

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Ron Fox at
Chairperson

3:30 ~~xxx~~ am./p.m. on February 3, 1986 in room 526-S of the Capitol.

All members were present except:

All members present.

Committee staff present:

Ramon Powers, Legislative Research Department
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Ramon Powers, Legislative Research Department
Michael Lennen, Chairman, Kansas Corporation Commission
Donald P. Schnacke, Chairman, Blue Ribbon Subcommittee

Upon calling the meeting to order, Chairman Fox took up the minutes of February 27 and 28. There were no objections, so they stand approved. He noted that copies of the Blue Ribbon Panel Report were still available for anyone who did not have one.

Ramon Powers of Legislative Research gave a brief historical perspective on the protection of groundwater from oil and gas activities. He also discussed the origins and development of the petroleum industry in Kansas. Regarding the current joint program, which was established in 1982 as a result of the passage of Senate Bill 498, staff noted that a report was required to be submitted to the legislature annually. The Kansas Corporation Commission's part of the joint program includes 26 positions and the Department of Health and Environment's contingent consists of 23 persons.

Michael Lennen, Chairman of the State Corporation Commission, addressed the committee on behalf of himself and Barbara Sabol, Secretary of Health and Environment. He noted that while they continue to work for improvement of the Program's operations, neither he nor Secretary Sabol would urge major structural reorganization. Chairman Lennen mentioned a joint report to the legislature, detailing 1985 accomplishments and plans for 1986, which was in the final drafting stages. Several accomplishments of 1985 are listed in his written testimony. (See Attachment 1) During discussion on violations, penalties, and related matters, Chairman Fox asked for a report on these matters. Bill Bryson, Bureau Manager of the Oil Field & Environmental Geology Bureau of Health and Environment, offered to provide computer reports for the committee's use in a detailed study. During continued discussion, it was noted that Kansas is unique in regulating oil, gas and water under a joint program, rather than all being under one agency, as it is in most other states. Chairman Fox asked staff for a breakdown of costs of the joint program.

Written testimony was provided to the committee by John Bailey, Chairman of the Advisory Commission on Environment. (See Attachment 2)

Donald Schnacke appeared before the committee as Chairman of a Blue Ribbon Subcommittee. He provided the committee with written copies of his testimony, along with copies of the Report of the Organization Review Subcommittee. (See Attachments 3 and 4) Mr. Schnacke noted that he had heard--not by official communication--that the work of his subcommittee had apparently been rejected. He commented that the subcommittee report, pages 10-18 under "Evaluation of the Joint Regulatory Program", points up the existing inadequacies of attempting to run a program with two masters--the confusion of duties, the criss-crossing between agencies ending up costing the regulated industry increasingly in time and expense, and the cost of the mandated review. Mr. Schnacke felt that efficiency of assignments, cost savings, and accountability of dollars spent for regulated

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on February 3, 1986

duties would be better addressed under one agency, the Kansas Corporation Commission.

In order to allow ample time for questions, Chairman Fox asked Mr. Schnacke to return on February 4. He noted the importance of this issue, and urged the committee to study the information provided. It was hoped that a recommendation could be made by the end of the week.

The meeting was recessed at 5:05 p.m., to be continued on February 4, 1986 at 3:30 p.m. in Room 526-S.

STATEMENT RELATING TO THE JOINT OIL AND GAS REGULATORY
PROGRAM

BY

MICHAEL LENNEN

CHAIRMAN, STATE CORPORATION COMMISSION

FOR HIMSELF AND BARBARA SABOL,

SECRETARY OF HEALTH AND ENVIRONMENT

PRESENTED TO THE

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

FEBRUARY 3, 1986

THANK YOU FOR THE PRIVILEGE OF DISCUSSING THE ORGANIZATIONAL STRUCTURE AND FUNCTIONING OF THE JOINT OIL AND GAS REGULATORY PROGRAM ESTABLISHED IN 1982 AS A RESULT OF THE PASSAGE OF SENATE BILL 498. AS THE COMMITTEE IS AWARE, CERTAIN OF THE PROPOSALS OR CONCEPTS WHICH ARE SCHEDULED FOR CONSIDERATION THIS WEEK WOULD GO BEYOND A RESTRUCTURING OF THE JOINT PROGRAM AND WOULD CHANGE FUNDAMENTALLY NOT ONLY THE GROUNDWATER PROTECTION PROGRAM, BUT THE REGULATORY FRAMEWORK FOR THE CONSERVATION, PRODUCTION AND DISTRIBUTION OF OIL AND GAS RESOURCES WITHIN THE STATE.

