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KANSAS STATUTES ANNOTATED
Chapter 2. – AGRICULTURE
Article 33. – CHEMIGATION SAFETY

Kansas Chemigation Safety Law

K.S.A. 2-3301. Citation of act. This shall be known and may be cited as the "Kansas chemigation safety law."

K.S.A. 2-3302. Definitions. As used in the Kansas chemigation safety law: (a) "Chemigation" means 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.

(b) "Board" means the secretary of agriculture.

(c) "Secretary" means the secretary of agriculture.

(d) "Operating chemigation equipment" for the purposes of this act shall include, but not be limited to:

(1) Preparing solution and filling the chemical supply container;

(2) calibrating of injection equipment;

(3) starting and stopping equipment when injection of chemicals is involved; and

(4) supervision of the chemigation equipment to assure its safe operation.

(e) "Anti-pollution devices" means mechanical equipment used to reduce hazard to the environment in cases of malfunction of the equipment during chemigation and includes but is not limited to interlock, waterline check valve, chemical line closure device, vacuum relief device and automatic low pressure drain.

(f) "Supervision" means the attention given to the chemigating system during its operation when chemicals are being applied.

(g) "Direct supervision" means supervision with ability to change the procedures.

(h) "Irrigation distribution system" means any device or combination of devices having a hose, pipe or other conduit which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any handheld hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source. For the purpose of this act it does not include greenhouse irrigation or residence yards. Animal waste lagoons are not to be considered water sources.

(i) "Calibration device" means equipment of sufficient accuracy to determine the rate of chemical application.

(j) "Point of diversion" means:

(1) the point where the longitudinal axis of the dam crosses the center line of the stream in the case of a reservoir; or

(2) the location of the headgate or intake in the case of a direct diversion from a river, stream or other watercourse; or

(3) the location of a well in the case of groundwater diversion.

(k) "Agronomic application rates" means the method and amount of swine waste defined by the secretary that in the secretary's discretion best protects the environment, including consideration of the crops or soil to which swine waste may be applied and the economic impact associated with any application of swine waste.

(l) "Chemicals" shall include nutrients or the chemical composition of animal waste.

K.S.A. 2-3303. Requirements for chemigation users. Persons applying any chemical by the chemigation process in an irrigation system shall:

- (a) register with the secretary;
- (b) use anti-pollution devices; and
- (c) keep records and make reports as deemed appropriate by the secretary.

K.S.A. 2-3304. Registration of chemigation users; permit; fee; renewal. (a) Any user of the chemigation process shall register and obtain a chemigation user's permit before using the process.

(b) Registration shall consist of making application on a form supplied by the secretary. Such application shall include, but not be limited to:

- (1) The name of the persons to whom a permit is to be issued, including an owner or operator of land on which chemigation is to be used;
- (2) a plan for using anti-pollution devices;
- (3) a plan for handling tail water or accumulations of water;
- (4) the number and locations, including a legal description, of wellheads which may be involved in the chemigation process and surface water supply withdrawal points, not to include siphon tubes; and
- (5) payment of fees.

(c) The application fee for a chemigation user's permit shall be \$75 plus \$15 for each additional point of diversion, except that on and after July 1, 2023, a chemigation user's permit shall be \$55 plus \$10 for each additional point of diversion. A chemigation user's permit may be renewed each year upon making an application, payment of the application fee and completing the report form providing information used in chemigation the previous year.

History: L. 2009, Ch. 128 § 29; L. 2014, Ch. 133 § 5; July 1; L. 2017, ch. 86, § 7; July 1.

