

Water Supply and Sewage

65-171

Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171.

History: L. 1909, ch. 226, § 6; R.S. 1923, 65-171; Repealed, L. 1967, ch. 333, § 7; April 28.

65-171a

Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171a. Stream pollution detrimental to animal or aquatic life. The authority of the secretary of health and environment in matters of stream pollution is hereby supplemented to include stream pollution found to be detrimental to public health or detrimental to the animal or aquatic life of the state.

History: L. 1927, ch. 239, § 1; L. 1974, ch. 352, § 36; July 1.

65-171b

Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171b. Same; abatement. It shall be the duty of the attorney general, on presentation by the secretary of health and environment of evidence of abatable pollution of the surface waters detrimental to the animal or aquatic life in the state, to take such action as may be necessary to secure the abatement of such pollution.

History: L. 1927, ch. 239, § 2; L. 1974, ch. 352, § 37; July 1.

65-171c

Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171c. Same; technical advisers. The secretary of health and environment shall have authority to appoint or employ such technical advisers as may be

necessary in order to carry out the provisions of this act.

History: L. 1927, ch. 239, § 3; L. 1974, ch. 352, § 38; July 1.

65-171d

Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171d. Prevention of water pollution; standards; permits; exemption; orders; hearings; appeals; fees; confined feeding facilities, registration prior to construction, separation distance requirements, exemptions. [See Revisor's Note] (a) For the

purpose of preventing surface and subsurface water

pollution and soil pollution detrimental to public

health or to the plant, animal and aquatic life of the

state, and to protect designated uses of the waters of

the state and to require the treatment of sewage

predicated upon technologically based effluent

limitations, the secretary of health and environment

shall make such rules and regulations, including

registration of potential sources of pollution, as may

in the secretary's judgment be necessary to: (1)

Protect the soil and waters of the state from pollution

resulting from underground storage reservoirs of

hydrocarbons and liquid petroleum gas; (2) control

the disposal, discharge or escape of sewage as

defined in K.S.A. 65-164 and amendments thereto,

by or from municipalities, corporations, companies,

institutions, state agencies, federal agencies or

individuals and any plants, works or facilities owned

or operated, or both, by them; and (3) establish water

quality standards for the waters of the state to protect

their designated uses. In no event shall the secretary's

authority be interpreted to include authority over the

beneficial use of water, water quantity allocations,

protection against water use impairment of a

beneficial use, or any other function or authority

under the jurisdiction of the Kansas water

appropriation act, K.S.A. 82a-701, and amendments

thereto.

(b) The secretary of health and environment may

adopt by reference any regulation relating to water

quality and effluent standards promulgated by the

federal government pursuant to the provisions of the

federal clean water act and amendments thereto, as in

effect on January 1, 1989, which the secretary is

otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-

161 through 65-171h and K.S.A. 2001 Supp. 65-

1,178 through 65-1,198, and amendments thereto,

and rules and regulations adopted pursuant thereto:

(1) "Pollution" means: (A) Such contamination or

other alteration of the physical, chemical or

biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated uses; or (B) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

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

(3) "Animal unit" means a unit of measurement calculated by adding the following numbers: The number of beef cattle weighing more than 700 pounds multiplied by 1.0; plus the number of cattle weighing less than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing more than 55 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or less multiplied by 0.1; plus the number of sheep or lambs multiplied by 0.1; plus the number of horses multiplied by 2.0; plus the number of turkeys multiplied by 0.018; plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01; plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; plus the number of ducks multiplied by 0.2. However, each head of cattle will be counted as one full animal unit for the purpose of determining the need for a federal permit. "Animal unit" also includes the number of swine weighing 55 pounds or less multiplied by 0.1 for the purpose of determining applicable requirements for new construction of a confined feeding facility for which a permit or registration has not been issued before January 1, 1998, and for which an application for a permit or registration and plans have not been filed with the secretary of health and environment before January 1, 1998, or for the purpose of determining applicable requirements for expansion of such facility.

However, each head of swine weighing 55 pounds or less shall be counted as 0.0 animal unit for the purpose of determining the need for a federal permit.

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

(5) "Habitable structure" means any of the following structures which is occupied or maintained in a condition which may be occupied and which, in the case of a confined feeding facility for swine, is owned by a person other than the operator of such facility: A dwelling, church, school, adult care home,

medical care facility, child care facility, library, community center, public building, office building or licensed food service or lodging establishment.

