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ADMINISTRATIVE RULES AND REGULATIONS

NON-POINT SOURCE POLLUTION CONTROL

K.A.R. 11-7-1. Definitions. (a) "Animal unit" means a defined unit of measurement to determine the applicability of state and federal regulations and pollution potential of a confined feeding facility as defined by K.S.A. 65-171d, and amendments thereto.

(b) "Applicant" means a landowner or legal agent applying for financial assistance to construct or apply pollution control practices.

(c) "Commission" means the state conservation commission.

(d) "Confined feeding facility" is as defined in K.S.A. 65-171d (c)(2), and amendments thereto, exclusive of swine.

(e) "Critical or targeted water resources" means water resources that have been identified as exceptional and vulnerable.

(f) "District" means a conservation district that is a political subdivision of state government with its own governing body of five elected supervisors created under K.S.A. 2-1901 et seq., and amendments thereto, as a special purpose district to develop and carry out soil and water conservation programs within its political boundaries.

(g) "Exceptional value water resources" means any of the following:

(1) A public water supply impoundment and associated tributary watershed;

(2) a recharge area or groundwater capture zone of a public water supply well field;

(3) a sole source aquifer;

(4) a flowing stream and tributary watershed above a public water supply diversion;

(5) a flowing stream and tributary watershed that sustains or supports habitats of threatened or endangered species;

(6) a flowing stream and tributary watershed above the highest valued fishery resources;

(7) a flowing stream and tributary watershed above reaches having any habitat of aquatic species in need of conservation; or

(8) a flowing stream and tributary watershed above highly valued recreation areas.

(h) "Financial assistance" means financial incentives offered to eligible applicants on a cost-sharing basis to implement approved pollution control practices.

(i) "KDHE" means the Kansas department of health and environment.

(j) "Non-point source (NPS)" means any activity that is not required to have a national pollutant discharge system permit and that results in the release of pollutants to waters of the state. This release may result from precipitation runoff, aerial drift and deposition from the air, or release of sub-surface brine or other contaminated groundwaters to surface waters of the state.

(k) "On-site wastewater system" means a system composed of a septic tank disposal field, a wastewater pond, or an alternative treatment system designed to treat wastewater from a single-family residence or business installed in compliance with state regulations and county ordinances to prevent surface and groundwater contamination by

disease-causing organisms, organic matter, chemicals, and nutrients.

(l) "Plan" means a locally developed, long-range comprehensive plan for the non-point source pollution control in a watershed, hydro-logic unit, or county.

(m) "Pollution" means either of the following:

(1) Any contamination or other alteration of the physical, chemical, or biological properties of any waters of the state that will or is likely to create a nuisance or render these waters harmful, detrimental, or injurious to public health, safety, or welfare; to the plant, animal, or aquatic life of the state; or to other designated beneficial uses; or

(2) any discharge that will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(n) "Practice" means a land treatment or management practice constructed or implemented to effect pollution control.

(o) "Project work plan" means a detailed plan for a proposed project that is identified in the approved local non-point source pollution management plan.

(p) "State contract" means a contract between the commission and the district to prescribe the annually allocated amount of technical assistance and information and education funds and to prescribe expenditure guidelines for those funds.

(q) "State non-point source pollution management plan" means a process to identify measures to control pollutants discharged from non-point source pollution sources and shall also mean state and local programs for controlling non-point source pollution.

(r) "Total maximum daily load" means state identification and prioritization of pollutants and specific water bodies with pollutant loadings allocated for specific water bodies and corresponding pollutant reduction goals developed and strategies implemented.

(s) "Vulnerable water resources" means water resources that have a high probability of being contaminated. Factors that contribute to vulnerability shall include the following:

(1) Infiltration recharge;

(2) vadose zone characteristics;

(3) depth to water table;

(4) topography;

(5) soil characteristics;

(6) pollutant source concentration;

(7) pollutant characteristics;

(8) groundwater;

(9) surface water;

(10) precipitation;

(11) runoff;

(12) land cover; and

(13) proximity of the pollution to a stream or lake. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999).

K.A.R. 11-7-2. Local non-point source pollution management plan. (a) The conservation district responsibility, with assistance from sponsors or cosponsors, shall be to coordinate the development and submission of a comprehensive local non-point source pollution management plan. Local, state and federal agencies and the private sector shall be invited to assist in the development of the management plan.