K.S.A. 2-3305. Functional anti-pollution devices, requirements. Functional anti-pollution devices shall be used in the chemigation process according to:

(a) Criteria adopted by the secretary by rules and regulations that, in the secretary's discretion, follow the latest scientific knowledge and technology and that is designed to protect the groundwater and surface water of the state; or

(b) the following criteria:

- (1) Waterline check valve shall be an automatic, quick-closing device capable of preventing the backflow of water chemical mixtures into the source of water supply during times of system failure or equipment shutdown;
- (2) a chemical injection line check valve shall be used to prevent flow of water from the irrigation system into the chemical supply tank and to prevent gravity flow from the chemical supply tank into the irrigation system;
- (3) an interlock system shall be used between the power system of the injection unit, the irrigation pumping plant and the pivot, if involved; the interlock shall function so that if the irrigation pump stops, the injection pump will also stop;
- (4) a functional vacuum relief device shall be used between the waterline check valve and the irrigation pump to reduce the chance of chemical being back-siphoned into the water source; and
- (5) an automatic low pressure drain shall be used between the waterline valve and the irrigation pump.

K.S.A. 2-3306. Responsibility of chemigation equipment operators; chemigation equipment operator examination; renewal; fee. (a) Any individual operating chemigation equipment under a chemigation user permit shall be responsible for the safe operation of such chemigation equipment and any such equipment shall be considered to be under the direct supervision of the chemigation user permit holder.

(b) The secretary shall not issue a chemigation user permit to any person unless such person is a certified chemigation equipment operator or has in such person's employment at least one certified chemigation equipment operator. A chemigation equipment operator is an individual who has successfully completed an examination given by the secretary or the secretary's designee. Except as provided in subsection (c), if the chemigation user permit is issued to an individual, that individual must have successfully completed the chemigation equipment operator examination. Such examination shall include, but not be limited to, the following:

- (1) The proper use of anti-pollution devices;
- (2) preparing the chemical solution and filling the chemical supply container;
- (3) calibrating of injection equipment;
- (4) supervision of chemigation equipment to assure its safe operation;
- (5) environmental and human hazards that may be involved in chemigation;
- (6) protective clothing and respiratory equipment;
- (7) general precautions to be followed in disposal of containers and decontamination of the equipment;
- (8) handling of tail water and other accumulations of water containing chemicals;

9) information of procedures to be followed should chemicals inadvertently enter the water supply source as a result of the chemigation process;

(10) label information, especially chemigation instructions;

(11) applicable state and federal laws and regulations; and

(12) any other subject which the secretary deems necessary.

(c) The examination provided for in subsection (b) may be waived for any individual who has been certified as a pesticide applicator in the category of chemigation pursuant to the Kansas pesticide law.

(d) The chemigation equipment operator certification shall expire on December 31 of the fourth calendar year after the year of issue. A chemigation equipment operator certification shall be renewed for a succeeding five year period upon payment of the certification fee and passing the examination specified in either subsection (b) or (c).

(e) The fee for certification as a chemigation equipment operator or for renewal of such certification shall be \$25, except that on and after July 1, 2023, such certification shall be \$10.

History: L. 2009, Ch. 128 § 30; L. 2014, Ch. 133 § 6; July 1; L. 2017, ch. 86, § 8;

K.S.A. 2-3307. Access to premises by secretary; inspections, samples and investigations; search warrants; enforcement of criminal and civil provisions of act. (a) For the purpose of carrying out the provisions of this act, including any review of the application of swine waste under K.S.A. 2-3318 and amendments thereto, the secretary or the secretary's agent or the county or district attorney or their agents may enter any premises at any reasonable time in order to:

(1) Have access for the purpose of inspecting any equipment subject to this act;

(2) inspect or sample water, lands and crops reported to be exposed to chemicals;

(3) inspect or investigate complaints or injury to humans, crops or land;

(4) sample chemicals being applied or to be applied; or

(5) observe the use and application of chemicals.

Should the secretary, the secretary's agent or the county or district attorney or their agents be denied access to any land where such access was sought for the purposes authorized, the secretary or the county or district attorney may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for such purposes. The court, upon such application, may issue the search warrant for the purposes requested.

(b) The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the various counties or districts. In the event a county or district attorney refuses to act, the attorney general shall so act. The secretary is charged with the duty of enforcing all other provisions of this act.