TODAY'S AGENDA INDICATES THAT, IN ADDITION TO A STAFF REVIEW, THE COMMITTEE WILL BE RECEIVING TESTIMONY FROM THOSE WHO WISH TO LEAVE THE PROGRAM "AS IS." NEITHER SECRETARY SABOL NOR I ARE URGING MAJOR STRUCTURAL REORGANIZATION AND

FOR THAT REASON IT IS APPROPRIATE THAT OUR TESTIMONY BE GIVEN TODAY. WE RECOGNIZE, HOWEVER, THE CONTINUING NEED TO REVIEW THE PROGRAM'S OPERATIONS AND WHERE APPROPRIATE MAKE CHANGES FOR IMPROVEMENT.

OUR PRIMARY RESPONSIBILITY IS, OF COURSE, TO MAKE THE JOINT STRUCTURE WORK AS EFFECTIVELY AS POSSIBLE IN ORDER TO PROTECT THE STATE'S GROUNDWATER FROM POLLUTION RESULTING FROM OIL AND GAS OPERATIONS.

IN OUR VIEW, THE PASSAGE OF SENATE BILL 498, WITH THE CONCOMITANT STRENGTHENING OF ENFORCEMENT AUTHORITY AND THE PROVISION OF SIGNIFICANT, NEW RESOURCES WITH WHICH TO DO THE JOB HAS MARKEDLY RAISED THE LEVEL OF GROUNDWATER PROTECTION ACTIVITY IN THE STATE. IT IS ALSO OUR VIEW THAT THE PROGRAM HAS EXPERIENCED STEADY IMPROVEMENT SINCE ITS INCEPTION AND TODAY FUNCTIONS MORE SMOOTHLY AND EFFECTIVELY THAN IT DID EVEN A YEAR AGO.

IN ADDITION TO INTERNAL ANALYSIS AND REVIEW, WE HAVE ACTIVELY SOUGHT ADVICE AND COUNSEL FROM THOSE OUTSIDE OUR RESPECTIVE AGENCIES. THE MOST FORMAL MANIFESTATION OF THAT EFFORT WAS THE APPOINTMENT OF A JOINT OIL AND GAS REVIEW COMMITTEE IN MAY OF 1985. IT WAS COMPOSED OF INDIVIDUALS REPRESENTING DIVERSE INTERESTS, BUT SHARING A SPECIAL CONCERN FOR GROUNDWATER PROTECTION AS IT RELATED TO OIL AND GAS ACTIVITIES. IT INCLUDED FOUR MEMBERS OF THE LEGISLATURE.

THE REVIEW COMMITTEE WAS ASKED TO STUDY CURRENT TECHNICAL, ADMINISTRATIVE AND ORGANIZATIONAL PERFORMANCE AND

TO DEVELOP BOTH SHORT AND LONG TERM RECOMMENDATIONS FOR PROGRAM IMPROVEMENT.

THE FINAL REPORT WAS DELIVERED IN MID-DECEMBER. COPIES HAVE BEEN SUBMITTED TO THE LEGISLATURE. I WOULD ENCOURAGE YOUR CONSIDERATION OF IT AS YOU DELIBERATE UPON THE QUESTION OF WHETHER OR NOT THERE SHOULD BE STRUCTURAL CHANGE IN THE JOINT PROGRAM.

INCLUDED IN THE REPORT IS AN EXTENSIVE HISTORY OF THE OIL AND GAS REGULATORY PROGRAM. THIS HISTORY WAS PREPARED BY THE SUB-COMMITTEE ON JOINT PROGRAM ORGANIZATION -- ONE OF TWO SUB-COMMITTEES ESTABLISHED IN ORDER TO FACILITATE BOTH ORGANIZATIONAL AND ENVIRONMENTAL REVIEW. INTERESTINGLY, IT SETS OUT IN SOME DETAIL AREAS OF JOINT OR COMPLEMENTARY RESPONSIBILITY THAT EXISTED FOR KDHE AND THE KCC MANY YEARS BEFORE THE PASSAGE OF SENATE BILL 498. THAT LEGISLATION WAS, IN FACT, A RESPONSE TO THE NEED TO ACHIEVE BETTER COORDINATION BETWEEN THE TWO AGENCIES IN CARRYING OUT THEIR COMPLEMENTARY REGULATORY RESPONSIBILITIES AS THEY RELATED TO THE PROTECTION OF FRESH AND USABLE GROUNDWATER.

