

# KANSAS

## *Enforceable Provisions Applicable to Nonpoint Source Water Pollution*

### DISCHARGE PROHIBITIONS

#### Water Pollution Control Law

Kansas' water pollution law contains enforceable permitting provisions that may be applied to some nonpoint source discharges. The law also directs the state's attorney general to pursue abatement of pollution of surface waters affecting animal or aquatic life.

- "No person shall place or permit to be placed or discharge or permit to flow into any of the waters of the state any sewage, except pursuant to a permit."<sup>1</sup> The Kansas Department of Health and Environment may require nonpoint sources to obtain a permit. The law states that the "secretary...may establish...procedures for issuance of general permits to...(1) a category of point and nonpoint sources of sewage such as storm water; (2) other categories of point and nonpoint sources of sewage...."<sup>2</sup> For purposes of the above provisions, sewage is defined as "any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings or animals, or chemical or other wastes from domestic, manufacturing, or other forms of industry."<sup>3</sup>

- "The secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may...be necessary to...(2) control the disposal, discharge or escape of sewage...and (3) establish water quality standards for the waters of the state to protect their beneficial uses."<sup>4</sup>

- "If the secretary finds that...refuse in any surface pond is causing or is likely to cause pollution of soil or waters of the state, the secretary shall issue an order prohibiting such surface pond."<sup>5</sup>

- In addition, if the secretary of health and environment finds evidence of "abatable pollution of the surface waters detrimental to the animal or aquatic life in the state," it is the duty of the attorney general to take such action as may be necessary to secure the abatement of such pollution.<sup>6</sup>

Enforcement of these provisions is by corrective action orders, civil penalties of up to \$10,000 and criminal prosecutions.<sup>7</sup> Where a violation results in the "death of, or injury to, fish, animals, vegetation or other resources of the state, or otherwise causes a reduction in the quality of the waters of the state below the standards set by the secretary," the violator is liable to the state for damages in an amount equal to that necessary to "restock such waters, replenish or replace such resources and otherwise restore the water."<sup>8</sup>

## **Other Discharge Limitations**

- State nuisance law potentially addresses some activities that may result in nonpoint source pollution. "The secretary of health and environment and the county or joint boards of health shall have the power and authority to examine into all nuisances, sources of filth and causes of sickness that in their opinion may be injurious to the health of...inhabitants. Whenever any such nuisance, source of such filth or cause of sickness is found to exist on any private property or upon any watercourse in this state...[the health authorities] shall have the power and authority to order, in writing, the owner or occupant thereof at his or her own expense to remove the nuisance or source of filth or cause of sickness within 24 hours, or within such reasonable time thereafter" as ordered.<sup>9</sup> Failure to obey an order results in a fine of not less than \$10 nor more than \$100 per day.<sup>10</sup>

Kansas' solid waste law provides an exemption from nuisance actions for agricultural activities. "Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance, public or private, unless the activity has a substantial adverse effect on the public health and safety. If such agricultural activity is undertaken in conformity with federal, state, and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety."<sup>11</sup> The law also prohibits open dumping, but exempts normal farming operations provided the practice does not create a public nuisance or adversely affect public health. Violation is a Class A misdemeanor.<sup>12</sup>

## **Fish/Fisheries Laws**

The state's fisheries laws do not appear to contain enforceable provisions relevant to nonpoint source discharges.

## **OPERATIONAL REQUIREMENTS**

### **Forestry Requirements**

State forestry laws do not appear to contain enforceable provisions relating to nonpoint source discharges.

### **Agriculture Requirements**

- Kansas' agriculture law regulates CAFOs of different sizes than the federal regulations. "Prior to any new construction of a confined feeding facility with an animal unit capacity of 300 to 999, such facility shall register with the secretary of health and environment. Facilities with less than 300 units may register...."<sup>13</sup> Within 30 days, the department of health and environment must identify any significant water pollution potential or separation distance violations; if water pollution potential is identified, the facility is required to obtain a permit. If no water pollution potential is found, the secretary is to certify that no permit is required. Confined feeding facility means any

lot, pen, pool or pond: which is used for the confined feeding of animals or fowl for food, fur or pleasure purposes; which is not normally used for raising crops; and in which no vegetation intended for animal food is growing.<sup>14</sup> Violators are subject to a civil penalty of up to \$10,000 per day.<sup>15</sup>

- State agriculture law also requires licenses and sets standards of operation for livestock feedlots or feed yards having more than 1,000 head of livestock at one time. Other livestock feedlots may elect to come under the act. Operating standards contained in the law include requiring that the feedlot provide adequate drainage to control pollution of streams and lakes.<sup>16</sup> Enforcement is through revocation or suspension of licenses, or by criminal prosecution.<sup>17</sup>