K.S.A. 2-3308. Unlawful acts; criminal penalties. (a) Except as provided by subsection (b), it is a misdemeanor punishable by a fine not exceeding \$500 for:

(1) Any person to engage in chemigation without first obtaining a permit as provided in this act;

(2) any person to engage in chemigation on a suspended or revoked permit;

(3) any person to tamper with, or otherwise damage in any way, equipment specified in this act; or

(4) any permit holder to fail to immediately notify the secretary of any actual or suspected accident resulting from the use of chemigation.

(b) It is a misdemeanor punishable by a fine not exceeding \$5,000 per violation for any person to knowingly:

(1) Commit any act described by subsection (a); or

(2) commit any unlawful act described by K.S.A. 2-3313 and amendments thereto.

K.S.A. 2-3309. Administration of act; employees; rules and regulations.

(a) The secretary of agriculture shall administer this act and have authority to employ such qualified persons deemed necessary to carry out the provisions of this act.

(b) The secretary shall adopt such rules and regulations the secretary deems necessary to carry out the provisions of this act. Such rules and regulations shall be promulgated on or before July 1, 2010.

History: L. 2009, Ch. 128 § 31, July 1.

K.S.A. 2-3310. Denial, suspension, revocation or modification of permits, notice and hearing; grounds. The secretary, after notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, may deny, suspend, revoke or modify the provisions of any permit issued under this act, if the secretary finds that the applicant, registrant or permit holder has:

(a) Been convicted of or pleaded guilty to a violation of this act or the Kansas pesticide law, or has been convicted of or pleaded guilty to a felony under the laws of this state or of the United States, if the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(b) failed to comply with any provision or requirement of this act or any rule and regulation adopted thereunder; or

(c) had any certificate, registration or permit issued under this act or the Kansas pesticide law revoked.

K.S.A. 2-3311. Same; notice and hearing. The secretary may revoke, deny renewal or suspend, for any cause, a chemigation user's permit, after notice and opportunity for a hearing are given in accordance with the provisions of the Kansas administrative procedure act. The notice shall be sent to the registrant or permit holder at such person's address as shown by the records of the secretary, setting out the alleged grounds for revocation or suspension. The registrant or permit holder shall have the right to appear in person and by counsel and to testify and introduce evidence. If such person fails to appear, the matter may be heard in such person's absence. Any such hearing may be conducted by the secretary or a presiding officer from the office of administrative hearings.

History: L. 1985, ch. 5, § 11; L. 1988, ch. 356, § 35; L. 2004, ch. 145, § 8; July 1, 2005; amended 2010.

K.S.A. 2-3312. Same; judicial review of secretary's action. The registrant or permit holder may obtain review of an order of the secretary revoking or suspending a chemigation user registration or chemigation user's permit or denying or declining to issue or to renew such registration or permit in accordance with the Kansas judicial review act.

History: L. 1985, ch. 5, § 12; L. 1986, ch. 318, § 15; July 1; amended 2010.

K.S.A. 2-3313. Unlawful acts. It shall be unlawful for any person required to be registered or to hold a permit under the provisions of this act to:

- (a) Make a pesticide use or application not in accordance with the directions for use shown on the label registered under the Kansas agricultural chemical act and by the federal environmental protection agency;
- (b) knowingly use ineffective or improper equipment or materials;
- (c) refuse or neglect to keep and maintain records required by this act or refuse or neglect to make records available when and as required by this act;
- (d) make false or fraudulent records or reports;
- (e) use fraud or misrepresentation in making an application for or renewal of a registration or permit issued under the provisions of this act;
- (f) refuse or neglect to comply with any limitations or restrictions on or in a duly issued registration or permit;
- (g) aid, abet or conspire with any person to evade any of the provisions of this act or allow a registration or permit issued under the provisions of this act to be used by a person not named on the registration or permit;
- (h) impersonate any state, county or city inspector or official, as acting in their official capacity;
- (i) use any chemigation method or pesticide, fertilizer or other chemical material without regard to public health, safety or welfare; or
- (j) use the chemigation process without proper registration or permit issued under the provisions of this act.