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

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

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that the soil or waters of the state are not being protected from pollution resulting from underground storage reservoirs of hydrocarbons and liquid petroleum gas or that storage or disposal of salt water not regulated by the state corporation commission or refuse in any surface pond is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such underground storage reservoir or surface pond. Any person aggrieved by such order may within 15 days of service of the order request in writing a hearing on the order.

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

(3) Any action of the secretary pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(f) The secretary may adopt rules and regulations establishing fees for the following services:

(1) Plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place;

(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed \$1,950 per company; and

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875 per company.

(g) 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 a capacity of less than 300 animal units may register with the secretary. Any such registration shall be accompanied by a \$25 fee. Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential or separation distance violations pursuant to subsection (h). If there is identified a significant water pollution potential, such facility shall be required to obtain a permit from the secretary. If there is no water pollution potential posed by a facility with an animal unit capacity of less than 300, the secretary may certify that no permit is required. If there is no water pollution potential nor any violation of separation distances posed by a facility with an animal unit capacity of 300 to 999, the secretary shall certify that no permit is required and that there are no certification conditions pertaining to separation distances. If a separation distance violation is identified, the secretary may reduce the separation distance in accordance with subsection (i) and shall certify any such reduction of separation distances.

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

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

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

(2) A confined feeding facility for swine shall meet or exceed the following requirements in separation distances from any habitable structure or city, county, state or federal park in existence when the application for a permit is submitted:

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

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

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

(D) 5,000 feet for: (i) Construction of new facilities with an animal unit capacity of 3,725 or more; or (ii)

expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion extends outside the perimeter from which separation distances are determined pursuant to subsection (k) for the existing facility.

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

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

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

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

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

(B) The secretary may reduce the separation distance requirements of subsection (h)(2)(A) or (B) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (1); (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances; or (iii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

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

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

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

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

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

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

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

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

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

(3) The separation distances required pursuant to subsections (h)(2)(C) and (D) and (h)(3) shall not apply to the following, as determined in accordance with subsections (a), (e) and (f) of K.S.A. 2001 Supp. 65-1,178 and amendments thereto:

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

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

(k) The separation distances required by this section for confined feeding facilities for swine shall be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine, any swine waste retention lagoons or ponds or other manure or wastewater storage

structures and any additional areas designated by the applicant for future expansion. Such separation distances shall not apply to offices, dwellings and feed production facilities of a confined feeding facility for swine.

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

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

History: L. 1933, ch. 85, § 1 (Special Session); L. 1945, ch. 234, § 1; L. 1953, ch. 284, § 1; L. 1957, ch. 333, § 1; L. 1967, ch. 333, § 4; L. 1971, ch. 201, § 1; L. 1974, ch. 247, § 2; L. 1974, ch. 352, § 39; L. 1984, ch. 222, § 2; L. 1986, ch. 204, § 6; L. 1986, ch. 201, § 22; L. 1988, ch. 356, § 181; L. 1989, ch. 185, § 4; L. 1994, ch. 213, § 1; L. 1995, ch. 204, § 13; L. 1997, ch. 139, § 2; L. 1998, ch. 143, § 1; L. 2001, ch. 160, § 15; July 1.

65-171e

Chapter 65.--PUBLIC HEALTH Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171e. Same; investigations, services and orders; fees. All investigations, services and orders rendered, issued or promulgated under the provisions of K.S.A. 65-171d, and amendments thereto, shall be made by such agency, section or division of the department of health and environment, or any of them, as may be designated by the secretary of health and environment, and all fees collected shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

History: L. 1933, ch. 85, § 2 (Special Session); L. 1949, ch. 327, § 1; L. 1974, ch. 352, § 40; L. 1975, ch. 312, § 3; L. 2001, ch. 5, § 212; July 1.

65-171f

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171f. Same; penalties for failure to comply with rules and regulations. Every public authority having by law the charge of the sewer system of any municipality, township, county or legally constituted sewer district or any person, company, corporation, institution, municipality or federal agency that shall willfully or negligently, fail to comply with the rules, regulations and orders of the secretary of health and environment authorized by K.S.A. 65-171d, as amended, shall be punished upon conviction by a fine of not less than twenty-five dollars (\$25) and not more than ten thousand dollars (\$10,000). Each day in which the failure to comply with such requirements and orders continues shall constitute a separate offense.