(b) The management plan submitted to the commission shall include the following:

(1) Pollution reduction goals;

(2) a description and the location of the area included in the plan;

(3) a description of problems and potential problems;

(4) a description of proposed solutions, evaluation, and monitoring;

(5) estimated costs;

(6) the source of funding;

(7) an implementation schedule; and

(8) a list of participants in the development of the plan.

(c) An administrative review by the commission and a technical review by the following state and federal natural resource agencies shall be completed with recommendations consolidated by the KDHE:

(1) KDHE;

(2) United States natural resources conservation service;

(3) Kansas biological survey;

(4) Kansas corporation commission;

(5) Kansas geological survey;

(6) Kansas water office;

(7) Kansas forest service;

(8) Kansas department of wildlife and parks;

- (9) Kansas department of agriculture;
- (10) Kansas state university cooperative extension service; and
- (11) United States environmental protection agency.

(d) The reviewer's recommendations shall be included in the plan as an amendment and incorporated into project work plans.

(e) The conservation district shall be notified in writing when the local non-point source pollution management plan is approved. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-3. Project work plan. (a) The conservation district shall coordinate the development and submission of a project work plan to request funds for a new or significantly modified existing project work plan to implement all or part of an approved management plan, or to report the implementation of a non-point source pollution control project that does not require additional state assistance.

(b) The project work plan submitted to the commission shall include the following:

- (1) A description of the water quality problem;
- (2) a description of the project area;
- (3) a priority designation;
- (4) the goals and objectives of the project;
- (5) evaluation procedures;
- (6) schedules and milestones;
- (7) a budget; and
- (8) a list of all participating organizations.

(c) Approval of a project work plan requesting state funds shall include the following:

- (1) An implementation schedule;
- (2) local initiatives;
- (3) utilization of existing state and federal programs; and
- (4) administration of the project to assure successful completion and consistency with the approved and amended local non-point source pollution management plan.

(d) Approved project work plans requesting funding from the non-point source pollution control fund shall be considered by the commission, if funds are available.

(e) Financial requests for new and existing project work plans shall be submitted to the commission using forms prescribed by the commission.

(f) Project work plans shall address at least one of the following water resources included in the state non-point source pollution management plan and assessment report:

- (1) Critical or targeted water resources;
- (2) exceptional value water resources; or
- (3) vulnerable water resources. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-4. Project work plan amendment. (a) An amendment to the project work plan may be submitted to the commission for review.

(b) An amendment that involves a funding increase and is approved shall be funded from available non-point source pollution control funds.

(c) An amendment that involves a funding increase and is not approved shall be returned with the reason for disapproval. Appeal may be made in writing within 15 days after the notice of disapproval. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-5. Allocation of non-point source pollution control funding. (a) When funds are available, any district with an approved local non-point source management plan shall annually request from the commission NPS funding for new and existing project work plans to implement specific elements of the plan and to request contract funds by April 1, using forms prescribed by the commission.

(b) Annual district allocations shall be made by the commission in accordance with the following criteria:

- (1) The amount of geographic inclusion in a state water plan priority area;
- (2) the identified areas or drainage addressing the protection of public water supply areas;
- (3) other locally identified priority areas;
- (4) the total maximum daily load project areas; and
- (5) any other criteria determined by the commission to meet the resource goals and objectives of the state. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-6. Contract funds. (a) The state contract shall provide for the distribution of non-point source pollution technical assistance, information, and education or nonfinancial assistance funds.

(b) A one-time advance of the annual allocation of either technical assistance or information and education

funds, or both, shall be paid to each district by the commission after July 1, upon receipt of the signed contract.

(c) The amount allocated shall be a supplement to each district's uncommitted balance retained on June 30, to equal the current fiscal year allocation.

(d) Uncommitted funds held by each district on June 30 shall remain in each district account and shall be deducted from the next fiscal year's annual advance if the contract is extended.

(e) If the contract is not extended or if uncommitted funds exceed the next fiscal year's allocation, the uncommitted funds shall be returned to the commission by the district within 10 days after the expiration of the contract or receipt of the next fiscal year's allocation.

(f) The district may employ a water quality coordinator to provide technical assistance. This coordinator shall be an employee of the district and shall be supervised by that district's board of supervisors or its designee.

