

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Charlie L. Angell at  
Chairperson

8:00 a.m./~~p.m.~~ on Friday, January 20, 1984 in room 123-S of the Capitol.

All members were present except:  
Senator Paul Hess  
Senator Tom Rehorn (Excused)

Committee staff present:  
Ramon Powers, Research Department  
Raney Gilliland, Research Department  
Don Hayward, Revisor's Office  
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:  
Barbara Sabol, Secretary, Kansas Department of Health and Environment  
Allan S. Abramson, Kansas Department of Health and Environment  
David Pope, Chief Engineer, Division of Water Resources, State Board of Agriculture

Senator Werts moved that the minutes of the January 19, 1984 meeting be approved. Senator Roitz seconded the motion, and the motion carried.

Barbara Sabol read her written testimony (Attachment 1). She reviewed the responsibilities of Kansas Department of Health and Environment (KDHE). She mentioned the recent reorganization of the agency (Attachment 2). Ms. Sabol described the environmental priorities for FY 1985: hazardous waste management, groundwater protection, drinking water quality, water quality management and low level radioactive waste disposal. Recommended new legislative actions are: (1) legislation to gain full authorization under the Resource and Recovery Act (RCRA), (2) legislation prohibiting the land burial of hazardous waste, (3) creation of a Superfund for cleanup action, (4) tax incentives to promote use of alternatives to land burial, (5) legislation to gain authority to administer the Kansas pretreatment program, and (6) legislation concerning fees for certification and training courses for water supply systems and wastewater treatment facilities.

Senator Feleciano moved that the Committee introduce a bill to allow Kansas to receive full authority to administer the Kansas Pretreatment Program (Attachment 3). Senator Roitz seconded the motion, and the motion carried.

Chairman Angell asked Ms. Sabol her opinion of the ex-officio members of the Water Authority not having voting rights. Ms. Sabol pointed out that the way the statute reads, the Director of the Division of Environment, not the Secretary, serves on the Authority.

Chairman Angell asked the same question of Dr. Allan Abramson. Dr. Abramson responded that he sees two sides to the question. The statute requires the Authority to review and make recommendations on the budget of KDHE which would result in the KDHE representative voting on his own budget. On the other hand, the Authority is designated to coordinate water policies for the state, and in that sense, should have the right to vote on decisions of the Authority. Dr. Abramson said he personally feels that the voting members of the Authority are open to input from the ex-officio members and he believes that the present arrangement works fairly well.

Chairman Angell asked Ms. Sabol to comment on the status of the Furley waste site. She told the Committee that an application to open the additional 80 acres has been submitted under the requirements of RCRA, deficiencies in the application have been responded to and KDHE is reviewing the responses. Upon deciding that those responses are sufficient, the application will be deemed complete and there will be 240 days within which to make a decision on the application. She advised that clean-up of the existing site is progressing. Chairman Angell asked about pollution coming from land burial. Ms. Sabol answered that they do know of pollution coming from land burial practices, for example, Strother Field. She stated that no present technology can be guaranteed to prevent leakage from land burial.

Vice-Chairman Kerr asked about the chances that Furley will ever be opened up again. Ms. Sabol said there is no preset notion of whether it will or will not be opened except as it relates to satisfactory clean-up and protection of the environment. Vice-Chairman Kerr asked Ms. Sabol if she would like to comment on the progress of implementing S.B. 498. Ms. Sabol said that the arrangement is not without problems, but some degree of success has been

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources,  
 room 123-S, Statehouse, at 8:00 a.m. ~~XXX~~ on Friday, January 20, 1984.

achieved in the staffs of KDHE and the State Corporation Commission working together. Vice-Chairman Kerr asked if Ms. Sabol anticipates additional legislation being needed in order to respond to existing problems. Ms. Sabol answered that she does not at this time expect legislation to be required.

Responding to questions from Senator Gordon, Ms. Sabol said that, almost without exception, they do not station staff on site at such places as Furley, Wolf Creek or Jeffrey Energy, but staff from area district offices carry out necessary monitoring. Senator Werts asked what is being done with the waste that formerly went to the Furley site. Ms. Sabol said her agency has not made a survey of the involved industries, but she understands that the companies who do not have on-site capability to handle the waste are sending it out of state. Senator Werts asked if Ms. Sabol feels progress is being made which will eventually result in effective detoxification of these wastes as an alternative to land burial. Ms. Sabol said she thinks progress has been made. She feels the technology is available for additional progress and feels the tax incentives proposals will assist in that regard.