K.S.A. 2-3314. Injunctive relief for violations of act. The district courts of Kansas shall have jurisdiction to restrain violations of this act by injunction without the institution of criminal proceedings. The injunction shall be issued without bond.

K.S.A. 2-3315. Chemigation fee fund; expenditures. The secretary shall remit all moneys received under this act 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 chemigation fee fund. All expenditures from the chemigation fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

K.S.A. 2-3316. Subpoena power. The secretary may issue subpoenas to compel the attendance of witnesses or production of books, documents and records anywhere in the state in any hearing affecting the authority or privilege granted by a registration or permit issued under the provisions of this act.

K.S.A. 2-3317. Penalties. (a) Any person who violates any of the provisions of the Kansas chemigation safety law, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) A duly authorized agent of the secretary, upon a finding that a person or any employee or agent has violated the Kansas chemigation safety law, may impose a civil penalty as provided in this section upon such person.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing or informal conference hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(e) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer. 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.

(f) This section shall be a part of and supplemental to the Kansas chemigation safety law.

History: L. 1989, ch. 7, § 4; L. 2001, ch. 5, § 23; July 1; amended 2010.

K.S.A. 2-3318. Application of swine waste; authority of secretary; nutrient utilization plans, review and approval; penalties for violations. (a) Regardless of whether irrigation water is added, whenever swine waste is applied to crops or land, the secretary of health and environment is authorized to investigate, inspect or conduct any manner of examination or review of the application of swine waste. No swine waste shall be applied to crops or land in excess of agronomic application rates.

(b) The secretary of health and environment shall review and approve all nutrient utilization plans that provide for the application of swine waste to crops or land and that are submitted by swine confined feeding facilities pursuant to K.S.A. 65-1,182 and amendments thereto if the plans demonstrate that swine waste will be applied pursuant to agronomic application rates and include all required information. Nutrient utilization plans shall be submitted on a form required by the secretary of health and environment.

(c) Failure of the operator of a swine confined feeding facility to implement a nutrient utilization plan approved by the secretary of health and environment shall be considered a violation of the Kansas chemigation safety law for which the secretary may suspend a permit pursuant to K.S.A. 2-3310 and amendments thereto or may impose a civil penalty pursuant to K.S.A. 2-3317 and amendments thereto, or both.

(d) This section shall be part of and supplemental to the Kansas chemigation safety law.

History: L. 2009, Ch. 128 § 34, July 1.

K.S.A. 74-568. State board of agriculture and secretary of the state board of agriculture abolished; transfer of powers and duties to the department of agriculture and secretary of agriculture. (a) The state board of agriculture created by K.S.A. 74-503, and amendments thereto, and the office of the secretary of the state board of agriculture created by K.S.A. 74-503, and amendments thereto, are hereby abolished.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the existing state board of agriculture and the existing secretary of the state board of agriculture are hereby transferred to and conferred and imposed upon, the department of agriculture and the secretary of agriculture established by this act.

(c) Except as otherwise provided by this act, the department of agriculture and the secretary of agriculture established by this act shall be the successor in every way to the powers, duties and functions of the state board of agriculture and the secretary of agriculture in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the department of agriculture or the secretary of agriculture established by this act shall be deemed to have the same force and effect as if performed by the state board of agriculture or the secretary of the state board of agriculture, respectively, in which such powers, duties and functions were vested prior to the effective date of this act.

(d) Except as otherwise provided by this act, whenever the state board of agriculture, or words of the like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(e) Except as otherwise provided by this act, whenever the secretary of the state board of agriculture, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(f) All rules and regulations of the state board of agriculture or the secretary of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture by this act until revised amended or nullified pursuant to law.

