

PERFORMANCE AUDIT REPORT

**Reviewing the Department of Health and Environment's
Efforts To Protect Water from Pollution Caused by
Confined Livestock Feeding Operations**

Executive Summary *with Conclusions and Recommendations*

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
January 1997**

Legislative Post Audit Committee

Legislative Division of Post Audit

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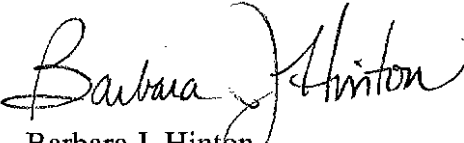
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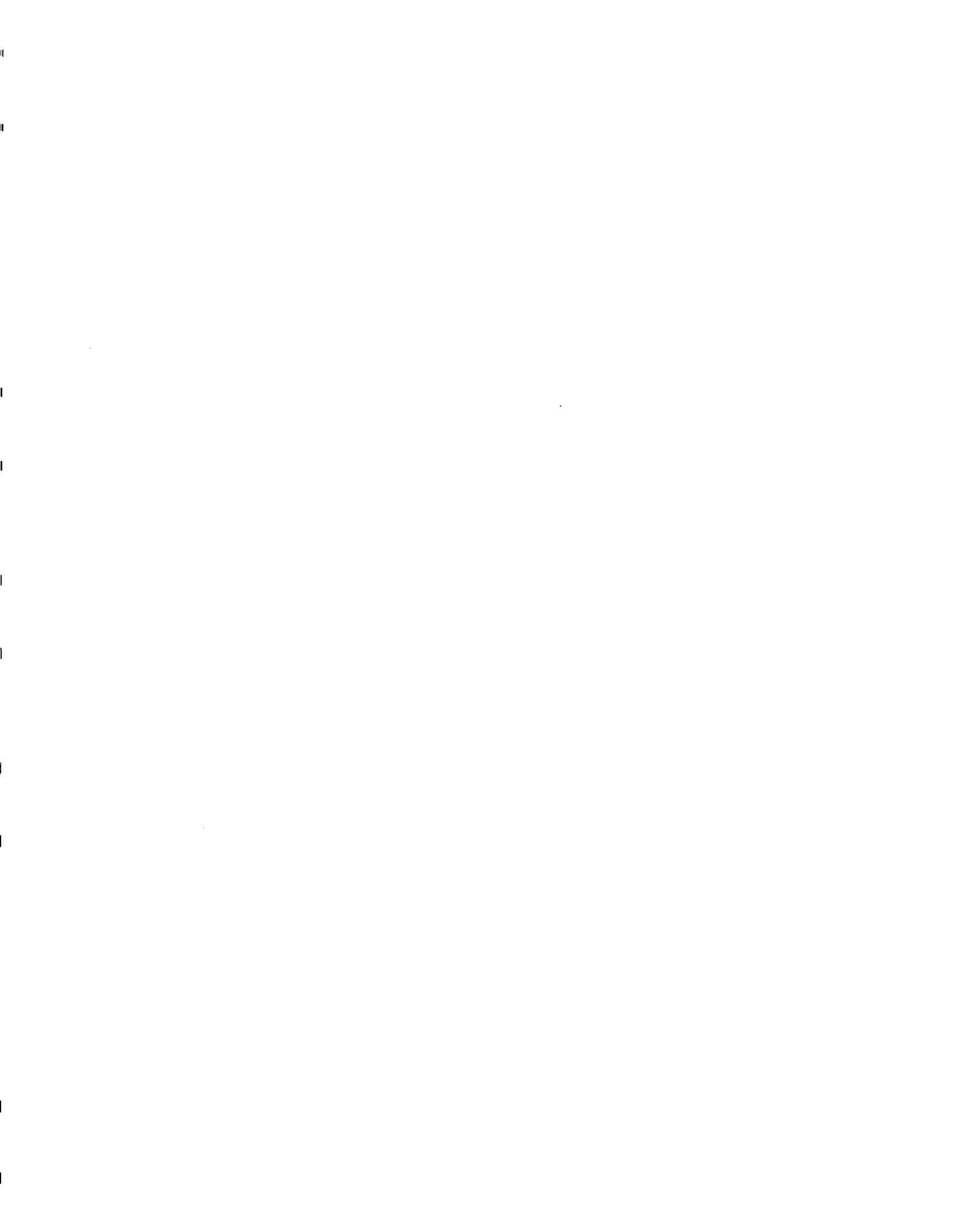
This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, from our completed performance audit, *Reviewing the Department of Health and Environment's Efforts to Protect Water from Pollution Caused by Confined Livestock Feeding Operations*.