(g) The technical assistance allocation shall be used solely for salaries, wages, and benefits as prescribed by the commission for the employment of any conservation district employee or employees, based on staff hours directly related to the implementation of the program, with funds accounted for on forms prescribed by the commission.

(h) The information and education allocation shall be used to fund activities that support implementation of the district non-point source pollution management plan and project work plans and shall be accounted for on forms prescribed by the commission and submitted to the commission by the requested date.

(i) Any district purchase, using state contract funds, of equipment exceeding \$500.00 in value shall be the property of the commission for five years or the life of the equipment, whichever is less, and shall require advance purchase approval of the commission. After five years, the equipment shall become the property of the conservation district.

(j) Transfers of either technical assistance or information and education funds to a district's financial assistance account may be allowed for reasons determined to be valid by the commission.

(k) Supplemental allocations to districts may be made by the commission for information and education projects.

(l) Each district shall follow the operations fund guidelines in K.S.A. 2-1907b, and amendments thereto, in its expenditure of state contract funds. (Authorized by and implementing K.S.A. 2-1915, 2-1904 and 82a-951; effective May 21, 1990; amended Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-7. Conservation district program. Each participating conservation district board of supervisors shall develop and submit to the commission for approval, using commission-prescribed forms, the district's fiscal year financial assistance program under the following provisions:

(a) The district may develop the program after receiving the state program forms from the commission.

(b) The district shall select the non-point source pollution control practices from those identified in the project work plans that will best address pollution prevention and improvement.

(c) The district shall implement its adopted program policies upon approval by the commission.

(d) The financial assistance applicant shall follow the minimum standards of design, construction, operation, and maintenance as outlined in K.A.R. 11-7-12, 11-7-13, and 11-7-14.

(e) Financial assistance levels set by the conservation district shall not exceed 70% for private ownership and 50% for public entities and shall not change during the fiscal year unless a specific allowance is granted by the commission.

(f) The maximum amount of financial assistance allowed for each practice shall not exceed \$10,000. However, the maximum amount of financial assistance allowed shall be \$1,000 for abandoned water well plugging and \$20,000 for livestock waste systems. The amounts specified in this subsection shall apply, unless exempted for reasons prescribed by the commission.

(g) Each district shall develop financial assistance prioritization criteria following commission guidelines and requirements in the funding of financial assistance contracts.

(h) Amendments to the district program shall be submitted, in writing, by the district to the commission and may be approved following commission-prescribed guidelines.

(i) Approval shall be obtained from the state historical preservation office before any expenditure of state funds on practices that impact national or state historic sites or other cultural resource areas. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective May 21, 1990; amended Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-8. Financial assistance contract. (a) Each request for a financial assistance payment submitted by the district shall be recommended for approval by the conservation district board of supervisors or its designee and duly recorded in the minutes of the regularly scheduled board meeting.

(b) The district shall review and recommend approval of requests for payment from the non-point source pollution control fund on forms prescribed by the commission.

(c) Financial assistance requests shall be consistent with each district's current fiscal year program as approved by the commission, and all commission guidelines and procedures shall be followed in the submittal of financial requests.

(d) The actual cost or county average cost, whichever is smaller, shall be used as a basis for determining financial assistance earned.

(e)(1) The applicant shall not begin construction until written approval of the submitted request is given by the commission to the district, unless the commission determines that an exception is warranted.

(2) If the applicant requests immediate approval, verbal approval may be given by the commission if either of the following conditions is met:

(A) The practice has been designed and surveyed, and the contractor or installer is at the site and ready to proceed with practice construction on the same day that the request is made.

(B) The commission will not receive the financial assistance request form before an uncommitted funds cancellation deadline.

(f) Partial payments shall not be awarded to an applicant approved for financial assistance, unless specifically granted by the commission, until the project is certified as complete and includes all components installed according to the design and installation requirements of the commission.

(g) Each contract shall be assigned by the commission an expiration date of 60 days following the date the contract is approved by the commission if the conservation district does not assign the expiration date.

(h) Districts may grant an extension of any length of time during the contract period but not beyond June 30.

(i) Contract cancellation and amendments of an approved contract shall be recommended by the district and duly recorded in the regularly scheduled board of supervisors' meeting. If a cancellation or amendment is approved by the commission, the district shall retain one copy and forward one copy to the applicant or legal agent.