- Kansas' pesticide law addresses disposal and storage practices that might result in nonpoint source pollution. "It shall be unlawful for any person to...discard or store any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or waterways and wildlife therein...or to fail to comply with" regulations adopted under the law.<sup>18</sup> Enforcement of the pesticide law is through criminal (Class A misdemeanor) prosecution and, in the case of violations by certified applicators, through civil penalties of between \$100 and \$500 per day.<sup>19</sup>

- The pesticide law also authorizes the board of agriculture to develop pesticide management areas if a pesticide poses a serious threat to the public health, safety and welfare or the natural resources of the state.<sup>20</sup> "Pesticide management plans may include provisions for the handling or release of pesticides, including, but not limited to, the application, mixing, loading, storage, disposal or transportation and guidelines for best management practices."<sup>21</sup> Enforcement is by civil penalty of between \$100 and \$5,000, and by criminal (Class A misdemeanor) prosecution.<sup>22</sup>

- State agriculture law requires that any person who applies any chemical by the chemigation process in an irrigation system must register and use anti-pollution devices specified under state law. Chemigation is defined as "any process whereby pesticides, fertilizers or other chemicals or animal wastes are added to irrigation water applied to land or crops, or both, through an irrigation distribution system." Registration must include, among other things, a plan for handling tail water or accumulations of water.<sup>23</sup> It is unlawful for any person to use the chemigation process without registration or refuse or neglect to comply with restrictions, and enforcement is through permit suspension or revocation, civil penalties of between \$100 and \$5,000, and criminal prosecution.<sup>24</sup>

- Other provisions of Kansas law relating to irrigation practices include the requirement that "(a)ny person who is using a ditch, conduit, or reservoir for irrigation purposes shall be responsible that no injury be done to the embankment thereof, or the fence enclosing it, or other parts of it, and that the waters thereof be not fouled or polluted by any animal driven to or watered there."<sup>25</sup>

## Development and Other Earth-Disturbing Activities

Apart from any programs for the control of urban stormwater under the federal Clean Water Act or that may be authorized by general land use regulation such as zoning, state law provides the following authority applicable to nonpoint sources.

- Kansas law authorizes the regulation of land development activities around some water bodies for the purpose of preventing water pollution. The secretary of health and environment may adopt regulations designating "sanitation zones" to regulate and control development of areas of the state surrounding certain impoundments of water to prevent pollution of such impoundments.<sup>26</sup> A sanitation zone is the land designated by the secretary that is not more than 3 miles from the waterline of any existing or proposed state or federal reservoir that is more than 100 acres in surface area.<sup>27</sup> Owners of land in the zone must obtain approval to construct a building, structure or facility.<sup>28</sup> Exempted from these requirements are (1) land used for agricultural purposes or land under the control of the department of wildlife and parks; (2) subdivisions approved prior to Aug. 1, 1965; and (3) land subject to sanitary codes controlling the subsurface disposal of sewage enforced by the local health department.<sup>29</sup> County attorneys are authorized to enforce these requirements through appropriate actions of injunction, mandamus or quo warranto.<sup>30</sup>

### Endnotes

<sup>1</sup> Kansas Statutes Annotated 65-164(a).

<sup>2</sup> KSA 65-165(b).

<sup>3</sup> KSA 65-164(c).

<sup>4</sup> KSA 65-171d(a).

<sup>5</sup> KSA 65-171d(e).

<sup>6</sup> KSA 65-171b.

<sup>7</sup> KSA 65-164(d), 65-170d, 65-167.

<sup>8</sup> KSA 65-171u.

<sup>9</sup> KSA 65-159.

<sup>10</sup> KSA 65-159.

<sup>11</sup> KSA 2-3201-3204.

<sup>12</sup> KSA 65-3409.

<sup>13</sup> KSA 65-171d(g).

<sup>14</sup> KSA 65-171d(c)(2).

<sup>15</sup> KSA 65-170d(a).

<sup>16</sup> KSA 47-1501, 47-1503, 47-1505.

<sup>17</sup> KSA 47-1506, 47-1509.

<sup>18</sup> KSA 2-2453.

<sup>19</sup> KSA 2-2461.

<sup>20</sup> KSA 2-2472.

<sup>21</sup> KSA 2-2473.

<sup>22</sup> KSA 2-2461, 2-2478.

<sup>23</sup> KSA 2-3302, 2-3303.

<sup>24</sup> KSA 2-3308, 2-3310, 2-3313, 2-3317.

<sup>25</sup> KSA 42-312.

<sup>26</sup> KSA 65-184 -- 65-189f.

<sup>27</sup> KSA 65-185(a).

- <sup>28</sup> KSA 65-189c.
- <sup>29</sup> KSA 65-189e.
- <sup>30</sup> KSA 65-188.