David Pope summarized the history of the Kansas Water Appropriation Act. Since 1978 the role of the Division of Water Resources (DWR) has shifted from administrative functions to regulatory functions. There has also been a shift in philosophy from the developmental stage of water usage to conservation and management of water resources. Mr. Pope discussed the duties of DWR: processing of new applications for permits to appropriate water, responsibility to determine the extent water rights have been perfected and to issue the certificate of appropriation and the general administration of the Water Appropriation Act. He said his office will increase its usage of water meters and its computerization of water data. They will be designating more intensive groundwater use control areas. He spoke about their responsibilities in the area of dam safety. Mr. Pope talked about the two bills supported by the Water Authority requested by his office concerning interstate transfers of water and the time within which water must be released from a reservoir upon demand.

Chairman Angell asked Mr. Pope what he thinks about the voting rights of the ex-officio members of the Water Authority. Mr. Pope said he would agree with Dr. Abramson's comments. He added that, philosophically, he feels any member of a board or commission functions more actively if they have full voting privileges; but, in his experience, he doesn't feel any constraints have been put on the input of the ex-officio members of the Authority. Mr. Pope indicated he would not recommend a change in this matter. Senator Feleciano asked what specific part of the Nebraska law was struck down by the U.S. Supreme Court. Mr. Pope answered that Kansas statutes have a section providing for a reciprocity agreement with any adjoining state. The U.S. Supreme Court held that groundwater is a product of interstate commerce and the rights of states to regulate that are limited. He said Kansas does sell water outside the state. Mr. Pope agreed to provide written testimony.\*

The meeting was adjourned at 9:00 a.m. by the Chairman. The next meeting of the Committee will be at 8:00 a.m. on January 24, 1984.

\*Written testimony received and attached. (Attachment 4).

Senate Energy & Natural Resources

Jan. 20, 1984

<u>Name</u>	<u>Organization</u>
Chip Wheeler	Waste Management Inc.
JAMES L. YOUNG	WASTE MANAGEMENT, INC.
Mary Fund	Kansas Rural Center
Ed Reinert	Ks League Women Voters
PAT SCHAFER	BUDGET
Allan Abramson	KDHE
David Pope	Ks Board of Agric, Div of Water Res
Spurland Kinsdale	Ks " " " , Secretary
Barbara Kinsdale	KDHE
Robin Somerville	ENVIRONMENTAL PROTECTION & CLEANUP. (EPIC) LIBERTY M.O.
Glen E. Kirk	U.S. Bureau of Reclamation, Topeka
Janice Shutz	Pete McGill & Assoc.
Pete McGill	Pete McGill & Assoc.
David W. Nickel	KCC
Ed Peterson	"

## KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

## Presentation of Agency Environmental Legislative Program

By

Barbara J. Sabol, Secretary

To

Senate Energy and Natural Resources Committee

January 20, 1984

Mr. Chairman, Members of the Committee: I am pleased to be able to discuss with you today the status of the Department of Health and Environment and our initiatives for protection of the environment.

As you know, the Department of Health and Environment has a very broad responsibility for protecting both the public health and the environment for all Kansans. We have responsibility for control of most environmental contaminants and conditions relating to human health and welfare and the integrity of the land, air and water environment. Governor Carlin said in his message before the Legislature of 1983 and reinforced to the 1984 Legislature last week that, "Kansans have a deep respect for the natural resources of our State. They expect a healthy and safe environment composed of clean air, productive land and quality water. They recognize that these natural resources contribute to the productiveness which is of a distinctive quality in Kansas. Preserving and protecting our natural resources must be an effort joined by individuals as well as public and private agencies. As our environment becomes more complex, so must the intensity with which we care for that environment." Indeed, our environment is becoming more complex.

The Department's responsibilities have grown over the years in response to legislative changes designed to achieve an interrelated, comprehensive environmental control program. Our environmental goals include maintaining a healthful environment free from significant levels of pollutants; preserving our natural resources; and developing environmental control programs which are responsive to the needs of Kansans. Our Department activities are primarily of a regulatory nature. These regulatory actions are implemented within a policy framework that is based on a cooperative approach maintaining, however, a perspective of healthy skepticism and independence to allow for vigorous enforcement. Not all the Department's activities are regulatory. We provide technical assistance to individual citizens, municipalities, and industry. Counsel is provided on safe and effective methods of handling a wide variety of chemicals and hazardous waste. Publications and guidance are provided to local agencies and citizens on a variety of issues, including such things as construction of effective rural sewerage systems and water supply wells. Training programs are provided to operators of municipal and industrial water supplies, waste treatment plants, and solid and hazardous waste facilities so that compliance, efficiency and economy will result.

