

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Representative David J. Heinemann at
Chairperson

3:30 ~~a.m.~~/p.m. on March 28, 1983 in room 519-S of the Capitol.

All members were present except:

Representatives Ben Foster and Keith Roe (excused)

Committee staff present:

Ramon Powers, Research Department
Theresa Kiernan, Revisor of Statutes' Office
La Nelle Frey, Secretary to the Committee

Conferees appearing before the committee:

Phil Lewis

SB 143 - An act concerning certain mineral interests; relating to reversion of certain unused interests.

Phil Lewis testified regarding SB 143. He testified at the request of Committee Chairman David Heinemann.

Mr. Lewis noted that SB 143 would provide that an interest in coal, oil, gas or other minerals would lapse and revert to the current surface owner if the mineral interest remained unused for a period of 20 years. He noted that if the bill was enacted, there were 19,380 conveyances of land which would have to be examined to see if mineral interests are there. He estimated that this would cost a minimum of \$145,000 utilizing present staff. He suggested that the two-year stipulation on line 52 might be extended to three or four years. He noted that seven counties currently assess tax on the segregated minerals, but that 20 to 21 counties could be affected by this bill's enactment.

A question and answer period followed Mr. Lewis' presentation of testimony on SB 143.

Representative Ron Fox asked for a list of the 20 to 21 counties which might be affected by this proposed legislation, plus the seven counties that currently assess taxes. Mr. Lewis agreed to provide the information.

FINAL ACTION ON SB 143

Representative Darrel Webb distributed to Committee members a copy of a proposed amendment to SB 143 which he explained (see attachment 1). Representative Webb made a motion to amend SB 143 in accordance with the amendment he distributed to Committee members. Representative Fred Rosenau seconded the motion. The motion passed.

Representative LeRoy Fry made a motion that the Committee recommend SB 143 be passed as amended. Representative Anita Niles seconded the motion. The motion passed.

FINAL ACTION ON SB 248

Representative Keith Farrar distributed to Committee members a copy of a proposed amendment to SB 248 which he explained (see attachment 2).

Representative Rosenau made a motion that SB 248 be amended as proposed by Representative Farrar. Representative Farrar seconded the motion. The motion passed.

Representative Farrar made a motion that the Committee recommend SB 248 be passed as amended. Representative Ron Fox seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,
room 519-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 28, 1983.

FINAL ACTION ON SB 268

Representative Fox made a motion that the Committee recommend SB 268 be passed. Representative Thomas Walker seconded the motion.

A copy of correspondence from James Aiken, director of the Division of Environment, Kansas Department of Health and Environment, was distributed to Committee members. The correspondence outlined pollution of Surface and Subsurface Water not covered by K.S.A. 65-170(d) (see attachment 3). This information was requested in relation to the Committee's consideration of SB 268.

After discussion on the information distributed relating to SB 268, Representative Rosenau made a substitute motion to strike "\$10,000" on line 36 and insert "\$1,000". Representative Edgar Moore seconded the motion.

After further discussion on SB 268, Chairman Heinemann pulled the bill back from the floor so it could receive further consideration by the Committee. Committee members, through unanimous agreement, removed all motions and action on the bill.

There being no further business to come before the Committee, the meeting adjourned at 4:40 p.m.

The next meeting of the Committee will be held March 30, 1983.

Rep. David J. Heinemann, Chairman

Date March 28, 1983

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME

ADDRESS

ORGANIZATION

~~no signees~~

6 in attendance

PROPOSED AMENDMENTS TO S.B. NO. 143

[As Amended by Senate Committee of the Whole]

"AN ACT concerning certain mineral interests; relating to reversion of certain unused interests."

Be amended:

On page 2, by striking all after line 60;

On page 3, by striking all in lines 108 and 109; following line 109, by inserting the following:

"(b) Failure to file a statement of claim within the time prescribed by subsection (a) shall not cause a mineral interest to be extinguished if (1) the owner of the mineral interest filed the statement of claim within 60 days after publication of notice as prescribed by section 5, if such notice is published or (2) within 60 days after receiving actual knowledge that the mineral interest had lapsed, if such notice is not published.

Sec. 5. Upon the lapse of a mineral interest under section 2, any person who will succeed to the ownership of the interest shall give notice of the lapse of the mineral interest by publishing notice of the lapse in a newspaper of general circulation in the county in which the land subject to the mineral interest is located, and, if the address of the owner of the mineral interest is shown of record or can be determined upon reasonable inquiry, by mailing a copy of the notice by restricted mail to the owner of the mineral interest within 10 days after publication. The notice shall state the name of the owner of the mineral interest, as shown of record; a description of the land subject to the mineral interest; and the name of the person giving the notice. If a copy of the notice, together with an

affidavit of its publication and service, is promptly filed in the office of the register of deeds of the county where land subject to the interest is located, the record of the filing shall be prima facie evidence in any legal proceedings that the notice was given.

Sec. 6. Upon the filing of a statement of claim as provided in section 4 or the filing of proof of service of notice as provided in section 5, the register of deeds shall record the filing in a book to be kept for that purpose and shall indicate by marginal notation on the instrument creating the original mineral interest the filing of the statement of claim or affidavit of publication and service of notice.

Sec. 7. The provisions of this act may not be waived at any time prior to the expiration of the twenty-year period provided in section 2.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.";

And the bill be passed as amended.