History: L. 1933, ch. 85, § 3 (Special Session); L. 1949, ch. 327, § 2; L. 1973, ch. 243, § 1; L. 1974, ch. 352, § 41; July 1.

65-171g

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171g. Protection of water and air from sewage contamination. Water supply shall be protected against contamination from sewage by the prohibition of any connection between sewage and water systems which provide the possibility of water contamination by means of back syphonage or direct connection. Air in enclosed spaces shall be protected against contamination from toxic, explosive, or disagreeable gases or vapors from a sewage system by providing leak-tight and substantial waste and ventilation connections, and liquid sealed traps on all plumbing fixtures discharging into any type of sewage disposal systems.

History: L. 1951, ch. 363, § 1; June 30.

65-171h

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171h. Minimum standards for sanitary water and sewage systems. The secretary of health and environment in pursuance of his general power of supervision over the interests of the health and life of the citizens of this state, and the sanitary conditions under which they live and in order to protect the quality of the waters of the state for beneficial uses is hereby authorized and empowered to develop, assemble, compile, approve and publish minimum standards of design, construction, and maintenance of sanitary water and sewage systems, and shall publish and make available such approved minimum standards to municipalities, communities and citizens of this state, and shall from time to time make recommendations to the appropriate committees of the legislature, for any legislation that may be required to adequately protect air in enclosed spaces, and water supply from contamination.

History: L. 1951, ch. 363, § 2; L. 1967, ch. 333, § 5; L. 1974, ch. 352, § 42; July 1.

65-171i

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171i. Feedlot law administration not affected by this act. Nothing in this act shall be construed as limiting the authority of the state livestock commissioner in matters concerning the administration of the law concerning feedlots (K.S.A. 47-1501 *et seq.*).

History: L. 1967, ch. 333, § 6; L. 1989, ch. 156, § 63; July 1.

65-171j

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171j. Discharge of substances containing mercury into waters of state prohibited; penalty.

(a) As used in this act:

(1) "Waters of the state" shall be defined as stated in K.S.A. 65-161; and

(2) "Person" means any individual, firm, partnership, corporation or other association of persons.

(b) It is hereby prohibited for any person, directly or indirectly, to discharge into the waters of the state any substance containing mercury or any compound or derivative of mercury in any quantity which is or may become injurious to the public health, safety or welfare; or which is or may become injurious to domestic, commercial, industrial, agricultural, recreational or other uses which are being or may be

made of such waters; or which is or may become injurious to the value or utility of riparian lands; or which is or may become injurious to livestock, wild animals, birds, fish, aquatic life or plants or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired.

(c) Any person who violates this section shall be guilty of [a] class B misdemeanor.

History: L. 1971, ch. 202, § 1; July 1.

65-171k

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171k.

History: L. 1976, ch. 260, § 1; Repealed, L. 1991, ch. 179, § 2; July 1.

65-171l

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171l. Same; analyses to be performed by laboratory certificated by secretary. Whenever any water sample analysis is required by the secretary of health and environment for the purposes of any permit or application for a permit under K.S.A. 65-163, 65-165 or 65-171d, or any amendments thereto, such water sample analysis shall be performed by a laboratory which has been certified and approved by the secretary of health and environment pursuant to this act and any rules and regulations adopted hereunder.

History: L. 1976, ch. 260, § 2; July 1.

65-171m

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171m. Public water supply systems; primary drinking water standards; rules and regulations, authority to adopt, scope; stringency of standards; requiring fluorides prohibited. The secretary of health and environment shall adopt rules and regulations for the implementation of this act [*]. In addition to procedural rules and regulations, the secretary may adopt rules and regulations providing for but not limited to: (a) Primary drinking water standards applicable to all public water supply systems in the state. The primary drinking water

standards may (1) identify contaminants which may have an adverse effect on the health of persons; (2) specify for each contaminant either a maximum contaminant level that is acceptable in water for human consumption, if it is economically and technologically feasible to ascertain the level of such contaminant in water in public water supply systems; or the treatment techniques or methods which lead to a reduction of the level of the contaminant sufficient to protect the public health, if it is not economically or technologically feasible to ascertain the level of the contaminant in the water in the public water supply system; and (b) establish the requirements for adequate monitoring, maintenance of records and submission of reports, sampling and analysis of water, citing criteria and review and inspections to insure compliance with the contaminant levels or methods of treatment and to insure proper operation and maintenance of the public water supply system; and (c) the definition of different categories of public water supply systems such as community water supply systems and noncommunity water supply systems and may provide for varying requirements for monitoring, maintenance of records and reporting, sampling and analysis of water, citing criteria, and review and inspections based on numbers of persons served, source of supply whether surface or groundwater or other conditions as the secretary may determine to be in the interest of public health and welfare and economic benefits.

