

KDHE's actions on Hog CAFOs don't pass the smell test

April 29, 2021



Photo by Mark Stebnicki from Pexels

Craig Volland, Chapter Agriculture Chair

In December, 2019 the Shawnee Co. District Court ruled for the Sierra Club that KDHE had incorrectly allowed a large hog producer in Phillips and Norton Co. to evade the requirement for a 500 foot setback from surface water when he expanded his breeding operation in an area only 250 feet away. The District Court decision found that KDHE misapplied their own regulation to approve the producer's scheme to split his operation into two smaller units by creating two legal ownership entities.

KDHE said the operations could be separate if they lacked contiguous ownership but the regulation actually said they must not have a contiguous ownership *boundary*. Since they were side-by-side they had such a boundary. So KDHE has now tentatively approved and put out for public comment a fix allowing a five or ten foot strip of land, owned by another of the producer's entities, to be inserted between his two operations at each site. Yup, just another legal fiction sanctioned by KDHE. This is explained in more detail with graphics on our [fact sheet](#).

But wait, that's not all. KDHE has also proposed to change this regulation to allow any CAFO owner to divide their operation however they want as long as each piece has its own waste treatment system. This was after they met with industry representatives (and no opposing party) to formulate the change. As far as we can tell, this would allow any CAFO owner to evade any restrictive setback to either habitable structures or surface water. That's open season on rural residents.

Here's the link to [KDHE's announcement of the proposed regulation change](#). For swine, see page 3 of K.A.R. 28-18a-4 at (d)(1)&(2). Scroll down further to the economic impact statement where they openly admit their meetings with industry and claim there will be no impacts other than saving the industry trouble and money. We are still investigating and will register our opposition during the public comment and hearing process.