

Chapter 3. LEGAL AUTHORITIES FOR POLLUTION CONTROL

Authority for pollution control is divided between state and local governments and in many cases it is shared. Particularly in the control and regulation of onsite wastewater, nonpoint source pollution, and land use management, local authority predominates. Whenever authority is shared, enforcement of local rules and regulations are the preferred method of controlling pollution.

A **statute** is a law enacted by a legislative body. Kansas Statutes Annotated (K.S.A.) contains the statutes effective in the state. A **regulation** is a set of procedures to implement a statute and has the force of law. Kansas Administrative Regulations (K.A.R.) contain the regulations effective in the state. An **ordinance** is a statute or regulation, typically adopted by a municipal government. A **resolution** is a formal statement of a decision put before or adopted by a governmental assembly.

The Kansas Department of Health and Environment (KDHE) publication “Kansas Statutes Pertaining to Water Pollution Control which are administered by the Kansas Department of Health and Environment, January 1997” is available on request from KDHE by calling (785) 296-5506. The following summary contains extracts of pertinent materials contained in Kansas Statutes governing domestic wastewater.

A. Statutory Authority of KDHE

1. Kansas Statutes Annotated (K.S.A.) Chapter 65, Article 1, Secretary of Health and Environment, Activities, sets out water pollution control and water quality protection objectives for Kansas. Briefly stated these statutes provide that all human or human induced activity conducted in the state of Kansas shall be carried out in a manner that will not result in impairment of the quality of the state’s surface water and groundwater resources.

K.S.A 65-159 “Abatement of nuisances; failure to remove, penalties” states: “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 the inhabitants within any county or municipality in this state. Whenever any such nuisance, source of filth or cause of sickness shall be found to exist on any private property or upon any watercourse in this state, the secretary of health and environment or county or joint boards of health 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, source of filth or cause of sickness within twenty-four (24) hours, or within such reasonable time thereafter as such secretary or such county or joint board may order; and if the owner or occupant shall fail to obey such order, such owner or occupant upon conviction shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) , and each day’s continuance of such nuisance, source of filth or cause of sickness, after the owner or occupant thereof shall have been notified to remove the nuisance, source of filth or cause of sickness, shall be a separate offense.”

The above statute clearly establishes the authority of county health boards/county commissions serving as county health boards to abate pollution conditions within county borders.

K.S.A 65-164 Sewage; definitions; complaints and investigations as to pollution; appeal, states in part “No person, company, corporation, institution or municipality shall place or permit to flow into any of the waters of the state any sewage except as hereinafter provided. . . . For the purposes of this act, sewage is hereby 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 manufacturing or other forms of industry.”

K.S.A 65-171d, Prevention of surface and subsurface water pollution; standards; pollution defined; permits; exemption; orders; hearings; appeals; fees, states in part: “(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 beneficial 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 environmental shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary’s judgment be necessary to: (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.”

K.S.A 65-171h Minimum standards for sanitary water and sewage systems states: “The secretary of health and environment in pursuance of his general power of supervision over the interests if 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.”

2. Article 5, K.S.A. 68-545 County and Township Roads (not administered by KDHE, but relevant) states, in part, that it is unlawful to dump sewage on any highway or any ditch on any highway.

3. Article 33 Water Pollution Control, K.S.A. 65-3301 through 3313 establishes the State Water Pollution Control account to provide financial assistance to municipalities, which includes any county, city, sewer district or other public agency or combination thereof. This article contains the authority for the development of countywide wastewater management

plans.

4. Establishment of the Kansas Water Pollution Control Revolving Fund is found in K.S.A. 65-3321 through 3329.

5. Article 45, Certification of Operators of Water Supply Systems and Wastewater Treatment Facilities, K.S.A. 65-4501 through 4517, sets forth requirements for operator certifications.

6. Sanitation Zone Law, K.S.A. 65-184 through 189f establishes requirements for water supply, wastewater and refuse disposal in areas surrounding certain water impoundments.

B. Regulatory Authority of KDHE

The entire set of pertinent regulations can be found in the KDHE document titled "Article 5, Article 16, Article 18, Water Pollution Control Regulations, September 1996" and is available upon request from KDHE by calling (785) 296-5506.

1. Article 5 "Sewage and Excreta Disposal K.A.R. 28-5-1 through 9 Chapter 28," sets forth the regulations by which sewage is discharged to the environment for both public and private systems. These regulations were revised effective July 1997 and set forth separation distances of wastewater systems to water wells, direct that the discharge of wastewater be to a public sewer approved by KDHE, or a private system approved by KDHE or appropriate local authority that is located, designed, and operated in accordance with standards set forth in KDHE Bulletin 4-2, "Minimum Standards for Design and Construction of Onsite Wastewater Systems".

