many agricultural activities conducted on farmland have been given protection from nuisance lawsuits. Agricultural activities conducted on farmland, if consistent with good agricultural practices and established before surrounding nonagricultural activities, are presumed to be reasonable and do not cause a nuisance unless the activity has a substantial adverse effect on the public health.

However, the Kansas farmland protection statute is not an absolute defense. A producer must satisfy three conditions to prevent a nuisance claim:

- The producer must be conducting agricultural activities on farmland;
- The operation must conform with all federal, state, and local laws; and
- The operation must have been established prior to the inception of the conflicting nonagricultural activities.

If any one of these conditions is not met, an agricultural producer will lose the protection of this statute, commonly called a “right-to-farm” defense, and be subject to Kansas nuisance law as are all other citizens.

C. **Kansas Pest Control**

1. *Kansas Plant Pests*

A plant pest is defined as an arachnid, nematode, insect (in any stage of development), invertebrate animal, bacteria, fungus, virus, weed, or any other parasitic plant or microorganism which can injure plants or plant products.³⁰

Producer Note: The KDOA has the duty along with other state and federal agencies to locate, suppress, control, eradicate, or prevent the spread of any plant pests. An agent of the KDOA has the authority to quarantine, treat, or dispose of pests once notice is given to the owner of the infested plant or land.

All nurseries in Kansas are inspected annually by the KDOA. If the nursery is found to be free of pests, the nursery is awarded a certificate stating that the nursery is free of pests. However, if the nursery is found to be infested, the KDOA may order those in charge of the nursery to carry out actions to eradicate the pests. Delivery or sales of nursery stock requires a dealer’s license from KDOA.

²⁹ KAN. STAT. ANN. § 2-3201 *et seq.* (1992).

³⁰ KAN. STAT. ANN. § 2-2113 *et. seq.* (1992).

2. *Kansas Noxious Weed Control*

Noxious weeds include kudzu, field bindweed, Russian knapweed, hoary cress, Canada thistle, quackgrass, leafy spurge, burragweed, pignut, musk thistle, Johnson grass, and, in some areas, multiflora rose and sericea lespedeza.³¹

The KDOA has responsibility to adopt methods for the control and eradication of noxious weeds within the state. A private landowner has the responsibility and must bear the expense to eradicate and control noxious weeds by methods established by the KDOA. Chemicals for eradication and control may be purchased from the Board of County Commissioners.

Unlawful activities regarding noxious weeds include the following:

- Bringing any farm machinery containing noxious weed residue into the state;
- Removing farm machinery from any field containing noxious weeds before it is cleaned;
- Selling or giving to another any plant, fertilizer, soil, or sod which contains or is infested with noxious weeds; or
- Selling or giving to another any livestock feed material containing noxious weeds or residue unless the feed is sold to commercial processors or commercial feed mixers or it is consumed on the same farm where it was grown.

D. **Kansas Soil and Water Conservation Districts**

1. *Kansas Conservation Districts*

The Kansas legislature has enacted the Conservation Districts Law in order to prevent soil erosion and to protect the water resources of the state.³² The State Conservation Commission oversees and administers the Conservation District Laws.

The governing body of each district consists of five supervisors. Each district has the following powers and responsibilities:

- To conduct surveys, investigations, and research concerning soil erosion, flood damage, and preventative measures needed within the district;
- To carry out preventative and control measures within the district including engineering projects, changes in the use of land, and new cultivation measures;

³¹ KAN. STAT. ANN. § 2-1314 *et seq.* (1992).

³² KAN. STAT. ANN. § 2-1901 *et seq.* (1992).

- To provide landowners with agricultural and engineering machinery, fertilizer, and seed; and
- To develop plans for the conservation of soil and water resources including impaired water drainage and improvement of water quality within the district.

Each district may apply to the state for cost share grants, covering up to 80 percent of costs, which aid in the implementation measures for soil and water resource conservation.

2. *Kansas Watershed District Act*

The Kansas Watershed District Act provides for the establishment of watershed districts with the power to construct, operate and maintain works of improvement needed to carry out a declared public necessity for the creation of such districts in watersheds including lands that are subject to erosion, floodwater or sediment damages or that would be benefitted by the construction of works of improvement for the conservation, development, utilization and disposal of water. (K.S.A. 24-1201 through 24-1237) The State Conservation Commission oversees watershed district activities. Additional questions should be referred to the State Conservation Commission.