The recent reorganization of the Department which was designed primarily to improve coordination and communication and linkage between health and environmental programs already has demonstrated its benefits. Communication and coordination among the Bureaus has improved. The integration of the drinking water,

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surface water, and operator training programs under the Bureau of Water Protection has enabled them to speak with one voice and to broaden their perspective in delivering services to Kansas communities. Consolidation of functions such as permits, compliance and plan and specification review has improved the efficiency of the programs too. Another important goal of the reorganization--to improve the link between our health and environmental programs--is being achieved. This focus has been in the area of hazardous waste health and environmental risk assessment which now involves staff from both the Division of Health and Division of Environment working together on a daily basis. Strengthening the link between health and environment already has improved our responsiveness to the public as at Strother Field and the Obee School. All in all the reorganization promises to continue to strengthen the Department.

The Governor's budget for Fiscal Year 1985 reflects the following environmental priorities:

- Hazardous waste management;
- Groundwater protection;
- Drinking water quality;
- Water quality management;
- Low level radioactive waste disposal.

#### Hazardous Waste

State and federal laws and regulations pertaining to solid and hazardous waste have evolved during the past seventeen (17) years. Laws pertaining specifically to hazardous waste and setting out details for its management did not exist prior to the 1977 session of the Kansas Legislature. In 1981, the Legislature created a new Hazardous Waste Act by extracting provisions from the Solid and Hazardous Waste Act and by adding new sections. The Department of Health and Environment has responsibility for administering the state Hazardous Waste Act. In addition, we administer the hazardous waste portions of the federal Resource Conservation and Recovery Act (RCRA), with its many and complex supporting regulations, in concert with the U.S. Environmental Protection Agency. Kansas is an Interim Authorization State for RCRA administration, and it is our hope and intent to obtain final RCRA authorization in 1984. This will require Legislative action.

In the area of hazardous waste management, the potential long-range effects are such that we must take additional steps to minimize risk. The Governor has proposed a two prong strategy: minimizing potential contamination to groundwater by prohibiting land burial (preventive) and attention to 201 potential problem sites through a Kansas Superfund. These initiatives will need Legislative action as well. These are important policy directions designed to allow us to continue to meet the goal of protection of public health and environment. The Governor has proposed additional staff for the hazardous waste management program and \$500,000 for a State Superfund to allow the Department to review, investigate, and monitor the 201 potential problem sites that have been identified around the State. Therefore, Legislative action is proposed to amend certain statutes to:

1. Provide the necessary Legislative changes to gain full authorization under the Resource Conservation and Recovery Act.

2. Prohibit land burial of hazardous waste in Kansas.
3. Create a Kansas Superfund.
4. Provide time limited tax incentives to promote alternatives to land burial of hazardous waste.

### Drinking Water Quality

The protection of public health through assurance of safe and adequate water supplies is a major responsibility of the Department. In recent years, we have discovered additional problems that need our attention.

Contamination of groundwater sources of public water supply is an emerging public health problem. Volatile organic chemicals are now being detected with the use of sophisticated analytical measurement techniques. The Department is particularly concerned because of their frequency of occurrence, occasional presence in high concentrations, and the potential health risk. Examples of volatile organic chemicals include trichloroethylene, tetrachloroethylene, carbon tetrachloride, trichloroethane, dichloroethane, and vinyl chloride. Samples taken from public water supply wells in thirty-one (31) communities in 1982 revealed four (4) with volatile organic compounds. These systems serve 22,000 people. The Department, in addition, has been working with four areas where organic compounds were detected. These are: Strother Field near Winfield; 60 private wells east of Hutchinson; 20 private wells in northwest Sedgwick County; and an unincorporated community north of Wichita. It is estimated that these groundwater pollution incidents have affected about 5,000 people.

The continued identification of new incidents of organic contamination of our groundwater is a major challenge for the state. In response, the Department is proposing to expand its regular monitoring efforts into a broad synthetic organic chemicals survey. We hope to test 60 water supplies for synthetic organic chemicals each year. This approach will focus our attention on the most urgent cases for clean-up of drinking water supplies.

Thirty-nine (39) communities serving over 77,000 people use water supply lakes for public drinking water. In a recent field survey, pesticides were detected in eight (8) of the nineteen (19) lakes sampled.

There are an estimated 250 unpermitted, non-community water supplies which serve the public at restaurants, gas stations, small trailer courts, etc. Since these systems are not yet inspected or sampled it is unknown what potential problems they may harbor. This is a problem to which we must also give attention.