The revised regulations contain a statement that if a county sanitary code was adopted before June 30, 1997, the county code would provide the minimum standards. All county codes are reviewed for consistency with existing statutes and regulations prior to KDHE approval. The revisions in Bulletin 4-2 present some requirements that are more stringent than those contained in some county codes that were adopted prior to June 30, 1997. These codes may remain in effect until such time as a provision in the code that is also addressed in Bulletin 4-2 is amended. At that time, the provision must be brought into compliance with the standards set forth in Bulletin 4-2.

2. Article 16 covers Water Pollution Control Sewage Discharge Permits, (K.A.R. 28-16-1 through 10), River Basin Water Quality Criteria (28-16-11 through 28), Surface Water Quality Standards (28-16-28a through 36), Grants to Municipalities for the Construction of Water Pollution Control Projects Benefitting from Federal Grants (28-16-50 through 64), Establishment and Administration of Critical Water Quality Management Areas (28-16-68 through 75), Development of Countywide Wastewater Management Plans, (28-16-76 through 82), Pretreatment (28-16-83 through 109), Kansas Water Pollution Control

Revolving Fund (28-16-110 through 138) and Water Pollution Control General Permitting, (28-16-150 through 154).

Pertinent sections are summarized below.

Water Quality Standards The regulations for water quality standards in Kansas are found in K.A.R. 28-16-b through f. As directed in the federal Clean Water Act, each state must specify appropriate water uses to be achieved and protected. The classification of the waters of a state must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. States may not adopt waste transport or waste assimilation as a designated use for any waters of the state.

In designating uses of a water body and the appropriate criteria for those uses, the State must take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

All perennial streams in Kansas have been classified as to their designated uses according to the directive above. Based on these designated uses, certain numeric water quality standards apply. Any discharge into these streams must not, by itself or cumulatively with other discharges, result in a violation of the water quality standard associated with the designated use. This is most applicable to sewage discharges in reference to fecal coliform bacteria standards. If a stream is designated for body contact recreation, the fecal coliform count in the stream cannot exceed 200 colonies/100 ml. If a wastewater discharge will cause that count to be exceeded, it is not allowed and a higher level of treatment must be achieved before discharge of that wastewater.

Point Source Discharge Permitting Administrative Regulations for point sources are found in Article 16, Chapter 28 “Water Pollution Control - Sewage discharge permits”. Every point source discharge, including municipal and industrial discharges, must operate under a permit from KDHE. The permit will state the quality of the effluent allowed to be discharged. These permit limitations are based on the designated use of the receiving water and the water quality standards associated with that use. This provision is the one that limits the ability of onsite systems to have a surface discharge. KDHE does not issue discharge permits for individual systems.

Requirements for Certified Operator K.A.R. 28-16-30 through 36 establish requirements for operator certification. Any wastewater collection and treatment system operating under a permit from KDHE must be operated by a certified wastewater operator.

C. Statutory Authority to Form Sewer Benefit Districts (Also see Chapter 10 of this manual)

1. Article 27a - Sewer Districts - K.S.A 19-27a01 through 19-27-a27

This set of statutes sets out the authority of counties to form sewer districts (19-27-01), designates the Board of County Commissioners as the governing body of the district (19-27-02), defines those conditions that can cause a sewer district to be formed (by petition or unsanitary conditions 19-27-03), conditions of the preliminary survey (19-27-04), requirements for public notification (19-27-05), resolution of the district (19-27-06), cost of the project (19-27-07), lateral districts (19-27-08), and maintenance funds (19-27-09).

Also included is sewage received from other districts (19-27-10), costs of combined or enlarged districts (19-27-11), approval of plans by KDHE and costs born by sewer district (19-27-12), joint sewer districts (19-27-13), enlargement of boundaries (19-27-14), annexation (19-27-15), alteration of boundaries (19-27-16), inspections (19-27-17), acceptance of federal aid (19-27-18), public bidding requirements (19-27-19), and uses of expended bond proceeds (19-27-20).

Finally, deficits in bond and interest fund (19-27-21), revenue bonds (19-27-22), delinquency in payment (19-27-23), attachment of territory within a city (19-27-24), additional user charges (19-27-25), districts in Sedgwick County (19-27-26), and existing districts are discussed (19-27-27).

2. Article 12-519 through 537 - Annexations by Cities

This set of statutes covers when and how a city can annex a county sewer district (12-519) including conditions which permit annexation (12-520), petitions (12-521), fire district annexation, filing of ordinances (12-522), effective dates (12-523), annexation of parts of cities (12-524), Severability (12-526), annexation of lands located in water districts (12-527), use of funds (12-528), and other aspects of the authority of cities to annex other entities.