WITH RESPECT TO THE ORGANIZATIONAL ISSUE, THE JOINT REVIEW COMMITTEE MADE THE FOLLOWING RECOMMENDATION:

THE JOINT COMMITTEE AGREED THAT AS A LONG-RANGE GOAL, THE SENATE BILL 498 REGULATORY PROGRAM SHOULD BE PLACED UNDER THE CONTROL OF ONE SINGLE AGENCY.

THERE WERE MANY DIFFERENT THOUGHTS EXPRESSED BY COMMITTEE MEMBERS AS TO WHAT FORM THAT SINGLE AGENCY SHOULD OR COULD BE. IDEAS RANGED FROM CONSOLIDATION WITH AN EXISTING AGENCY TO SETTING UP A NEW AGENCY WHICH WOULD DEAL WITH THE ADMINISTRATION OF ENVIRONMENTAL AND RESOURCE PROGRAMS, RELATED TO OIL AND GAS.

THOUGH RECOMMENDING PLACEMENT OF RESPONSIBILITY FOR THE 498 PROGRAM UNDER THE CONTROL OF A SINGLE AGENCY AS A LONG-TERM GOAL, THE COMMITTEE DID NOT REACH AGREEMENT AS TO PRECISELY WHERE THE AUTHORITY SHOULD BE PLACED OR WHAT THE SCOPE OF THE RECIPIENT AGENCY'S AUTHORITY SHOULD BE.

IN SUMMARY FASHION, THE ORGANIZATIONAL SUB-COMMITTEE'S REPORT POINTS OUT THAT KDHE AND THE KCC HAVE JOINT REGULATORY RESPONSIBILITY IN THE FOLLOWING AREAS: OIL AND GAS WELL COMPLETIONS, CLASS II (OIL AND GAS) INJECTION WELLS, THE PLUGGING OF ABANDONED OIL OR GAS WELLS, AND THE POLLUTION CAUSED BY OR LIKELY TO BE CAUSED BY OIL OR GAS WELLS. IT ALSO MAKES CLEAR THAT IN ADDITION TO JOINT PROGRAM RESPONSIBILITIES, THERE REMAIN SIGNIFICANT AREAS OF INDEPENDENT AGENCY AUTHORITY. FOR EXAMPLE:

...KDHE HAS THE RESPONSIBILITY TO LICENSE WATER WELL CONTRACTORS, PURSUANT TO K.S.A. 82A-1201 ET SEQ. APPROXIMATELY 30 PERCENT OF THE WATER WELLS PERMITTED BY KDHE ARE FOR OIL FIELD WATER SUPPLY. KDHE ALSO IS RESPONSIBLE FOR THE CONTROL, ABATEMENT AND CLEAN UP OF HAZARDOUS MATERIAL SPILLS.

UNDER THE SAFE DRINKING WATER ACT, KDHE IS RESPONSIBLE FOR PRIMARY ENFORCEMENT OF THE FOLLOWING CLASSES OF INJECTION WELLS: CLASS I (INDUSTRY), CLASS III (SOLUTION MINING), CLASS IV (HAZARDOUS WASTE) AND CLASS V (OTHER). PURSUANT TO K.S.A. 65-171D, KDHE REGULATES THE STORAGE OF SALT WATER, OIL AND REFUSE IN SURFACE PONDS. KDHE

ALSO REGULATES SALT SOLUTION OF UNDERGROUND PETROLEUM STORAGE TANKS AND LPG STORAGE.