(j) The commission-prescribed maintenance agreement shall be signed by the applicant, who shall be the landowner or legal agent, with the original copy attached to the request for financial assistance submitted to the commission for approval. (Authorized by K.S.A. 1998 Supp. 2-1915 and K.S.A. 75-5657; implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-9. Final payment. Final disbursement of funds due on the contract shall be made upon submission of request for payment on forms prescribed by the commission. Certification that the project is complete and that it meets all the requirements of the contract shall be required before payment of funds. (Authorized by K.S.A. 82a-903; implementing K.S.A. 82a-951; effective May 21, 1990.)

K.A.R. 11-7-10. Cancellation of funds. (a) A status report of all active NPS contracts and each district's uncommitted balance shall be prepared by the commission on or after June 1 and shall be provided to each district.

(b) Cost-share funds uncommitted and not under contract at the close of business on June 30 shall be canceled.

(c) Cost-share funds under contract for practices on which construction has not begun by June 30 shall be canceled.

(d) Cost-share funds under contract for practices on which construction has not begun by June 30, due to inclement weather or other factors beyond the control of the applicant, shall be individually evaluated by the commission and may be encumbered and continued for one year.

(e) Cost-share funds under contract for practices on which construction has begun but has not been completed by June 30 may be encumbered and continued for one year.

(f) Encumbered contracts not completed within the year of encumbrance may be canceled by the commission.

(g) Any contract may be extended by the commission beyond previously outlined guidelines if the contract is determined by the commission to be highly significant in pollution reduction and if other factors exist that are beyond the control of the applicant. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-11. Maintenance contract. (a) Each applicant for financial assistance shall sign form SCC/NPS-3 entitled "non-point source pollution control program application/contract for financial assistance."

(b) The applicant shall agree to maintain the practice according to recommended maintenance procedures adopted by the commission for 10 years or the life of the practice, whichever is greater.

(c) If the financial assistance recipient fails to maintain the practice according to contract provisions, the recipient may be declared ineligible for future financial assistance funds. The financial assistance recipient may be required to repay financial assistance funds received on the following pro-rata basis if the amount is more than \$100.00 and the recipient has constructed or installed the practice within the following time limits:

(1) Five or fewer years: 100%;

(2) more than five years but six or fewer years: 80%;

(3) more than six years but seven or fewer years: 60%;

(4) more than seven years but eight or fewer years: 40%;

(5) more than eight years but nine or fewer years: 20%; and

(6) more than nine years but 10 or fewer years: 10%.

(d) The recipient of state financial assistance for any pollution control practice shall be responsible for proper operation and maintenance and, if needed, modification of the facility or other actions to ensure satisfactory operation and continued pollution control at the recipient's expense.

(e) The financial assistance recipient shall obtain a written agreement to transfer the maintenance responsibilities contained in the commission's "non-point source pollution control program application/contract for

financial assistance" in the event of new ownership of the property where the practice was installed within the life span specified.

(f) When a recipient of financial assistance is determined by the commission to be in noncompliance with the requirements of the contract for financial assistance, upon notice by the district, the recipient shall bring the property into compliance within a time specified by the commission, or the repayment provisions of the application contract outlined in subsection (c) above shall apply.

(g) The provisions of the financial assistance application contract shall not apply to a recipient of financial assistance if the recipient's failure to comply is due to any of the following:

- (1) Natural disasters;
- (2) faulty design or construction as determined by the commission; or
- (3) any other situation beyond the control of the financial recipient. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective Dec. 27, 1999.)

K.A.R. 11-7-12. On-site wastewater system. (a) The minimum standards established by the KDHE for design and construction of on-site wastewater systems outlined in KDHE bulletin 4-2, as in effect in March 1997, and the "environmental health handbook," written by the KDHE, Kansas state university cooperative extension service, and Kansas association of sanitarians and as in effect on January 1, 1999, are hereby adopted by reference. These minimum standards shall be superseded only by local ordinances requiring more stringent standards of design and construction.

(b) The standard for on-site waste system operation and maintenance outlined in Kansas state university cooperative extension publications MF-947, dated August 1998, and MF-2290, dated October 1997, shall be followed for all state financially assisted on-site wastewater projects and are hereby adopted by reference.