(g) All rules and regulations of the division of water resources of the state board of agriculture or the chief engineer of the division of water resources of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the chief engineer of the division of water resources of the department of agriculture established by this act until revised, amended, revoked or nullified pursuant to law.

(h) All orders and directives of the state board of agriculture or the secretary of the state board of agriculture in existence in the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the secretary of agriculture established by this act, until revised, amended or nullified pursuant to law.

(i) On the effective date of this act, the secretary of agriculture shall succeed to whatever right, title or interest the state board of agriculture has acquired in any real property in this state, and the secretary shall hold the same for and in the name of the state of Kansas. On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the state board of agriculture or the secretary of the state board of agriculture to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

(j) The secretary of agriculture established by this act shall be continuations of the state board of agriculture and the secretary of the state board of agriculture.

KANSAS ADMINISTRATIVE REGULATIONS
Agency 4 – Kansas Department of Agriculture
Article 20. – CHEMIGATION

K.A.R. 4-20-3. Records and reports.

(a) Each person using a chemigation process shall keep records regarding each application of any chemical other than water or animal waste. The records shall contain the following information:

- (1) the type of chemical used;
- (2) the amount of active ingredient used;
- (3) the date of use;
- (4) the legal description of the location of the water supply or the point of diversion of the water supply;
- (5) the total number of acres treated by means of chemigation;
- (6) the type of crop to which the chemical was applied; and
- (7) the EPA registration number for each pesticide applied and the name of the target pest stated as the common name

for the pest or pests. When pesticides are applied for the control of weeds, the target pests may at a minimum be identified as grassy or broadleaf weeds. Records required under this section shall be retained by the holder of the chemigation user permit for a period of not less than two years from the date of application.

(b) Each person using a chemigation process to apply animal wastes through the person's chemigation system shall keep records regarding each application of animal waste. The records shall contain the following information:

- (1) the date of the application; and
- (2) the location of the water supply used for chemigation or the legal description of the point of diversion.

(c) Each application for renewal of a chemigation user permit shall be accompanied by a copy of the records for chemigation use during the previous year as described in paragraphs (a) and (b) of this regulation.

(d) Each chemigation permit holder shall report immediately both to the secretary of the board of agriculture and to the secretary of health and environment all spills, accidents, system malfunctions, or other situations involving actual or potential contamination of either groundwater or surface water.

K.A.R. 4-20-4. Permits. No individual shall supervise more than 10 operating chemigation units at one time.

Each individual possessing a chemigation user permit shall be responsible for insuring that those persons who work under his or her direct supervision and who handle pesticides:

- (a) are knowledgeable in the use of the pesticide;
- (b) are knowledgeable concerning the proper calibration methods for the pesticide;
- (c) are knowledgeable regarding the injection devices and anti-pollution devices being used in the system;
- (d) follow all applicable directions on the pesticide's label; and
- (e) use all safety precautions pertaining to that pesticide.

K.A.R. 4-20-5. Waterline check valves. (a) Each waterline check valve required by K.S.A. 2-3305, and amendments thereto, shall be constructed and installed in accordance with the requirements specified in K.A.R. 5-6-13a.

(b) Each check valve and all required components shall be maintained in an operating condition that prevents backflow into the source of water supply whenever a foreign substance could reasonably be expected to be introduced into the water system.

(c) Each chemigation installation, unit, or system that can serve as a conduit for chemicals, effluent, or any substance while water is not being pumped shall also be equipped with a positive closing gate valve or its equivalent.

This valve shall be located between the check valve and the point at which chemicals, effluents, or other substances enter the water distribution system and shall be closed whenever chemicals, effluents, or other substances enter the distribution system and water is not being pumped.

K.A.R. 4-20-6. Injection equipment. (a) The injection equipment used shall be constructed and maintained in a manner which prohibits application of any pesticide at a rate which exceeds the maximum rate of application recommended by the pesticide's label or labeling and which prohibits application of any fertilizer or animal wastes at any rate which exceeds the planned application rate. Injection equipment shall be calibrated before each chemigation application.