THE KCC IS SOLELY RESPONSIBLE FOR THE LICENSING OF OIL AND GAS WELL OPERATORS AND CONTRACTORS, IMPLEMENTING THE NATURAL GAS POLICY ACT OF 1978, HEARING AND DETERMINING NEW POOL APPLICATIONS PURSUANT TO THE KANSAS MINERAL TAX ACT, AND PREVENTING WASTE OF HYDROCARBONS AND PROTECTING THE CORRELATIVE RIGHTS OF PRODUCERS OF NATURAL GAS AND OIL. THIS LAST RESPONSIBILITY INCLUDES, AMONG OTHER THINGS, THE SETTING OF OIL AND GAS ALLOWABLES, DETERMINING WELL LOCATIONS AND EXCEPTIONS, CONTROLLING THE VENTING OF NATURAL GAS PRODUCED IN CONJUNCTION WITH CRUDE OIL, DETERMINING APPLICATIONS FOR UNITIZATION AND SPECIAL FIELD RULES, AND GAS AND OIL WELL CAPABILITY TESTING.

WITH RESPECT TO KCC, IT IS ALSO IMPORTANT TO BE MINDFUL OF THE CLOSE RELATIONSHIP BETWEEN OIL AND NATURAL GAS PRODUCTION ACTIVITIES WHICH COME WITHIN THE JURISDICTION OF THE CONSERVATION DIVISION AND, FOR EXAMPLE, ISSUES OF NATURAL GAS TRANSPORTATION AND DISTRIBUTION WHICH IN LARGE MEASURE FALL WITHIN THE JURISDICTION OF OUR UTILITIES DIVISION.

I WOULD URGE EXTREME CAUTION IN MAKING ORGANIZATIONAL CHANGES THAT, HOWEVER UNINTENTIONALLY, RESULT IN A DIS-INTEGRATION OF ENERGY REGULATORY RESPONSIBILITIES AND JURISDICTION. MOREOVER, I WOULD DISCOURAGE ANY ACTION THAT WOULD SIMPLY RESULT IN ONE ADDITIONAL AGENCY BEING INVOLVED IN REGULATION OF OIL AND GAS ACTIVITIES WITH THE ATTENDANT INCREASES IN COST AND COMPLEXITY.

AS INDICATED EARLIER, SECRETARY SABOL AND I BELIEVE THAT ADMINISTRATION OF THE 498 PROGRAM IS MATURING AND

CONTINUES TO IMPROVE. THAT VIEW SEEMS TO BE GENERALLY HELD BY THOSE WHO INTERACT WITH THE PROGRAM.

A JOINT REPORT TO THE LEGISLATURE DETAILING 1985 PROGRAM ACTIVITIES AND THE PLANS FOR 1986 IS IN THE FINAL DRAFTING STAGES. (THIS WILL BE THE THIRD REPORT WE HAVE SUBMITTED.)

AMONG SIGNIFICANT 1985 ACCOMPLISHMENTS ARE: 1) APPOINTMENT OF A SINGLE INDIVIDUAL TO DIRECT THE CONSERVATION DIVISION AND THE KDHE OFFICE OF OIL FIELD AND ENVIRONMENTAL GEOLOGY. THIS WE BELIEVE HAS IMPROVED INTER-AGENCY COORDINATION, PARTICULARLY AT THE FIELD LEVEL, AND HAS REDUCED THE POTENTIAL FOR INCONSISTENT ENFORCEMENT OF JOINT AGENCY POLICY.

2) APPOINTMENT OF THE JOINT OIL AND GAS PROGRAM REVIEW COMMITTEE WHICH PRODUCED A NUMBER OF RECOMMENDATIONS FOR SHORT-TERM OPERATIONAL PROGRAM IMPROVEMENTS. AS THE REVIEW COMMITTEE NOTED, SUCH IMPROVEMENTS WOULD IN LARGE PART BE APPLICABLE TO ANY ORGANIZATIONAL STRUCTURE. WE ARE CURRENTLY ACTING UPON THOSE RECOMMENDATIONS.

3) A MAJOR EXPANSION IN THE SCOPE OF THE ADMINISTRATIVE FINE PROCEDURE WITH AN EXTRAORDINARY INCREASE IN THE NUMBER OF PENALTIES IMPOSED. (82 IN 1984, 229 IN 1985).

IN MID-1984 THE CORPORATION COMMISSION, WITH THE CONCURRENCE OF HEALTH AND ENVIRONMENT, STREAMLINED PROCEDURES DEALING WITH THE PROBLEM OF UNIDENTIFIED TANK

BATTERIES. WE DID THIS THROUGH APPROVAL OF A BLANKET ORDER THAT ALLOWS A \$100 FINE WHEN VIOLATIONS ARE DISCOVERED. MORE THAN 200 OPERATORS HAVE SINCE BEEN FINED, AND CONFORMANCE TO 82-3-126(A) HAS IMPROVED DRAMATICALLY.