### Water Quality

Under Section 208 of the Federal Clean Water Act, a plan was prepared and submitted to the 1979 session of the Kansas Legislature which subsequently adopted the Kansas Water Quality Management Plan. The Legislature passed Senate Concurrent Resolution 1640 which directed the Kansas Department of Health and

Environment to report to the Legislature in 1984. Two reports have been prepared, and will be submitted to the Legislature this session.

1. Management Report on the Six Directives:
  - a. Mineral intrusion;
  - b. Agricultural runoff;
  - c. Irrigation;
  - d. Lead and zinc mining;
  - e. Construction erosion;
  - f. Urban storm runoff;
2. Revision of the 1979 Water Quality Management Plan which is programmatic in nature.

This year we will complete the process of accepting full delegation from the U.S. Environmental Protection Agency for the Construction Grants program, with the acceptance of responsibility for construction inspections. These inspections are essential to assure that sewage treatment plants are built as designed.

This year also will mark the beginning of implementation of the pretreatment program by over a dozen cities. Close oversight and technical assistance by the Department will be needed to protect the integrity of our sewage treatment plants.

#### Groundwater

In adopting the Kansas Water Quality Management Plan, the 1979 Legislature directed the Kansas Department of Health and Environment to continue work on development of a statewide groundwater quality management plan and report to the Legislature in 1981. The 1982 Legislature acted on the portion dealing with oil and gas field pollution problems which resulted in passage of Senate Bill 498 and subsequent formation of joint offices of the Kansas Corporation Commission and the Kansas Department of Health and Environment. The Department of Health and Environment and the Kansas Corporation Commission will jointly present to the Legislature a report on the implementation of SB 498.

Current issues within the groundwater program include an evaluation of the potential problems posed by underground storage tanks and by spills of organics. We intend to upgrade the petroleum storage tank inspection program to improve our inventory of both active and abandoned tanks, as well as do more testing to determine cases of substantial leakage. We also intend to evaluate the impact of spilled organics on groundwater resources through long-term monitoring.

#### Radioactive Waste Disposal

The 1982 Legislature passed enabling legislation to allow Kansas to participate in the Central Interstate Low Level Radioactive Waste Compact. The outlook of Congressional ratification is optimistic for 1984. Licensing of a site will take over a year. A January 1, 1986, deadline allows Compact states with a designated site to close out non-member states from using the site after that time. The State will continue to actively participate in the Compact.

January 20, 1984

Our baseline environmental monitoring program for the Wolf Creek Nuclear Power Plant is entering its second year. I have directed my staff to review this program and to make any changes needed to improve our ability to detect and to respond to any off-site emissions which could threaten public health or the environment. We also are considering an agreement with the Nuclear Regulatory Commission (NRC) which will give the state the full lead role in off-site monitoring.

This has been a very brief overview of the goals, accomplishments, and proposals for the Departments environmental programs. The recommended new Legislative actions are summarized as follows:

1. Adopt necessary Legislation to gain full authorization under the Resource and Recovery Act (RCRA).
2. Hazardous waste - Adopt legislation to prohibit the land burial of hazardous waste.
3. Hazardous Waste Superfund - create a fund which will be available for state cleanup action.
4. Adopt time limited tax incentives to promote use of alternatives to land burial.
5. Pretreatment - amendments to K.S.A. 65-164, 165, 167, 170a, and 171d to give KDHE full authority to administer the Kansas pretreatment program, rather than jointly with EPA.
6. Water Supply Systems and Wastewater Treatment Facilities. Operator Training and Certification - amend K.S.A. 65-4506 to allow Secretary to set the fee for training and certification at a level sufficient to cover direct and indirect costs of administering the correspondence courses.

I am requesting that this Committee introduce legislation to amend K.S.A. 65-164, 65-165, 65-167, 65-170a, and 65-171d to allow Kansas to receive full authority to administer the Kansas Pretreatment Program.



January 1984

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Care Facilities  
Richard Morrissey

Bureau of  
Oil Field and  
Environmental Geology  
William Bryson

LABORATORIES SERVICES AND RESEARCH  
Dr. Roger Carlson

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FEBRUARY 1983

SECRETARY OF  
HEALTH & ENVIRONMENT

( COMMISSIONS &  
COUNCILS )

- HEALTH
- ENVIRONMENT
- EMERGENCY MEDICAL SERVICES
- FOOD SERVICE AND LODGING
- STATEWIDE HEALTH COOR. COUNCIL
- CRIPPLED CHILDREN'S SERVICES
- GOVERNOR'S COUNCIL ON FITNESS
- ADULT CARE HOME ADM.
- TOXICOLOGY ADV. COMMITTEE