PROPOSED AMENDMENTS TO S.B. NO. 248

As Amended by Senate Committee

I move to amend SENATE BILL NO. 248, As Amended by Senate Committee, On page 2, by striking all in lines 52 to 57, inclusive; following line 57, by inserting the following subsection:

"(b) Natural gas produced in connection with the production of oil may be flared or used in any manner if such use or flaring is authorized by an order, rule or regulation of the state corporation commission.";

Also on page 2, in line 66, preceding "flaring" by inserting "use or"

Attachment 2
3-28-83

State of Kansas . . . John Carlin, Governor



DEPARTMENT OF HEALTH AND ENVIRONMENT

Barbara J. Sabol, Secretary
Joseph F. Harkins, Secretary

Forbes Field
Topeka, Kansas 66620
913-862-9360

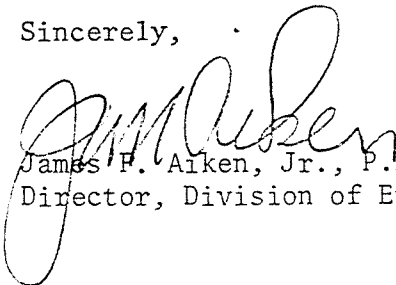
The Honorable David Heinemann
Chairman, House Energy and
Natural Resources Committee
State Capitol, Room 523-S
Topeka, KS 66612

Dear Representative Heinemann:

In relation to consideration of Senate Bill 268 by the House Energy and Natural Resources Committee, information was requested concerning the types of water pollution that would be covered by the proposed bill. I am attaching a copy of the response which was prepared by James Power of the Division of Environment.

If you desire any additional information, please feel free to contact me.

Sincerely,


James F. Aiken, Jr., P.E.
Director, Division of Environment

cac
cc - Representative Keith Farrar
Barbara J. Sabol
James A. Power, Jr.

Attachment 3
3-28-83


KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

DIVISION OF ENVIRONMENT

March 18, 1983

MEMORANDUM

DIRECTOR OF
ENVIRONMENT
1983

TO James F. Aiken
FROM James A. Power 
SUBJECT Pollution of Surface and Subsurface Water not Covered by
K.S.A. 65-170(d)

Representative Keith Farrar, House Energy and Natural Resources Committee, during testimony on March 16, 1983, requested information on types of pollution of surface and subsurface water which would be covered by the amendment to K.S.A. 65-170(d). The proposal contained in the report entitled Groundwater Quality Management Plan for the State of Kansas was to place emphasis on pollution prevention and to broaden the state's power to assess civil penalties when flagrant pollution occurred to the land or waters of this state. Senate Bill 268 is the recommendation of the Kansas Water Authority.

K.S.A. 65-170(d) now deals with application, permitting, operation, and monitoring of waste treatment plants in relation to surface water pollution. What the existing statute does not include, for example, are:

- Improperly designed, constructed, maintained, or abandoned injection wells for industrial waste disposal
- Improperly designed, constructed, maintained, or abandoned oil or gas wells
- Improperly designed, constructed, maintained, or abandoned oil or gas brine injection or enhanced recovery wells
- Leaks from petroleum pipelines
- Spills of hazardous material or other contaminants
- Runoff and leachate from old or abandoned industrial waste landfills
- Leaky industrial waste ponds or impoundments
- Hazardous sites identified under the federal Superfund program
- Leaky salt solution and LPG cavities
- Abandoned or improperly plugged water wells
- Improper use of fertilizers or pesticides
- Seepage from sewers, pipelines, and underground storage tanks
- Leakage from septic tanks, seepage pits, and cesspools
- Runoff and leachate from old or abandoned community landfills
- Runoff from active or abandoned industrial sites
- Leakage from above-ground storage tanks containing toxic or hazardous materials or fluids
- Seepage from surface impoundments containing community wastes
- Runoff and leachate from improperly designed, constructed, and maintained community landfills
- Seepage from sites employed for land treatment of community or industrial wastewater
- Drift from aerial spraying

Some of the items are specifically or indirectly covered under civil penalties in other statutes. Pollution from hazardous waste, for example, allows civil penalties greater than in K.S.A. 65-170(d). Similar provisions exist for solid waste, but the maximum civil penalty is \$500. A number of environmental activities are regulated under the provisions of K.S.A. 67-171(d) which in turn relates back to K.S.A. 65-170(d) under (a)(2). K.S.A. 65-171(d) has an inherent weakness in not defining pollution to specifically include pollution to groundwater, the soil, and the zone of aeration.

In the case of Taylor vs KDHE (July 1981), the Supreme Court noted K.S.A. 65-170(a)(2) provides a civil penalty, but is limited to the subject matter of K.S.A. 65-171(d). The statutes individually and collectively are concerned with discharge and dumping of pollutants into water as waste materials. In this case, the Court found dealing with stream pollution caused by aerial spraying of pesticides the department had no authority to assess a civil or criminal penalty. The defendant should have been charged under K.S.A. 2-2413 which is administered by the State Board of Agriculture.

Ambiguities in the law exist which are not perceived by the framers or the implementers of a statute. The court interprets a statute. How the courts will interpret the department's authority on groundwater, soil, and the zone of aeration can be debated. Senate Bill 268 simply says to the courts gross pollution is not to be tolerated and a civil penalty should be administered.