IN EARLY 1985 WE EXPANDED THE PRACTICE OF USING AUTOMATIC ADMINISTRATIVE PENALTIES FOR NONCOMPLIANCE WITH CERTAIN REGULATIONS WHERE THERE IS NO REQUIREMENT FOR INTERPRETATION OF THE STATUTES.

ON JUNE 1, WE SET PENALTIES IN FIVE ADDITIONAL AREAS. FAILURE TO PROPERLY TRANSFER AUTHORITY TO OPERATE IN INJECTION WELL WILL RESULT IN A \$100 FINE.

FAILURE TO PROPERLY FILE ALL PRESCRIBED FORMS AND WELL LOGS, IF RUN, ALSO WILL RESULT IN A \$100 PENALTY.

FAILURE TO OBTAIN INJECTION WELL AUTHORITY PRIOR TO UTILIZATION WILL RESULT IN A FINE OF \$2,500 AND IMMEDIATE WELL SHUTDOWN FOR THE FIRST VIOLATION. A SECOND VIOLATION WILL RESULT IN A FINE OF \$5,000 AND A THIRD VIOLATION WILL RESULT IN A \$10,000 FINE. OUR STAFFS HAVE INDICATED THEY WILL SEEK LICENSE SUSPENSION UPON A THIRD FAILURE BY AN INDIVIDUAL OR COMPANY TO OBTAIN INJECTION WELL AUTHORITY.

TWO OTHER POTENTIAL VIOLATIONS, FAILURE TO INSTALL ADEQUATE SURFACE CASING AND FAILURE TO COMPLETE ALTERNATE 2 CEMENTING PROCEDURES ON NEWLY COMPLETED WELLS, WILL RESULT IN ADMINISTRATIVE PENALTIES OF \$5,000 FOR THE FIRST VIOLATION.

4) PRESENTATION OF AN ENVIRONMENTAL UPDATE CONFERENCE IN COOPERATION WITH THE INTERSTATE OIL COMPACT COMMISSION

AND THE PETROLEUM INDUSTRY OF KANSAS, INC. THE PRIMARY PURPOSE OF THE SEMINAR WAS TO ENHANCE THE ENVIRONMENTAL AWARENESS OF OIL AND GAS OPERATORS IN KANSAS AND TO PROVIDE INFORMATION CONCERNING PROCEDURES FOR COMPLYING WITH CURRENT RULES AND REGULATIONS.

MORE SPECIFIC PROGRAM ACCOMPLISHMENTS WILL BE DETAILED IN THE FORTHCOMING REPORT.

MAY I CONCLUDE BY OBSERVING THAT WE SHARE WITH YOU A CONCERN FOR THE PROTECTION OF THE STATE'S WATER RESOURCES. WE WELCOME INITIATIVES AND RECOMMENDATIONS THAT WILL IMPROVE EITHER THE QUALITY OR EFFICIENCY OF OUR GROUNDWATER PROTECTION EFFORTS. THANK YOU FOR THIS OPPORTUNITY TO DISCUSS THE JOINT PROGRAM.

Testimony Presented to
House Energy and Natural Resources Committee
on February 3, 1986

by

John Bailey, Chairman
Advisory Commission on Environment

Mr. Chairman and Members of the Committee:

Please accept this as the official position of the Advisory Commission on Environment on House Bill No. 2650, which would create a new oil, gas, and minerals commission.

The Commission was statutorily created in 1974, and is composed of seven members who reside in different parts of the State and are appointed by the Governor (K.S.A. 75-5615). The Commission is mandated by statute "to consult with and advise the secretary of health and environment on matters relating to the management, operation, and functions of the division of environment, and the operation of programs under the jurisdiction of the division..." It is therefore not only appropriate, but is incumbent upon the Commission to voice its concerns relative to the proposal to create a new oil, gas, and minerals commission.