The standards established under this section shall be at least as stringent as the national primary drinking water regulations adopted under public law 93-523. No primary drinking water standard or rule and regulation may require the addition of fluorides to public water supplies.

History: L. 1977, ch. 212, § 5; April 14.

65-171n

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171n. Same; development of emergency plans by secretary. The secretary of health and environment shall develop plans for emergency conditions and situations that may endanger the public health or welfare by contamination of drinking water. The plans shall identify potential sources of contaminants, situations or conditions that could place the contaminants in the public drinking water, techniques and methods to be used by public water supply systems to reduce or eliminate the dangers to public health caused by the emergency situations or conditions, methods and times for analysis or testing

during emergency situations or conditions, alternate sources of water available to public water supply systems and methods of supplying drinking water to consumers if a public water supply system cannot supply the water.

History: L. 1977, ch. 212, § 6; April 14.

65-171o

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171o. Public water supply systems; suppliers to provide notice, when; form of notice. The secretary of health and environment may require a supplier of water to give notice to the persons served by the public water supply system and to the secretary of health and environment whenever the public water supply system:

- (a) Is not in compliance with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a primary drinking water standard adopted under K.S.A. 65-171m, and amendments thereto; or
- (b) fails to perform monitoring, testing, analyzing or sampling as required; or
- (c) is subject to a variance or exception; or
- (d) is not in compliance with the requirements prescribed by a variance or exemption; or
- (e) is subject to potential lead contamination from either or both of the following: (1) The lead content in the construction materials of the public water distribution system; (2) corrosivity of the water supply sufficient to cause leaching of lead.

The secretary of health and environment shall by rule and regulation prescribe the form and manner for giving such notice.

History: L. 1977, ch. 212, § 7; L. 1979, ch. 190, § 1; L. 1988, ch. 248, § 1; April 21.

65-171p

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171p. Public water supply systems; variances; conditions; notice; requests for public hearing; scheduled compliance. (a) The secretary of health and environment may grant a variance from an applicable primary drinking water standard to a public water supply system where the variance will not result in an unreasonable risk to the public health and where, because of the characteristics of the raw water sources reasonably available to the public water supply system, the public water supply system

cannot meet the maximum contaminant levels of the primary drinking water standards despite application of the best technology, treatment techniques or other means which the secretary finds are generally available, taking costs into consideration.

(b) Prior to granting a variance, the secretary shall provide notice in a newspaper of general circulation serving the area served by the public water supply system of the proposed variance and that interested persons may request a public hearing on the proposed variance. If a public hearing is requested the secretary shall set a time and place for the hearing. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Frivolous or insubstantial requests for a hearing may be denied by the secretary.

(c) A variance shall be conditioned on monitoring, testing, analyzing or other requirements to insure the protection of the public health. A variance granted shall include a schedule of compliance under which the public water supply system is required to meet each contaminant level for which a variance is granted within a reasonable time as specified by the secretary.

History: L. 1977, ch. 212, § 8; L. 1988, ch. 356, § 182; July 1, 1989.

65-171q

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171q. Same; exemptions; required findings; notice; requests for public hearings; scheduled compliance. (a) The secretary of health and environment may grant an exemption from any requirement relating to a maximum contaminant level or from any treatment technique requirement, or from both, of an applicable primary drinking water standard to a public water supply system upon a finding that: (1) The exemption will not result in an unreasonable risk to the public health; (2) the public water supply system is unable to comply with the contaminant level or treatment technique requirement due to compelling factors, which may include economic factors; and (3) the public water supply system was in operation on the effective date of the contaminant level or treatment technique requirement.

(b) Prior to granting an exemption, the secretary shall provide notice in a newspaper of general circulation serving the area served by the public water supply system of the proposed exemption and that interested persons may request a public hearing on the proposed exemption.

(b) Prior to granting an exemption, the secretary shall provide notice in a newspaper of general circulation serving the area served by the public water supply system of the proposed exemption and that interested persons may request a public hearing on the proposed exemption.