In order to prevent the harmful effects of soil erosion due to dust storms, the Kansas legislature has made it a duty of each landowner in the state to plant perennial grasses, shrubs, trees, and annual or biennial crops and cultivate land in a manner which prevents dust and soil erosion.³³ Each Board of County Commissioners has the responsibility to inspect land within their county to ensure that soil erosion prevention is implemented.

3. *Kansas Rural Water Districts*

Two or more landowners with adjacent land may file with the county clerk a petition addressed to the Board of County Commissioners which requests the incorporation of a water supply district.³⁴ A rural water district may also be created by having at least 50 percent of the landowners of the proposed water district sign a petition which is filed with the county clerk and addressed to the Board of County Commissioners. Each petition must contain the following:

- A description of the lands owned by petitioners and a description of the lands to be included in the water district;
- A statement that the lands sought to be brought under the proposed water district are without an adequate water supply;
- A description of the construction of dams, wells, or other works necessary for developing an adequate water supply; and
- A statement that the water supply improvements will not harm and will actually help the public health.

³³ KAN. STAT. ANN. § 2-2001 *et seq.* (1992).

³⁴ KAN. STAT. ANN. § 82a-601 *et seq.* (1992).

Producer Note: The governing body of a rural water district is made up of the landowners within that district. The rural water district has the power to construct, operate, and maintain dams, wells, pipes, and other water works as necessary.

E. Kansas Aquaculture

Aquaculture is defined as the controlled cultivation and harvest of aquatic plants and animals.³⁵ The KDOA is the state agency responsible for coordinating aquaculture activities in Kansas and implementing the state aquaculture plan. Some of the agency's responsibilities are as follows:

- Working with other state agencies in the research, development, and regulation of aquaculture within the state;
- Serving as an advocate of the aquaculture industry by developing programs that assist in promoting and marketing aquaculture products;
- Coordinating aquaculture information and literature; and
- Providing grants for those in the aquaculture industry.

Producer Note: Agricultural producers engaged in aquaculture activities in Kansas should check with the KDOA for rules or regulations regarding aquaculture environment and/or pollution and waste.

F. Kansas Dead Animal Disposal

Persons disposing of dead animals must do so in one of the following ways:

- Underground burial (a minimum of three feet deep);
- Incineration; or
- Delivery to a disposal plant, substation, rendering plant, or place of transfer licensed by the State Livestock Commissioner.

It is unlawful to put any dead animals or domestic birds into any well, spring, brook, branch, river, creek, pond, road, street, alley, lane, lot, field, or meadow and for an owner of any dead animal to allow it to remain in any of these places. Violations may result in fines up to \$100 for each animal plus criminal penalties.³⁶

Disposal requirements do not apply to the movement of dead horses or cattle from one farm to another if the animals are moved by the owner and the animals did not have a contagious disease at the time of death.

³⁵ KAN. STAT. ANN. § 47-1901 *et seq.* (1992).

³⁶ KAN. STAT. ANN. § 47-1201 *et seq.* (1992).

Swine CAFOs with an AU capacity of 1,000 or more must file a disposal plan with the KDHE for the handling of dead swine. The plan should be amended whenever changes in the facility or other conditions affecting the facility occur. The plan should contain the following minimum requirements:

- Dead swine must not be visible from municipal roads or habitable structures;
- Dead swine must be kept within the confines of the areas used to establish the separation distances;
- Carcasses must be picked up within 48 hours of death under normal circumstances.

G. Kansas Environmental Audits

Producer Note: Several states have passed environmental audit protection laws which give businesses immunity for administrative, civil, or criminal actions derived from the findings of audits when environmental problems are corrected following such discovery during the audit. In other words, businesses cannot be prosecuted, civilly or criminally, for environmental problems discovered and corrected in a self-audit process. Fewer than half of the states have this law, however, Kansas has granted this type of protection.

An environmental audit is defined in Kansas as “a voluntary, internal assessment, evaluation or review, not otherwise required by environmental law, that is performed by the owner or operator, the owner’s or operator’s employees, or a qualified auditor and initiated by the owner or operator of a facility for the express and specific purpose of determining whether a facility’s operation within a facility or facility management system complies with environmental laws.”³⁷

An audit report is a set of documents containing information which results from the environmental audit. It may include the three following components:

- The scope of the audit information, conclusions, and recommendations;
- Documents describing future implementation of certain environmental practices; and
- An implementation plan that addresses correction of previous noncompliance, improving current compliance, and preventing future noncompliance.

Generally, the information contained or disclosed in an audit report is privileged information unless this privilege is waived. This means that the information contained in audit reports is not generally used as evidence in civil, criminal, or administrative proceedings against the business. However, the information contained in the audit report may be placed into evidence if a business has committed fraud, failed to implement a management system to assure

³⁷ KAN. STAT. ANN. § 60-3332 *et seq.* (1992).

compliance with environmental laws, or failed to attempt correction of past noncompliance with environmental laws.