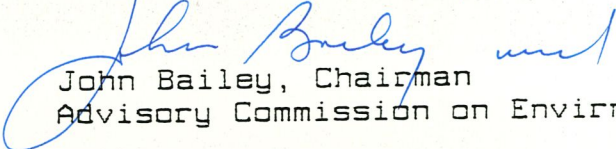
The Commission believes that House Bill 2650 is premature and a step in the wrong direction. It will fragment existing regulatory programs and will, ultimately, severely undermine State efforts to protect groundwater so vital to Kansans. The evidence suggests that groundwater contamination has occurred in certain localized parts of the State. We cannot, however, overlook the fact that the oil, gas, and minerals industry is not the only past or potential source of groundwater contamination. Many instances of contamination are directly attributable to practices of municipalities, agriculture, and other types of industries. Leaking septic tanks, storage tanks, excessive use of chemicals in agriculture, improperly constructed and operated water and saltwater recovery and injection wells, leaking sewage lagoons and feedlot facilities, leaking surface impoundments, etc., highlight the fact that potential sources of groundwater contamination are pervasive in our society. House Bill 2650 represents a piece-meal approach to this complex, multi-faceted, and inherently inseparable issue. House Bill 2650 creates a confusing array of multiple agency jurisdiction in groundwater protection. This will entangle and stymie the bureaucracy to the extent that groundwater degradation, rather than protection, will occur. Kansas needs a well-thought out, comprehensive groundwater protection strategy, which is fully integrated with and does not clash with our existing environmental protection programs.

The Kansas Department of Health and Environment (KDHE) has recently embarked on the development of such a comprehensive groundwater protection strategy. In his message to the 1986 Legislature, the Governor clearly designated KDHE as the lead agency in this effort. This was only appropriate because KDHE's extensive regulatory programs impinge more directly on groundwater quality than those of any other state agency. KDHE has recently completed two research studies with the University of Kansas to assist in the development of a comprehensive groundwater protection strategy. These studies were funded by grants from EPA and a \$50,000 appropriation from the 1985 Kansas Legislature. KDHE has recently mailed invitations to 44 public and private organizations to participate on a task force, which has been created to provide KDHE a broad spectrum of thought and consideration in the development of the strategy. A series of public meetings has been planned, and it is anticipated that proposals for consideration by the 1987 Legislature will emerge. This strategy and the ensuing plan will provide the blueprint and the framework within which policy-makers, law-makers, and administrators will have the opportunity to make sound decisions to protect the State's most valuable resource. The Commission has strongly endorsed the development of this strategy, and urges the Committee not to consider any major changes in State government until it has had an opportunity to review proposals, both legislative and administrative, that will emerge from this undertaking.

Finally, the Commission believes it would be too hasty to dismantle the joint oil and gas program, since the program was only recently implemented. The Commission believes that the joint program, now operating under one director, should be given additional time to establish itself and prove its efficacy.

Mr. Chairman, members of the Committee, on behalf of the Advisory Commission on Environment I appreciate very much this opportunity to submit our comments and concerns. I regret that because of prior commitments I could not appear before the Committee in person. Should the Committee have any questions, however, I would be most happy to respond. My telephone number is 316-262-2691.

Very truly yours,


John Bailey, Chairman
Advisory Commission on Environment



KANSAS INDEPENDENT OIL & GAS ASSOCIATION

500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297

TO: House Committee on Energy & Natural Resources

RE: Joint Oil & Gas Program
February 3, 1986

Thank you, Mr. Chairman and members of the Committee for inviting me to address the Committee on a subject that many of us have given considerable time and attention.

Some of you will remember the hearings on SB 498 in the 1982 Legislature. The bill was primarily designed by the then Chairman of the Senate Energy and Natural Resources Committee, Senator Charlie Angell. Our suspicions during those hearings have been confirmed. We suspected then that the joint program would face considerable difficulty. After three years of experience, we have not changed our minds.

When I was asked to serve on the Joint Oil and Gas Program Review - so-called "Blue Ribbon" Committee, I sincerely felt that this issue was finally going to be given a serious shakedown and the opportunity for change was upon us. When I was asked to chair the Organizational Subcommittee, I accepted with enthusiasm, knowing, however, we would have to work -- work hard and long, to make our points, as there were people on the Blue Ribbon Committee who were not familiar with our industry and were unfamiliar with the program.

To say the least, the experience of serving on the Blue Ribbon Committee from May through September of 1985 was an experience I had not had in my professional work representing the oil and gas industry of Kansas.

Our last meeting of the Blue Ribbon Committee was September 20, 1985 and I just saw the final report as transmitted to Chairman Fox under cover of January 23, 1986 - 4 months later.

