



Sierra Club

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Kansas Chapter Agriculture Committee
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Certified Mail - Return Receipt Requested

September 12, 2017

Secretary Susan Mosier
Kansas Dept. of Health & Environment
1000 SW Jackson St.,
Topeka, Kansas 66612-1367.

Sub: Swine CAFO Registrations:

- a. Public notice: Ks-AG-R-17-014, C&J Swine, LLC, Phillips Co.
- b. Public notice: Ks-AG-R-17-017, Husky Hogs A-URPL-H007, Phillips Co.

We are protesting the tentative approval the Livestock Section has granted to the subject registrations. This approval is evidenced by the enclosed communication from the KDHE Livestock Section Chief, Tara Mahin, to the Registrant, Terry Nelson, allowing him to subdivide the existing permitted Husky Hogs swine feeding and breeding operation into two new permitted operations of much greater total capacity. We are submitting this objection on behalf of the Sierra Club and on behalf of citizens of Phillips County, the location of this site, and on behalf of the citizens of Norton County who would be affected by another new operation that would feed the increased number of pigs.

The existing site, Husky Hogs, LLC (A-URPL-H007) is a sow-breeding operation permitted for 3702.4 animal units of swine. The registrant proposes to sell part of the existing permitted operation to a family member and split the production area of this site approximately in half, per the attached marked-up plan view. He would modify the other half, which recently suffered fire damage, into a new operation under a separate permit. The two new permits would hold a total of 6153.2 animal units.

In 1998 the Kansas legislature passed comprehensive legislation addressing the risks to air and water quality from large swine CAFOs especially as it relates to the neighbors of such facilities. To address air quality the legislature, in KSA 65-171d, increased the separation distance to habitable structures from 4000 feet to 5000 feet for operations with a capacity of 3725 animal units or more. In KSA 65-1,194 the legislature likewise related significant increases in animal unit capacity to the need for greater separations, when they required the 5000 feet setback, even for expansions of facilities existing in 1998, when the operation expanded the number of animals units by one third or more,

or to more than 4499 animal units. The increase in animal units capacity of both proposed new permits together exceeds each of these thresholds.

The legislature further acknowledged the relationship between the strength of air emissions and distance to neighbors when they instructed KDHE to "take into consideration different sizes of facilities " when making rules for odor control plans under KSA 65-1,187 (c).

To address increased threats to water quality the legislature, in KSA 65-1,180, increased the setback from public surface water from 250 feet to 500 feet for operations with capacity of 3725 animal units or greater. The subject operations would sit immediately adjacent to Prairie Dog Creek. Prairie Dog Creek water quality is already impaired for dissolved oxygen and total phosphorus at the monitoring station not far downstream at Woodruff.

Based on the plan-view layout provided in the registration, the two operations will be only about 30 apart. They will both lie mostly in the existing production area footprint. They would share the same immediate air space and commingle building runoff that ultimately ends up in Prairie Dog Creek. Precipitation around these operations will also absorb airborne pollutants blown by fans out of both operations and end up in runoff to Prairie Dog Creek.

The new lagoon will lie only about 80 feet from the existing lagoon that will continue in operation. It is well known that ammonia continually emitted from swine lagoons is in part deposited near its source. Thus the supposed physical separation of the two operations will in no way prevent an increase proportional to the total capacity of the site. It is highly dubious to imply that the environmental and health impacts can be somehow analyzed and addressed separately when the operations lie side by side.

Ms. Mahin stated that the proposal meets statutory and regulatory requirements without citing any specific provisions that apply specifically to this case, noting only that the two operations must be kept separate. It would not be surprising that the legislature did not address this specific situation because few could envision this attempt to circumvent the legislature's obvious intent by just cutting an existing production site in half to keep the animal unit count in each under 3725. The operational separation of the two facilities, even if possible, will not change the fact that the applicants are inserting 67% more animals into the same space.

This case is particularly egregious in view of the conclusions of a 2015 study by the Kansas Health Institute, "Potential Health Effects of Changes to the Kansas Corporate Farming Law," which recommended that the legislature increase the setback distance from large swine operations to 3 miles from the current 0.95 mile.

KDHE's approval of this dubious proposition sets a dangerous precedent that would encourage many other large swine CAFO operators to circumvent the intent of the legislature to provide additional protections for air and water quality. It also contradicts established science. We are requesting that the Secretary reverse the agency's decision. Mr. Nelson is entitled to rebuild his damaged facility according to his existing permit. He is not entitled to circumvent the obvious intent of the legislature and increase the capacity of swine at this site by two-thirds without additional protections for his neighbors.

Sincerely,

Craig Volland
Chair Agriculture Committee
Kansas Sierra Club

cc. Livestock Waste Management Section