PERSONNEL

LEGAL STAFF

ADMINISTRATIVE  
SERVICES

FINANCIAL  
OPERATIONS

MANAGEMENT  
OPERATIONS  
& REPORTING

BUILDING  
OPERATIONS

DISTRICT  
OFFICE  
OPERATIONS

DIVISION OF  
HEALTH

BUR. FOOD & DRUG

BUR. OF COMMUNITY  
HEALTH SERVICE

BUR. OF MATERNAL  
& CHILD HEALTH

BUREAU OF  
EPIDEMIOLOGY

BUREAU OF  
EMERGENCY MEDICAL  
SERVICES

BUREAU OF  
REGISTRATION &  
HEALTH STATISTICS

OFFICE OF HEALTH  
PROMOTION &  
HEALTH EDUCATION

BUR. HEALTH PLANNING

CRIPPLED  
CHILDREN'S  
PROGRAM

OFFICE OF LABORATORY  
SERVICES

LABORATORY  
CERTIFICATION  
& IMPROVEMENT

RECORDS & REPORTS

CHEMISTRY

HEALTH  
CHEMISTRY

ENVIRONMENTAL  
CHEMISTRY

AIR QUALITY

TOXICOLOGY

MICROBIOLOGY

HEALTH  
MICROBIOLOGY

ENVIRONMENTAL  
MICROBIOLOGY

VIROLOGY &  
SEROLOGY

DIVISION OF  
ENVIRONMENT

BUREAU OF ENVIR.  
TOXICOLOGY

BUREAU OF  
WATER QUALITY

BUREAU OF  
WATER SUPPLY

BUREAU OF  
ENVIR. SANITATION

BUREAU OF  
RADIATION CONTROL

BUR. OF AIR QUALITY

BUREAU OF FOOD  
SERVICE & LODGING

BUREAU OF TECHNICAL  
& SUPPORT SERVICES

BUREAU OF OIL FIELD  
& ENVIR. GEOLOGY

OFFICE OF  
HEALTH  
FACILITIES

NURSING  
HOMES

HOSPITALS

PROGRAM  
REVIEW &  
SERVICES

DISTRICT OFFICES

HAYS

SALINA

DODGE CITY

WICHITA

CHANUTE

TOPEKA

BONNER SPRINGS

## SUMMARY: KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT REORGANIZATION

### CURRENT BUREAU/PROGRAM

### CHANGE

#### DIVISION OF HEALTH

Bureau of Food and Drug

Food and Drug will be combined with Food, Service and Lodging and will be housed in the Bureau of Disease Prevention and Control.

Bureau of Community Health Services

Community Health Services will become Community Liason and Development Functions within the Bureau of Community Health.

Bureau of Maternal and Child Health

Maternal and Child Health functions will be housed in the Bureau of Family Health.

Bureau of Epidemiology

Epidemiology functions will be housed in the Bureau of Disease Prevention and Control.

Bureau of Emergency Medical Services

Emergency Medical Services will be housed in the Bureau of Community Health.

Bureau of Registration and Health Statistics

Registration and Health Statistics will be housed in the Bureau of Community Health. Research and Analysis functions will be housed in the Division of Policy and Planning, as will data processing.

Office of Health Promotion and Health Education

Health Promotion and Education will be housed in the Bureau of Community Health.

Bureau of Health Planning

Health Planning will become an office in the Division of Policy and Planning.

Crippled Children's Program

This program will be renamed "Crippled and Chronically Ill Children" and will be housed in the Bureau of Family Health.

SUMMARY: KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT REORGANIZATION (cont.)

CURRENT BUREAU/PROGRAM

CHANGE

DIVISION OF ENVIRONMENT

Bureau of Environmental Toxicology	Indoor Air Quality functions will be housed in the Bureau of Air Quality and Radiation Control. Toxicology functions will be housed in the Office of the Director of the Division of Environment.
Bureau of Water Quality	Water Quality functions will be housed in the Bureau of Water Protection.
Bureau of Water Supply	Water Supply functions will be housed in the Bureau of Water Protection.
Bureau of Environmental Sanitation	Sanitation functions will be housed temporarily in the Bureau of Waste Management.
Bureau of Radiation Control	Radiation functions will be housed in the Bureau of Air Quality and Radiation Control.
Bureau of Air Quality	Air Quality functions will be housed in the Bureau of Air Quality and Radiation Control.
Bureau of Food Service and Lodging	Food Service and Lodging will be combined with Food and Drug and will be housed in the Bureau of Disease Prevention and Control.
Bureau of Technical and Support Services	(1) Public Information and Graphics functions will be housed temporarily in the Secretary's Office. (2) Training and Certification (KETS and Sanitarians) will be housed in the Bureau of Water Protection. (3) Planning functions will be housed in the Division of Policy and Planning. (4) Grants coordination with EPA will be handled by the Director of the Division of Environment.
Bureau of Oil Field and Environmental Geology	No change.