The report also contains appendices comparing standards for human wastes with those for animal wastes and summarizing other states' animal-waste regulatory programs.

This report includes several recommendations for ensuring that the Department identifies all facilities that need to be regulated, develops plans to make sure all the required information is submitted before a permit is issued, and inspects all facilities as required. We also recommend that the Legislature seriously consider the Department's request for additional program staff and that the Department further study whether it needs to issue regulations governing dust and odors. We would be happy to discuss these recommendations or any other items in the report with you at your convenience.

If you would like a copy of the full audit report, please call our office and we will send you one right away.


Barbara J. Hinton
Legislative Post Auditor



**Reviewing the Department of Health and Environment's
Efforts to Protect Water from Pollution Caused by
Confined Livestock Feeding Operations**

EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

**Question 1: Have the Department of Health and Environment's
Actions to Permit, Monitor, and Regulate
Confined Livestock Feeding Operations
Been Sufficient To Protect Kansas Water from Pollution?**

The Department's design standards are less stringent than comparison states in two key areas. page 10
Kansas' "seepage" standard specifies that the liquid from the bottom of a lagoon can't seep into the ground by more than 1/4 inch per day. Six of the eight other states allow a seepage rate of less than that—generally 1/16 inch to 1/56 inch per day. Also, Kansas requires 100 feet between a waste-control facility and a well, while most other states have a variable standard based on the quality of the well's construction.

We found some significant problems with the Department's animal waste regulatory program. page 12
Although our reviews, testwork, and interviews showed the Department had adopted many good permitting, monitoring, and enforcement procedures in regulating animal wastes, they also showed the program had serious problems that weaken its effectiveness in protecting the State's water sources from pollution.

In 93% of the 41 cases we reviewed, the Department didn't follow its procedures or requirements for regulating animal waste-control facilities. page 14
The Department often allowed facilities to operate even though their permits had expired—often years before—or hadn't met all the requirements for obtaining a permit. For example, some facilities had never submitted required seepage tests to ensure lagoons wouldn't leak excessively. Other facilities didn't meet design standards or special permit conditions. In one case, a facility has operated for nine years after test results showed a waste lagoon could seep at more than 20 times the allowed standard if it hadn't sealed effectively. The Department has no way to identify facilities that may pose a significant water pollution potential and need to be regulated. In addition, in trying to address a large backlog of renewal permits, the Department is shortcutting some potentially important steps.

We also found the Department hadn't performed the required one-, two-, or three-year inspections for nearly half the facilities in our sample; one facility hadn't been inspected since 1973, and two others hadn't been inspected since the mid-to-late 1980s. The Department also inappropriately handled complaints more than 40% of the time. When inspections or complaint investigations uncovered violations of regulations, Department staff rarely followed up to make sure those violations were

corrected. The Department also didn't always take appropriate enforcement actions against operators with a history of repeated violations. In fact, the Department has only taken 13 formal enforcement actions since 1992.

Question 1 Conclusion: *The regulatory process for protecting the State's water resources from pollution caused by confined-feeding facilities has serious weaknesses that need immediate attention. Under the current system, the Department has relied heavily on the industry to voluntarily comply with regulations, and to provide the information it needs to regulate. That heavy reliance on the industry hasn't produced acceptable results, and the Department hasn't ensured that permitting requirements have been met, that feeding operations have operated with valid permits, and that operators submit required monitoring reports. The Department also hasn't established the types of procedures it needs to ensure that all these things happen. In addition, the Department appears to be slow to respond when it becomes aware of facilities that repeatedly violate its regulations. Water is one of the State's most valuable resources, and once polluted it can take many years to clean up. To-date, Kansas has been able to avoid some of the major lagoon failures experienced by Iowa and North Carolina. However, contamination problems that could be starting now won't show up for many years, particularly if groundwater deep below the surface is involved.* page 23

Question 1 Recommendations: *A brief summary of the report's recommendations, together with a summary of applicable comments from the agency, is presented below.* page 24

We recommend that the Department develop procedures for identifying facilities that haven't registered but that represent a pollution threat and need to be regulated. We also recommend that the Department incorporate its design standards into Kansas Administrative Regulations, and develop a formal system that requires its staff to review facility files and ensure all requirements have been met before a permit is issued.