(c) Each on-site wastewater system shall be designed, inspected, and certified as complete by a local official according to locally adopted sanitary or environmental codes approved by KDHE and state design and permitting standards, before any state financial assistance payment is made.

(d) Only existing systems determined to be failing by the local county official or a KDHE representative shall be eligible for state financial assistance.

(e) Each district shall establish and apply applicant prioritization based on non-point source pollution water quality benefit criteria for all state financially assisted on-site wastewater systems.

(f) An alternative on-site wastewater treatment system that is other than a conventional soil absorption field or pond and that is authorized by the local health official and the commission shall be eligible for financial assistance if the lowest cost treatment system cost-share calculation is used.

(g) State financial assistance for an applicant for an on-site wastewater system shall not be available if the local health official reports the applicant to the county attorney for enforcement action under locally adopted ordinances. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-13. Abandoned water well plugging. (a) Any individual plugging abandoned water wells to control non-point source pollution and receiving state financial assistance shall follow KDHE rules and regulations.

(b) Financial assistance for abandoned water well plugging shall not exceed \$1,000 for each well. However, an exception to the \$1,000 limit may be granted by the commission when circumstances warrant. The procedures and minimum standards for plugging abandoned wells outlined in Kansas state university cooperative extension publication "plugging abandoned wells," MF-935 (revised), as published January 1998 and hereby adopted by reference, shall be superseded only by more stringent local ordinances.

(c) All plugged abandoned wells shall be registered with the KDHE before financial assistance is paid. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-14. Livestock waste control systems. (a) Only minimum pollution control measures shall be eligible for financial assistance.

(b) Expansion costs of a livestock waste control system requiring a design that accommodates more animal units than currently exist shall not be eligible for financial assistance unless the commission determines that an exception is warranted.

(c) Applicants relocating a confined feeding facility and receiving financial assistance shall be required to perform the following:

- (1) Clean and properly dispose of waste from the existing facility;
- (2) remove interior fencing and feeding facilities to render the site incapable of the confined feeding of animals; and
- (3) plant vegetation at the abandoned facility that maximizes nutrient uptake as approved by the district.

(d) Financial assistance shall not be available for livestock waste control facilities over 999 animal units unless the commission determines that an exception is warranted.

(e) Sewage discharge from a home site shall not be deposited in a livestock waste facility of any type.

(f) A new livestock waste control facility that does not replace or modify an existing livestock waste control facility or confined feeding facility shall not be eligible for financial assistance.

(g) Partial payments shall not be available for livestock waste control systems, with the exception of grass seeding within the appropriate seeding dates.

(h) Only livestock waste systems approved by the KDHE and designed and certified as complete by a Kansas licensed professional engineer shall be eligible for state financial assistance. Exceptions may be granted by the commission for Kansas state university cooperative extension service designs approved by the KDHE for demonstration purposes.

(i) Confined animal feeding operators who incur court action for noncompliance with KDHE confined animal feeding operation regulations shall not be eligible for state financial assistance.

(j) The following minimum standards of design, construction, and operation of state financially assisted livestock waste management systems are hereby adopted by reference:

(1) "Animal and related waste control," K.A.R. 28-18-1 through 28-18-15 and K.A.R. 28-18a-1 through 28-18a-32, effective Jan. 15, 1999; and

(2) section IV of the "Kansas field office technical guide," as in effect on January 1, 2002, and the "agricultural waste management field hand- book," as in effect on January 1, 2002, published by the United States department of agriculture, natural resources conservation service, formerly known as the soil conservation service. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-15. Petition for reconsideration. (a) A landowner who has been denied cost-share funding may appeal an adverse decision of the district by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days after the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 2-1904; implementing K.S.A. 2-1915; effective Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-16. Special projects. (a) Funds may be withheld by the commission from the annual appropriation, and funds released by the districts may be reserved by the commission for the purpose of contributing to special projects that the commission considers necessary and important for the abatement of non-point source pollution.

(b) (1) Authority shall rest with the commission to fund special projects for the purpose of testing, development, implementation, and demonstration of new cost-share practices appropriate for water quality protection and restoration.

(2) Special projects may be funded by the commission from annual appropriations if the projects are determined to be necessary to increase the effectiveness and efficiency of the cost-share program.

(3) Special projects shall be conducted for a specified period of time and in a limited area as determined by the commission. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a- 951; effective Aug. 23, 2002.)