SUMMARY: KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT REORGANIZATION (cont.)

CURRENT BUREAU/PROGRAM

CHANGE

OFFICE OF LABORATORY SERVICES

Laboratory Services will be renamed Laboratory Services and Research.

OFFICE OF HEALTH FACILITIES

Health Facilities will be merged with Child Care Licensing and will be housed in the Bureau of Adult and Child Care Facilities.

ADMINISTRATIVE SERVICES

Administrative Services will be renamed the Division of Administrative and Support Services.

NEW DEPARTMENTWIDE PROGRAMS/FUNCTIONS

Centralized Policy and Planning Functions

Centralized Public Information Functions

Centralized Management Analysis and Evaluation

Centralized Regulation Promulgation and Review  
(housed in the Division of Policy and Planning)

Centralized Data Processing

DRAFT  
1/17/84

\_\_\_\_\_ Bill No. \_\_\_\_\_  
By \_\_\_\_\_

AN ACT related to water supply and sewage; defining terms; amending K.S.A. 65-161, 65-165, 65-167, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-161 is hereby amended to read as follows: 65-161.

(a) The term "waters of the state," wherever used in this act, shall include all streams and springs, and all bodies of surface and subsurface waters within the boundaries of the state.

(b) The term "discharge" wherever used in this act, when used without qualification, shall include the causing or permitting of sewage to enter, either directly or indirectly, waters of the state.

(c) The term "indirect discharge" means the introduction of pollutants into a publically owned treatment works from any nondomestic source.

(d) The term "direct discharge" means the discharge of sewage to waters of the state.

Sec. 2. K.S.A. 65-165 is hereby amended to read as follows: 65-165. Upon application duly made to the secretary of health and environment by the public authorities having by law the charge of the sewer system of any municipality, township, county, or legally constituted sewer district, or any person, company, corporation, institution, municipality, or federal agency, the secretary of health and environment shall consider the case of such a sewage discharge or sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the state, or the extension of a sewer system and whenever it is his opinion that the general interests of the public health would be subserved thereby, or that the discharge of such sewage would not detract from the quality of the waters of the state for their beneficial uses for domestic or public water supply, agricultural needs, industrial needs, recreational needs, or other beneficial use and that such discharge meets or

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will meet all applicable state water quality standards and applicable federal water quality and effluent standards under the provisions of the federal water pollution control act and the 1972 amendments thereto as amended, the secretary of health and environment shall issue a permit for the extension of a sewer system and/or for the discharge of sewage and shall stipulate in the permit the conditions on which such discharge will be permitted and shall require such treatment of the sewage as he shall determine necessary to protect beneficial uses of the waters of the state in accordance with the statutes and regulations defining the quality of the water affected by said discharge and may require treatment of the sewage in accordance with regulations predicated upon technologically based effluent limitations. Indirect dischargers shall comply with all applicable pretreatment regulations and water quality standards.

Every such permit for the discharge of sewage shall be revocable, or subject to modification and change, by the secretary of health and environment, on due notice, being served on the public authorities having by law the charge of the sewer system any municipality, township, county or legally constituted sewer district or on the person, company, corporation, institution, municipality, or federal agency owning, maintaining or using the sewage system. The length of time after receipt of the notice within which the discharge of sewage shall be discontinued may be stated in the permit, but in no case shall it be less than thirty (30) days or exceed two (2) years, and if the length of time is not specified in the permit it shall be thirty (30) days. On the expiration of the period of time prescribed, after the service of a ~~note~~ notice of revocation, modification or change from the secretary of health and environment, the right to discharge sewage into any of the waters of the state shall cease and terminate, and the prohibition of this act against such discharge shall be in full force, as though no permit had been granted; but a new permit may thereafter again be granted, as hereinbefore provided.