(b) Chemigation users who apply only animal wastes through their irrigation distribution systems are required to install only those anti-pollution devices required by K.S.A. 2-3305.

- (c) For those chemigation users who apply fertilizers and other chemicals, injection equipment shall include:

- (1) a manually operated valve on the supply tank;
 - (2) a strainer on the suction side of the injection pump; and
 - (3) a calibration device of sufficient volume to accurately calibrate the injection pump.
- (d) For pesticides, the following additional pieces of equipment shall be used:
- (1) an air bleeder valve on the injection line;
 - (2) a positive displacement injection pump; and
 - (3) any other equipment required by the pesticide's label or labeling.

K.A.R. 4-20-7. Vacuum relief device and automatic low-pressure drain. The vacuum relief device and automatic low-pressure drain shall be properly installed and shall be fully operational whenever the chemigation process is being used. These devices shall not be blocked, capped or otherwise modified in any manner which prevents their proper operation in any manner to render them inoperable.

K.A.R. 4-20-8. Chemical injection line and checkvalve. The point at which any chemical, fertilizer or animal waste is injected into the irrigation distribution system shall be located on the downstream side of any waterline check-valve. The chemical injection line shall contain a checkvalve which shall be located between the chemical injection pump and the point at which any chemical or fertilizer enters the irrigation distribution system.

K.A.R. 4-20-11. Civil penalties. (a) The process for issuing and processing civil penalties shall follow the procedure established in K.A.R. 4-13-60 and in K.A.R. 4-13-62 through 4-13-65, except for the following:

- (1) The provision of K.A.R. 4-13-62(b) shall be replaced by the provisions of subsection (b) in this regulation.
 - (2) The terms "state and federal pesticide laws" and "pesticide law" contained in K.A.R. 4-13-60 and K.A.R. 4-13-62 through 4-13-65 shall be replaced by the term "the Kansas chemigation safety law," as the context requires.
 - (3) The term "pesticide business licensee" shall be replaced by the term "person" or "swine facility," as the context requires.
- (b) The amount of civil penalty assessed for each violation shall be within the following ranges:
- (1) For each violation of K.S.A. 2-3305, and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.
 - (2) For each violation of K.S.A. 2-3308(a)(2), (a)(3), or (a)(4), and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.
 - (3) For each violation of K.S.A. 2-3313(a) or (b) or of K.S.A. 2-3313(f) or (i), and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.
 - (4) For each violation of K.S.A. 2-3308, and amendments thereto, not covered in paragraph (b)(2) in this regulation, the civil penalty shall be not less than \$100 and not more than \$1,000.
 - (5) For each violation of K.S.A. 2-3313, and amendments thereto, not covered in paragraph (b)(3) in this regulation, the civil penalty shall be not less than \$100 and not more than \$1,000.
 - (6) For each application of waste in violation of K.S.A. 2-3318, and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.
- (c) For any subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed for this violation shall be the maximum amount for the category listed. (Authorized by K.S.A. 2007 Supp. 2-3309; implementing K.S.A. 2-3308 and 2-3317; effective March 26, 1990; amended, T-4-12-29-98, Jan. 1, 1999; amended April 23, 1999; amended April 4, 2003; amended July 18, 2008.)

K.A.R. 4-20-12. Certified chemigation equipment operator examination. (a) Examinations for certified chemigation equipment operators shall be provided by the Kansas state board of agriculture. A grade of 75% correct answers shall be required to pass the examination.

(b) Examinations for chemigation equipment operator certification shall test the applicant's knowledge in those subject areas set out in K.S.A. 2-3306 as amended and supplemented involving chemigation practices associated with the applicant's agricultural operation and the applicant's legal responsibility as a certified chemigation equipment operator.