(c) If a public hearing is requested the secretary shall set a time and place for the hearing. Frivolous and insubstantial requests for a hearing may be denied by the secretary. An exemption shall be conditioned on monitoring, testing, analyzing or other requirements to insure the protection of the public health. An exemption granted shall include a schedule of compliance under which the public water supply system is required to meet each contaminant level or treatment technique requirement for which an exemption is granted within a reasonable time as specified by the secretary.

History: L. 1977, ch. 212, § 9; April 14.

65-171r

Chapter 65.--PUBLIC HEALTH Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171r. Same; prohibited acts. The following acts are prohibited:

- (a) The operation of a public water supply system without first obtaining a valid public water supply system permit under K.S.A. 65-163, and amendments thereto;
- (b) the operation of a public water supply system in violation of the conditions of the public water supply system permit under K.S.A. 65-163, and amendments thereto;
- (c) the failure of a supplier of water under investigation to furnish information to the secretary under K.S.A. 65-163, and amendments thereto;
- (d) the failure of a supplier of water to comply with any final order of the secretary issued under the provisions of K.S.A. 65-163 or 65-163a, and amendments thereto;
- (e) the failure of a supplier of water to comply with a primary drinking water standard established under K.S.A. 65-171m, and amendments thereto, and rules and regulations adopted pursuant thereto unless a variance or exception has been granted;
- (f) the failure of a supplier of water to comply with the rules and regulations of the secretary for monitoring, maintenance of records and submission of reports, sampling and analysis of water and inspections adopted under K.S.A. 65-171m, and amendments thereto;
- (g) the failure of a supplier of water to give notice as required under K.S.A. 65-171o, and amendments thereto, and rules and regulations adopted pursuant thereto;
- (h) using any pipe, solder or flux in the installation or repair of any public water supply system or any plumbing in a residential or nonresidential facility providing water for human consumption, which is not

lead-free, except that this paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes. As used in this paragraph, "lead-free" means: (1) With respect to its usage in conjunction with solder and flux, solder and flux containing not more than .2% lead, and (2) with respect to its usage in conjunction with pipes and pipe fittings, pipes and pipe fittings containing not more than 8% lead; (i) the sale of unmarked lead solders and fluxes. A seller of lead solders and fluxes in Kansas shall not sell any solder or flux containing more than .2% lead unless the seller displays a sign and a label is affixed to such product which states: "Contains lead: Kansas law and federal law prohibits the use of this product in any plumbing installation providing water for human consumption.";

(j) the application of fertilizers, pesticides or other chemicals by any person through any lawn irrigation system connected to a public water supply system except that in areas where the public water supply system has adopted a program for the detection and elimination of cross connections and prevention of backflow and backsiphonage which has been approved by the secretary of health and environment, such application may be permitted by the public water supply system upon its periodic inspection and current approval of the installed air gap or reduced pressure zone backflow prevention device which isolates the irrigation system; and

(k) the use by any person of a public water supply system as a source of make-up water for bulk chemical application tanks except that: (1) In areas where the public water supply system has adopted a program for the detection and elimination of cross connections and prevention of backflow and backsiphonage which has been approved by the secretary of health and environment, such use may be permitted by the public water supply system upon its periodic inspection and current approval of an air gap or reduced pressure zone backflow prevention device to protect the public water supply; and (2) in areas where the public water supply system has not adopted a program approved by the secretary of health and environment, such use shall be permitted if an air gap or reduced pressure zone backflow prevention device is used and such device meets nationally recognized standards, as determined by the secretary of health and environment.

History: L. 1977, ch. 212, § 10; L. 1988, ch. 248, § 2; L. 1991, ch. 180, § 1; July 1.

65-171s

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171s. Same; violation of standards; penalties; procedure; hearing; judicial review. (a) Any person who violates any provision of K.S.A. 65-171r and amendments thereto shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not more than \$5,000 for each violation. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation. The secretary, upon a finding that a person has violated any provision of K.S.A. 65-171r and amendments thereto, may impose upon the person a civil penalty of not to exceed the limitations provided in this section. In determining the amount of the civil penalty, the secretary shall take into consideration all relevant circumstances, including but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and any corrective actions taken.

(b) All civil penalties assessed shall be due and payable within 35 days after written notice of the imposition of a civil penalty is served on the person upon whom the penalty is being imposed, unless a longer period of time is granted by the secretary or unless the person appeals the assessment as provided in this section.