Sec. 3. K.S.A. 65-167 is hereby amended to read as follows: 65-167. Upon conviction, the penalty for the willful or negligent discharge of sewage into or from the sewer system of any municipality, township, county, or legally constituted sewer district by the public authorities having by law charge

thereof or by any person, company, corporation, institution, municipality, or federal agency, into any of the waters of the state without a duly issued permit, as required in this act, or in violation of any term or condition of a permit issued by the secretary of health and environment, or in violation of any requirements made pursuant to K.S.A. 65-164, 65-165 or 65-166, or any amendments thereto, shall be not less than two thousand five hundred dollars (\$2,500) and not more than twenty-five thousand dollars (\$25,000), and a further penalty of not more than twenty-five thousand dollars (\$25,000) per day for each day the offense is maintained. The penalty for the discharge of sewage into or from any sewage system into any waters of the state without filing a report, in any case in which a report is required by this act to be filed shall be one thousand dollars (\$1,000) per day for each day the offense is maintained.

Sec. 4. K.S.A. 65-161, 65-165 and 65-167, are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

STATEMENT BY DAVID L. POPE  
CHIEF ENGINEER-DIRECTOR  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE

TO SENATE ENERGY & NATURAL RESOURCES COMMITTEE

JANUARY 20, 1984

Thank you, Mr. Chairman and Committee members, for this opportunity to appear before you today. This morning I would like to talk to you about the role that I see for the Division of Water Resources in the coming years. I will also briefly discuss two of the bills which the Kansas Water Authority will be recommending as part of its legislative package this year. These bills are being proposed basically upon my request as a part of the Water Resources portion of the Board of Agriculture Legislative request.

Since June 28, 1945, the Division of Water Resources has been involved in the administration of the Kansas Water Appropriation Act. Until January 1, 1978, the responsibilities of the Division of Water Resources were mostly administrative and primarily consisted of determining vested rights (those rights acquired by actual use of water prior to June 28, 1945), processing applications for permits to appropriate water for beneficial use, and administering water rights on streams in the State of Kansas during times of shortage.

For the first time, on January 1, 1978, it became illegal in the State of Kansas, except for domestic use and other minor exceptions, to divert water for any beneficial purpose, or to threaten to do so, without the prior written approval of the Chief Engineer of the Division of Water Resources. The enactment of this statute began a shift of the role of the Division of Water Resources from one of administration to one of regulation.

Since 1978 there has also been a shift in philosophy concerning the utilization of water resources in Kansas. Kansas has evolved from the developmental stage of water usage to a time where the water resources in

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many areas of the State have been fully developed. This has prompted a philosophical shift from development to conservation and regulation of our vital Kansas water resources.

With regard to the administration of the Kansas Water Appropriation Act, I would like to comment on three general areas.

The first area is that of processing new applications for permits to appropriate water. The numbers of new applications have fallen dramatically during the past few years and probably will continue to fall some in the future. In the peak year of 1976, 2,890 new applications were filed. The number of new applications has steadily fallen since that time. In 1983 only 540 new applications were filed. This dwindling number of new applications is due to the limited supplies left to be developed in many areas, tighter regulation by the Division of Water Resources throughout many parts of the state in conjunction with policies developed by the existing groundwater management districts and a change in economic conditions.

Although the numbers of new applications are down, a more detailed review of those applications is necessary due to the fact that many water supplies are fully developed, or are nearing full development. One aspect of administration that is particularly time consuming and complex is analyzing the effect of new applications filed to appropriate water in alluvial valleys to determine the effects of such appropriation on existing surface water rights and, in the future, minimum streamflow designations, if any.

In areas where additional water is not available for appropriation, applications to change the point of diversion, place of use and type of use will be on the increase in those areas because acquiring existing water rights will be the only way persons will be able to acquire a right to use water in those areas. In addition, the owners of existing rights will be replacing old wells or modifying their operations as conditions change.

The second area of concern is the responsibility of the Division to determine the extent that water rights have been perfected or developed in accordance with permits previously issued and issue the Certificate of Appropriation which basically quantifies the limits of the water right. The size of the staff of the Division of Water Resources has not increased on a proportional basis to the number of applications that have been filed.

The Division of Water Resources is now, and intends to continue, reducing its backlog in certifying existing applications by means of a combination of remedial actions. For instance, each irrigation season, in order to supplement the field inspection program of the four field offices, contracts are being let to consultants for the purpose of conducting additional field inspections. This has substantially increased the number of field inspections while at the same time enabling our field staff to devote more time and effort to administrative and regulatory functions demanded by the public. It is essential that the certification of water rights proceed as rapidly as possible because the extent to which a water right has been perfected cannot be known until the certification process takes place. The data obtained through the certification process provides the Division of Water Resources with more information which is used to better analyze new applications to appropriate water for beneficial use and to make general overall administrative decisions. Additional staff is necessary in order to facilitate increased production of certificates.