K.A.R. 4-20-13. Certificates and pocket cards. A certificate and pocket card shall be issued to each certified person upon satisfactory completion of the requirements for certification. Such certificate and pocket card shall show the applicator's name, type of certificate issued, the expiration date of the certification and other pertinent information. The certified chemigation equipment operator shall produce such certificate or pocket card when requested to do so by any law enforcement official, the secretary or any authorized representative of the secretary.

K.A.R. 4-20-14. Report of address change by certified chemigation equipment operators. Each certified chemigation equipment operator shall notify the secretary of any change in the operator's mailing address by the 10th day of the month following the month during which such change occurred.

K.A.R. 4-20-15. Agronomic application rates. The agronomic application rate for swine waste shall be the amount of waste required for plant nutrition and for the nutrient-holding capacity of the surfaces or soils to which swine waste is applied, as determined by sound agronomic methods. Sound agronomic application rates shall be determined in consultation with Kansas state university. Sound agronomic methods may include the rate derived from the calculations from the form prescribed by the secretary of agriculture in K.A.R. 4-21-1 and K.A.R. 4-21-7.

REGULATIONS REFERENCED IN K.A.R. 4-20-5 (Waterline Check Valves)

K.A.R. 5-3-5c. Check valves. (a) All diversion works not subject to regulation under the Kansas chemigation safety law, K.S.A. 2-3301 et seq. and amendments thereto, into which any type of chemical or other foreign substances will be injected into the water pumped from the diversion works shall be equipped with an in-line, automatic, quick-closing check valve capable of preventing pollution of the source of the water supply.

(b) Each check valve required by the chief engineer shall be constructed and installed in accordance with the requirements specified in K.A.R. 5-6-13a.

(c) Each check valve and all required components shall be maintained in an operating condition that prevents backflow into the source of water supply whenever a foreign substance could reasonably be expected to be introduced into the water system.

K.A.R. 5-6-13a. Check valve specifications. The Kansas department of agriculture, division of water resources' document titled "check valve specifications," dated March 14, 2003, is hereby adopted by reference.

Adoption by reference K.A.R. 5-6-13a

Check Valve
Specifications

Division of Water Resources
Kansas Department of Agriculture
109 SW 9th Street, 2nd Floor
Topeka, KS 66612

March 14, 2003

General:

(1) An acceptable check valve shall be one that is automatic, quick closing, and seals tightly to prevent the back flow of water and the substances mixed with water into the source of water supply.

(2) A check valve shall include the following four components:

- (a) a low pressure drain;
- (b) a vacuum relief device;
- (c) an inspection port; and
- (d) the check valve itself.

The check valve may consist of four individual components or a manufactured unit that includes all four of the required components.

(3) Each check valve shall meet the following standards:

- (a) All components shall be constructed of sturdy corrosion-resistant materials or coated with corrosion-resistant materials. The body of the unit shall be internally resistant to water of the quality being diverted, the foreign substances being introduced, and the external environment. All moving parts shall be constructed to operate without binding, distortion or misalignment.
- (b) The check valve shall contain a suitable, automatic, quick-closing, tight-closing mechanism that closes at the moment water ceases to flow away from the diversion works. The mechanism shall, by a mechanical force greater

than the weight of the flapper, provide drip-tight closure against reverse flow. The closing force shall be positive and obvious to hand inspection. This requirement shall not be satisfied by hydraulic back pressure.

(c) A vacuum relief device, functioning as an air vent, shall be installed between the diversion works and the flapper in a position that prevents the entry of insects, animals, flood water or other foreign substances into the vacuum relief device and subsequently the water supply source.

(d) An automatic low pressure drain shall be installed between the check valve flapper element and the diversion works, and directly beneath the inspection port at the bottom of the horizontal pipe. The installation shall be made so that any fluid which seeps past the flapper element towards the diversion works will drain out through the automatic low pressure drain. The automatic low pressure drain inlet shall not extend inward past the interior pipe wall without the inclusion of an internal dam or other mechanism to force seepage into the drain. The inlet opening of the drain shall be at least three fourths of an inch in diameter and the outside discharge point shall be at least two inches above grade. Any discharge from the drain shall be directed away from the water supply by the natural slope, a pipe, or a trench.