Relating to monitoring activities, we recommend that the Department develop a plan to inspect all facilities as required, investigate all complaints, develop a tracking system for complaints and violations, ensure that there is adequate follow-up to show that violations have been corrected, inspect facilities that are renewing their permits as needed to verify any changes, ensure that monitoring logs are submitted and reviewed, and follow-up on facilities identified in this audit to ensure appropriate corrective action is taken.

We also recommend that the Department apply timely and consistent penalties. Finally, we recommended that the Department reassess its public notification procedures to come up with a workable means of notifying affected citizens about waste-control facility permits.

In its response, the Department generally agreed with these recommendations.

Question 2: Does the Department Have Sufficient Staff and Regulatory Authority To Protect the State and Its Citizens from Pollution and Nuisances Caused by Feedlots, Dairies, And Confined-Feeding Operations?

The Department doesn't have enough staff to adequately protect the State's water from pollution caused by animal wastes produced by confined-feeding operations. page 26
The Department has eight full-time-equivalent field staff working in the agricultural-waste program. We estimated that about four additional full-time-equivalent staff would be needed to effectively carry out the program. There also is a backlog of new applications brought on by Senate Bill 800, and a backlog of renewal applications that came about when the Department made renewing permits a low priority. We estimated it would take 10.5 full-time-equivalent staff over the next year to catch up these backlogs.

The Department has requested additional staff in its fiscal year 1998 budget. page 28
The Department has requested three additional district-office staff for fiscal year 1997. For fiscal year 1998, it has requested three additional central staff and six additional district-office staff.

The Department generally has sufficient authority to protect the State and its citizens from pollution and nuisances caused by confined-feeding operations. page 28
The Department has adequate authority to regulate water pollution from confined-feeding operations. It also has authority to regulate dust and odors through the State's air quality statutes. However, the authority to regulate dust and odors may be meaningless without some way to measure odors and isolate how much dust is caused by a specific source. The Department had some regulations for "fugitive" dust, but these were repealed in the late 1980s because they were unenforceable. No standards for odors ever have been in State regulations. Instead, the Department relies on statutory "separation" distances to control odor problems. The majority of other states we contacted also don't specifically regulate odors or dust from confined-feeding operations.

Question 2 Conclusion: page 33
The Department appears to have all the statutory authority it needs to regulate confined-feeding operations to prevent water pollution, and to control nuisances such as dust and odors. To-date, it has focused its efforts on controlling water pollution—rather than on trying to deal with problems of odor and dust—because of the difficulty involved in establishing standards and measuring the amount of dust created by a specific source. With the limited staff it has available for the program, the Department has had to rely on the industry to police itself to a certain extent, and it can't adequately carry out the things it needs to do to make sure confined-feeding operations are operating according to laws and regulations. The Department may need to further study whether additional regulations governing dust and odors are warranted, and how it might be possible to implement them.

Question 2 Recommendations: page 33
A brief summary of the report's recommendations, together with a summary of applicable comments from the agency, is presented below.

We recommend that at the Senate Ways and Means and House Appropriations Committees seriously consider the Department's request for additional program staff. We also recommend that the Department determine the full cost of adding sufficient staff to the program, and seek the support of the Legislature to adjust registration and permit fees to the level needed to defray those costs.

Finally, we recommended that the Department further study whether it needs to issue regulations governing dust and odors generated by confined-feeding operations, and report its findings back to the Legislative Post Audit Committee before the start of the 1998 Legislature.

In its response, the Department generally agreed with these recommendations.

APPENDIX A: Standards for Handling Human Wastes Compared page 35
With Those for Animal Wastes

APPENDIX B: Selected Information About the 41 Facilities page 36
We Reviewed

APPENDIX C: A Summary of Other States' Regulatory Programs page 39
for Confined Livestock Feeding Facilities

APPENDIX D: Agency Response page 42

This audit was conducted by Ellyn Sipp, Chris Clarke, Cindy Lash, and Laurel Murdie. If you need any additional information about the audit's findings, please contact Ms. Sipp at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call (913) 296-3792, or contact us via the Internet at: LPA@PostAudit.ksleg.state.ks.us.