(c) No civil penalty shall be imposed under this section except upon the written order of the secretary to the person upon whom the penalty is to be imposed, stating the nature of the violation, the penalty imposed and the right of the person upon whom the penalty is imposed to appeal to the secretary for a hearing on the matter. A person upon whom a civil penalty has been imposed may appeal, within 15 days after service of the order imposing the civil penalty, to the secretary. If appealed, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The decision of the secretary shall be final unless review is sought under subsection (d).

(d) Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

History: L. 1977, ch. 212, § 11; L. 1986, ch. 318, § 87; L. 1988, ch. 356, § 183; July 1, 1989.

65-171t

**Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES**

65-171t. Same; attorney general to seek injunctive relief. The attorney general, upon the request of the secretary of health and environment, shall bring an action in the name of the state of Kansas to seek injunctive relief to prevent the violation, or to enjoin any continuing violation, of any provision of this act [*] or any rule and regulation adopted pursuant to the provisions of this act [*].

History: L. 1977, ch. 212, § 12; April 14.

65-171u

**Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES**

65-171u. Liability for damages to environment; recovery by attorney general, when; disposition of damages recovered. As used in this act, "person" means any individual, company, corporation, institution, municipality, township, county, federal agency or legally constituted sewer district. Any person who violates any of the provisions of K.S.A. 65-161 to 65-171, inclusive, or any duty imposed therein or who violates an order or other determination of the secretary of health and environment or authorized representatives of such secretary made pursuant to the provisions of such sections, including the stipulations of conditions of a permit to discharge sewage, and, in the course thereof, causes the death of, or injury to, fish, animals, vegetation or other resources of the state whether natural or structural, or otherwise causes a reduction in the quality of the waters of the state below the standards set by the secretary of health and environment, thereby damaging the same, shall be liable to pay the state damages in an amount equal to the sum of money necessary to restock such waters, replenish or replace such resources and otherwise restore the stream, lake or other water source to its condition prior to the injury, as such condition is determined by the division of environment of the department of health and environment. Such damages shall not include damages to private rights or persons or damages to such person. If the person responsible for damage to resources fails to promptly submit payment for damages to resources of the state when notified in reasonable detail, then such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Kansas in the district court of the county in which such damages occurred. If damages occurred in more than one county the attorney general may bring action in any of the counties where the damages occurred. Any money so recovered by the attorney general shall be transferred to the agency of the state having

jurisdiction over the resource damaged and for which said moneys were recovered, as appropriate. The agency receiving such money shall utilize the same on activities or projects to remedy the resources damaged. No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to K.S.A. 65-165.

History: L. 1979, ch. 269, § 1; July 1.

65-171v

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171v. Cleanup operations for water or soil pollutants; duties of secretary; recovery of costs by attorney general and disposition thereof.

Whenever a water or soil pollutant is discharged intentionally, accidentally or inadvertently and the secretary of health and environment or the secretary's authorized representative determines that the discharged material must be collected, retained or rendered innocuous, and if a discharger refuses to undertake cleanup operations or if the responsible discharger is unknown at the time, the secretary or the secretary's authorized representative may enter into an agreement with a person to conduct the necessary cleanup operations with payment for such cleanup work to be provided from the pollutant discharge cleanup fund. Any person responsible for or causing the discharge of materials which are determined necessary to cleanup under the provisions of this act shall be responsible for repayment of the costs of cleanup work upon reasonably detailed notification by the secretary or the secretary's authorized representative. If the responsible person fails to promptly submit payment for costs of the cleanup operations when so notified, such payment shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Kansas in the district court of the county in which such costs were incurred. Any moneys recovered under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the pollutant discharge cleanup fund.

History: L. 1979, ch. 269, § 2; L. 2001, ch. 5, § 213; July 1.

65-171w

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171w. Same; establishment of pollutant discharge cleanup fund. There is hereby established in the state treasury a special fund designated the pollutant discharge cleanup fund for the use of the department of health and environment in paying for cleanup work undertaken in accordance with the provisions of K.S.A. 65-171v. The state treasurer shall maintain a balance in such fund not to exceed fifty thousand dollars (\$50,000).

History: L. 1979, ch. 269, § 3; July 1.

65-171x

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-171x. Application of acts to federal agencies.

The provisions of K.S.A. 65-161 through 65-171w, and amendments thereto, and any rules and regulations adopted under the authority thereof shall apply to agencies of the United States government.

History: L. 1984, ch. 221, § 4; April 19.