(e) An inspection port shall be located between the check valve and the water supply diversion works in a manner that allows easy access and full visual and hand access to all components of the check valve and assembly components. The inspection port shall have an orifice or a viewing port of at least four inches in diameter. For installations with diversion works too small to install a four inch diameter inspection port, the check valve and the other required components shall be mounted with quick-connect fittings, flange fittings, dresser couplings, or other fittings designed to allow easy removal and access.

(f) Systems utilizing a double check valve or reduced-pressure-zone back flow assembly shall be required to adhere, as a minimum, to a standard equivalent to the manufacturer's standards or recommendations for a method of inspection, testing schedule, and rebuilding schedule.

(4) The check valve and all required components shall be maintained in a satisfactory operating condition that prevents backflow into the source of water supply any time a foreign substance could reasonably be expected to be introduced into the water system.

(5) Variances shall be granted only if a low-pressure drain and vacuum relief device cannot be physically placed in the system.

REGULATIONS REFERENCED IN K.A.R. 4-20-11 (Procedure for Processing Civil Penalties)

K.A.R. 4-13-60. Civil penalty; order. Each order assessing a civil penalty shall include the following:

- (a) A statement reciting each subsection of the act authorizing the assessment of civil penalty;
- (b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;
- (c) a concise statement of the factual basis for each violation alleged;
- (d) the amount of the civil penalty to be assessed; and
- (e) the notice of the respondent's right to request a hearing. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)

K.A.R. 4-13-61. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; revoked July 18, 2008.)

K.A.R. 4-13-62. Amount of proposed civil penalty. (a) A separate civil penalty shall be assessed for each violation of the pesticide law which results from each independent act or failure to act by any pesticide business licensee or agent or employee thereof. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. Where several violations require the same elements of proof and are not distinguishable, assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) [See K.A.R. 4-20-11(b)]

(c) For each subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed for the subsequent violation shall be the maximum amount for the category listed.

K.A.R. 4-13-63. Criteria to determine dollar amount of proposed civil penalty. In determining the amount of any proposed civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered shall include:

- (a) The potential of the act to injure humans, pets, domestic animals, wildlife or the environment;
- (b) the severity of potential injuries;
- (c) the extent to which injury actually occurred;
- (d) the respondent's history of compliance with state and federal pesticide laws and regulations promulgated thereunder;
- (e) any action taken by respondent to remedy the specific violation or to mitigate any adverse health effects or environmental effects which were the result of the violation; and
- (f) whether or not the violation involved any misrepresentation or fraud.

K.A.R. 4-13-64. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

- (1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement;
- (2) The respondent neither admits nor denies the specific violations contained in the order.
- (3) The respondent consents to the assessment of a stated civil penalty.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)

K.A.R. 4-13-65. Adjusting the amount of the civil penalty. (a) Each respondent shall present all evidence on the issue of adjustment of the civil penalty at the settlement conference. This evidence may include mitigating factors or new evidence not previously known to the agency when the order was issued.

(b) Upon presentation by the respondent of new evidence establishing facts and circumstances that were unknown to the secretary when the order was issued and that relate to the gravity of the violation, the civil penalty may be reduced.

If additional facts establish a respondent did not commit a violation, the order shall be amended or vacated.

(c) The burden shall be on the respondent to present evidence of any mitigating factors to support any requested reduction in the amount of the civil penalty. The amount of the civil penalty may be reduced if the reduction serves the public interest.

(d) The amount of a civil penalty shall not be reduced to less than \$100 per offense.

(1) Whether or not a civil penalty is reduced shall be within the sole discretion of the secretary or the secretary's designee.

(2) Reductions shall not occur unless evidence of mitigating factors has been presented by a respondent. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)