The third area of concern is that of general administration of the Kansas Water Appropriation Act. This includes investigations of possible well impairment, dividing up streamflow among water right holders during times of shortage, enforcing minimum desirable streamflows as they are set by the legislature, protecting water released under contract from reservoirs and protecting water released in accordance with agreements with the Federal Government.

These increased administrative problems will necessitate the use of additional, or enhanced, administrative and regulatory tools on behalf of the Division of Water Resources.

One such tool will be increased use of water meters. The use of water meters enhances the capability of division personnel to effectively administer and regulate water rights in an effective and timely manner. Already the Division of Water Resources required mandatory metering in one intensive groundwater use control area, on several extensive stream reaches and in many problem areas or situations. It is expected that use of mandatory metering will continue to increase as the need arises. For instance, water users diverting surface water from streams for which minimum desirable streamflows have been established will probably be required to install meters to allow more equitable enforcement of these rights to surface flows.

Another tool which the Division of Water Resources will be relying on increasingly in the future is computerization of water rights and water resources data. Phase I of the computer program is virtually complete. Most of the data has been input and verified. Our visual index system has been abandoned and the data is now accessed by means of 19 computer terminals in the Topeka and four field offices. The computer is being utilized on a daily basis and already enables the Division to more quickly and accurately assimilate information to expedite the processing of water rights, evaluate existing water right conditions in any specific area and provide data to the Division of Water Resources and other state agencies to make better decisions concerning regulation and planning relating to water resources. Examples of some of the data that is currently available in the computer are the maximum rate of diversion, quantity of water authorized, legal descriptions of wells or other diversion points, names, addresses, types of use, a history of each water right and lists of water rights



within specified geographical areas. It is anticipated that as needs develop, that additional computer programs and capabilities, such as graphics, will be developed to meet those needs. Already valuable water right data has been compiled which, for all practical purposes, was unavailable when the Division was operating under the manual records system.

The third tool that will be needed will be increased numbers of field staff to administer surface water rights and enforce minimum desirable streamflows. It is anticipated that eventually at least one full time field person per major stream system in the State of Kansas will be required.

Finally, and maybe most important, the Division of Water Resources will be designating more and more intensive groundwater use control areas throughout the State of Kansas. Although there are only two in existence now, three more are currently under consideration. At the current staffing level the Division of Water Resources will probably be able to initiate proceedings for about two intensive groundwater use control areas per year.

#### REGULATION OF WATER STRUCTURES

Another area of concern is that relating to dam safety. The capability of a dam to hold an adequate volume of water to protect downstream areas from flooding, and its structural stability to withstand the force of this water, depends primarily upon how it is designed, constructed and maintained. The Division of Water Resources, Kansas State Board of Agriculture, has been able to check the design and conduct partial inspections during construction of many of the non-federal dams in the State. However, funds or personnel have never been available to make periodic inspections of existing structures to determine if they have been adequately maintained or in good structural condition, except during the federally funded National Dam Inspection Program (N.D.I.P.), for which seven employees were employed by the Division.

This program was terminated by the Federal Government during Fiscal Year 1982. Periodic safety inspections are needed to examine dams which could cause loss of lives or serious property damage should they fail. The fiscal impact to the State of Kansas, if these dams are not properly operated and maintained, would be much greater, should a disaster occur, than the cost of inspections to detect and correct deficiencies in these dams.

#### PROPOSED LEGISLATION

The Division of Water Resources brought two areas of legislative concern to the Kansas Water Authority and as a result of their discussions and deliberations two bills are being suggested to the 1984 Legislature.

The first proposed bill deals with amendment of K.S.A. 82a-726 dealing with use of appropriated water outside the State of Kansas.

A Nebraska statute, which was virtually identical to our present Kansas statute, was struck down by the United States Supreme Court in 1983 as unconstitutional. The proposed revision of K.S.A. 82a-726 is an attempt to bring Kansas law in accord with this most recent pronouncement by the United States Supreme Court. In essence it would allow the Chief Engineer to approve a permit to appropriate water for use of water outside the State of Kansas if such application met all the requirements which would have to be met by a person wishing to appropriate water for use inside the State of Kansas, including the requirements of the water transfer bill.

The second bill would be a proposed amendment to K.S.A. 1983 Supp. 82a-1314 by extending the time limit in which water must be released from a reservoir upon demand of the purchaser. This bill would change the minimum time from two days to four days and clean up some confusing language.

## CONCLUSION

I feel that Kansas has the basic statutes necessary for the Division of Water Resources to protect and administer the water resources in the State of Kansas. Although I foresee a lot of hard work ahead to accomplish this, I am optimistic about the future of water management and regulation in the State of Kansas.

At this time I would be happy to respond to any questions you might have.