The information privilege does not apply to:

- Documents, data, reports, or any other information required to be collected, maintained, or reported to any state or federal agency;
- Information obtained by observation, sampling, or monitoring by any regulatory agency; or
- Information obtained from a source independent of the audit.

A voluntary disclosure of a violation of environmental laws sets forth a presumption in Kansas that the person or business will be immune from administrative, civil, or criminal penalties for the violation if:

- The disclosure is made to the proper agency promptly after discovery;
- There is a prompt attempt to correct the violation; and
- There is cooperation with the appropriate agency.

H. Kansas Regulation of Biological Products

It is unlawful to sell, purchase, or inject certain vaccines in Kansas unless the State Livestock Commission has given authorization for these activities. It is unlawful in Kansas:

- For any person, except a licensed veterinarian, to inject into any animal any live *brucella abortus* strain 19 vaccine;³⁸
- For any person, except a licensed veterinarian or a person acting under the direct supervision of a licensed veterinarian, to inject any animal rabies vaccine into an animal;
- For any person, except a licensed veterinarian, to purchase any animal rabies vaccine or live *brucella abortus* strain 19 vaccine; and
- For any person to sell or offer for sale any animal rabies vaccine or live *brucella abortus* strain 19 vaccine to any person except a licensed veterinarian.

It is also unlawful for any person:

- To inject any virulent hog cholera virus into any hog in Kansas, unless a permit is obtained from the State Livestock Commission;³⁹

³⁸ KAN. STAT. ANN. § 21-1213 *et seq.* (1992).

³⁹ KAN. STAT. ANN. § 47-601 *et seq.* (1992).

- To sell or offer for sale virulent hog cholera virus to another person unless that person is the manufacturer, an authorized distributor of veterinary supplies, or a licensed veterinarian; and
- To inject any hog cholera vaccine unless authorized.

In addition, only those authorized by the State Livestock Commissioner may inject tuberculin into any animal. The State Livestock Commissioner has also adopted rules and regulations concerning the testing of cattle for brucellosis within the state.

Appendix A - Agencies

Producer Note: State and federal agencies are available to answer questions regarding environmental matters and a producer's compliance with environmental laws and regulations. The following is a list of agencies which should be able to answer questions or provide materials for a producer.

State Agencies:

Animal Health Department

708 S.W. Jackson
Topeka, KS 66603-3714
(785) 296-2326
(785) 296-1765 fax
<http://www.ink.org/public/kahd>

Department of Agriculture

Mills Building
109 S.W. 9th Avenue, 4th Floor
Topeka, Kansas 66612-1280
(785) 296-3556
(785) 296-8389 fax
<http://www.ink.org/public/kda>

Programs and Divisions:

Dairy, Meat, and Poultry Inspection

(785) 296-3511
(785) 296-0673 fax

Grain Warehouse

(785) 296-3453
(785) 296-0673 fax

Nutrient Management

(785) 296-3786
(785) 296-0673 fax

Pesticide and Fertilizer Use

(785) 296-4700
(785) 296-0673 fax

Plant Protection

(785) 862-2180
(785) 862-0727 fax

Water Resources

(785) 296-3717
(785) 296-1176 fax

Weed Control Program

(785) 862-2180
(785) 862-0727 fax

Department of Health and Environment

Capitol Towers Building
400 S.W. 8th, Suite 200
Topeka, Kansas 66603-3930
(785) 296-0461
(785) 296-6368 fax
<http://www.kdhe.state.ks.us>

Emergency Spills

(785) 296-3176

DHE's Division of Environment

Forbes Field
Building 740

Topeka, KS 66620-0001

(785) 296-1535

(785) 295-8464

Department of Wildlife and Parks

900 S.W. Jackson, Suite 502
Topeka, KS 66612-1233
(785) 296-2281
(785) 296-6953 fax
<http://www.kdwp.state.ks.us>

Forest Service

2610 Claflin Road
Manhattan, KS 66502-2798
(785) 532-3300
(785) 532-3305 fax
<http://www.kansasforests.org>

Kansas Water Office

901 S. Kansas Avenue
Topeka, KS 66612-1249
(785) 296-3185
(785) 296-0878 fax
<http://www.kwo.org>

State Conservation Commission

109 S.W. 9th Street, Suite 500
Topeka, KS 66612
(785) 296-3600
(785) 296-6172 fax