3. Article 10 Sanitary Conditions Around Reservoirs establishes Sanitation Zone Boundaries, administrative procedures, and design standards for waste disposal in sanitation zones.

D. Local Authority of Particular Importance

1. K.S.A. 19-101a through 101f establishes home rule powers; limitations, restrictions and prohibitions; and procedures.

2. Article 33 - Adoption of Codes By Reference describes procedures to be followed to adopt codes by reference in cities and counties

3. Countywide Wastewater Management Plans Authority for the development of County Wastewater Management Plans is in K.S.A 65-3308 through 3313 and K.A.R. 28-16-76

through 82. These plans were required to be developed until 1983 when funding through the Construction Grants Program was converted to the State Low Interest Revolving Loan Fund. These plans provide comprehensive countywide management of wastewater to be effective throughout the county. The five required elements of the plans are:

- a. City and county cooperation in management of existing point sources of pollution
- b. The management of onsite residential wastewater treatment facilities, including septic tanks
- c. Industrial waste treatment
- d. Procedures for approval of water delivery and wastewater systems for new developing areas
- e. Urban storm water runoff

Section 65-3313 of the act states “No provision of this act shall be deemed mandatory until seventy-five percent (75%) or more of the moneys necessary to implement such provisions are certified by the secretary of health and environment to be available from the federal government.” These moneys are no longer available, thus the requirement is no longer in place. Even though they are no longer required, development of and adherence to County Wastewater Management plans is still highly recommended when planning for future development.

4. County Sanitary Codes K.S.A 19-3701 et. seq., Sanitary Codes in certain counties, authorizes county commissioners to adopt sanitary codes administered by the local health department or other local agency. Sanitary codes contain rules and regulations designed to minimize or control those environments and environmental conditions that may adversely affect the health and well-being of the public. Such environments and environmental conditions may include, but are not restricted to: sewerage and sewage disposal; water supply; food and food handling; insects and rodents; refuse storage, collection and disposal; housing, trailers and trailer courts. Sanitary codes may provide for permits, licenses or other activities, and fees for these may be adopted. Authority to license septage haulers is also found in this act. County Sanitary Codes may contain provisions that are more restrictive than those required by the state in K.A.R. 28-5-1 through 9 (Article 5).

5. K.S.A. 75-5657. Environmental Protection Grant Program This program provides environmental protection grants to local entities for the purpose of developing and implementing environmental protection plans and programs. Administrative Regulations are found in K.A.R. 28-66-1 through 4.

6. Land Use Planning and Management Article 29, Planning and Zoning, governs zoning in Kansas. In order for a city or county to be zoned, a county comprehensive plan must have been developed, subjected to public review and approval, and adopted by the city council or the county commission. Planning commissions, as subsets of these authorities, are responsible for implementation of the plan, subject to the approval of the city or county commissioners. Townships may request zoning within their boundaries if the county does not have countywide

zoning, and must also have a planning commission to implement the requirements. No zoning applies to land used exclusively for agriculture.

K.S.A 19-2901 through 2913 covers zoning within designated townships. K.S.A 19-2914 through 2966 covers zoning in counties. K.S.A 12-701 through 732 covers city planning and subdivision regulations. K.S.A 12-741 through 768 covers county planning and subdivision regulations.

Local regulatory controls present the opportunity to protect resources and prevent the development of public health or pollution problems before they occur. Ideally, land use planning occurs on a watershed basis. Comprehensive land-use planning guides land use to appropriate areas, reduces suburban sprawl, and inventories and prioritizes natural resources for protection. Protection of natural resources involves soils based zoning, cluster housing, open space protection and natural resource inventories. With planning of this nature, areas in watersheds that are not conducive to the use of conventional onsite systems will not be used for these purposes. Factors involved in making these decisions include soil type, slopes, proximity to sensitive water bodies, depth to groundwater, source water protection area, and natural drainage flows.

The current state of land-use planning in Kansas is traditional development oriented, transportation based planning. Areas suitable for development are identified based upon logistic factors such as accessibility to roads, utility lines, and other infrastructure. Often, the entire community is designated suitable for development with the only differentiation being the particular uses and densities allowed in given areas. Natural resources are not factored in, unless they pose a barrier, such as in federal or state regulation of wetlands.

Land use management happens at the local level. Water resource programs, or any other natural resource initiatives, can no longer be conducted in isolation from other land use planning issues. The emerging realization of the close relationship of natural resource protection to quality of life and community character is a strong factor arguing for the success of watershed management programs.

The charge for those interested in protection of water resources is not to replace local political boundaries with natural watershed boundaries, but to find creative and effective ways to reconcile the two.