We have heard also -- not by any official communication -- that the work of the Blue Ribbon Committee's sub-committee that I chaired, has apparently been rejected. The sub-committee was comprised of the following:

Donald P. Schnacke, Topeka
Chairman

Robert A. Anderson, Ottawa

Bob Barnett, Chanute

Repr. Ken Grotewiel, Wichita

R.C. "Pete" Loux, Topeka

Senator Merrill Werts, Junction City

I am enclosing a copy of our sub-committee report. It contains several recommendations. There is a signature page near the front of the Final Report of the Blue Ribbon Committee containing my signature, but also says below "See attached letter dated 12/19/85". My letter was not attached. I am enclosing that letter to reflect the difficulties we were experiencing on the Blue Ribbon Committee.

The Sub-Committee on Organization, as you can see, spent considerable time in outlining the history of the regulation of the oil and gas industry in Kansas and the statutes and rules that are being followed.

It points out the extent of the assessment against the oil and gas industry for this regulation. For FY 1985 it amounts to \$4.8 million - broken down as \$3.968 million for the KCC and \$723,000 for the KDH&E.

At this point, I want to address something we heard during these deliberations and again heard was discussed recently by an environmental group. The accusation was that the oil and gas industry was in the pockets of the KCC and its employees, and for that reason, the KCC is not able to regulate our industry.

Of course, this is absurd! It would be like saying all environmentalist groups are in the pockets of the KDHE. I say to those that have evidence of such activity, on either side, to put up or shut up! We are talking about illegal activity that will not be condoned - and such loose talk will only result in tearing down our regulatory process.

The proposals before your Committee are HB 2650, a proposal authorized by the interim study - but as I remember it, and I was there, HB 2650 is not what the Interim Committee desired, and we are glad for that - as we oppose that bill, too, for a number of reasons.

The second bill, HB ----, reflects Proposal No. 2 of the Blue Ribbon Organizational Sub-Committee and is a proposal that, after long discussion, is supported by the industry. This bill would move all activities of KDHE over to the Conservation Division of the KCC and the assessment of \$723,000 against our industry would cease. The KCC would assume those limited duties now found in KDHE as related to the oil and gas industry.

My sub-committee's report is before you and I won't read back to you the meritorious reasons why Proposal No. 2 is the solution to this problem.

If the Committee examines the Sub-Committee Report beginning on page 10, under "Evaluation of the Joint Regulatory Program", it points up for several pages the existing inadequacies of attempting to run a program with two masters - the confusion of duties, the criss-crossing back and forth between agencies ending up costing the regulated industry increasingly in time and expense and the cost of the mandated review. This discussion ends on page 18.

The justification of putting the KDH&E regulatory program into the Conservation Division begins on page 18. I won't read all that, but the position is clear and makes sense. The Commission also regulates other important aspects of the oil and gas industry including utilities, pipelines, and truck transportation. You will remember the Kansas Energy Office was placed under the KCC in 1983.

Another reason we believe should be considered is the enormous undertaking that KDH&E is authorized to perform (\$41 million) and how small the oil and gas activity within KDH&E really is. Of the \$3.9 million assessed by the KCC against our industry, \$85,828 was transferred to KDH&E for reasons we have not yet been able to identify.

When you examine the man-hour assignments of KDH&E and how the dollars are being spent, we find it's almost an hourly ticket audit approach, in that many personnel are not applied fulltime to oil and gas matters, but assigned to many other important tasks. We think efficiency of assignments, cost savings, and accountability of dollars spent for regulated duties are better addressed under one agency, the KCC.

There is no fiscal impact. It probably will cost less to combine these duties. The industry has been paying for this regulation for years, but the time has arrived to make the change into a more efficient, one boss, one command, one responsible organization. We hear it consistently - do something about the confusion that exists between KCC and KDH&E. Our sub-committee worked very hard on this subject and you have the benefit of our efforts.

It seems to us, the Legislature should not sit idly by another year and permit the continuing of the status quo. The Administration has apparently chosen the status quo. That is not a satisfactory solution for the industry that is being regulated and paying for the program. We think the industry is entitled to the most efficient and expeditious use of its money possible and it is in that spirit we ask you to seriously do something constructive in 1986. I can assure you that if you fail to act, this problem is not going to go away. It's been with us for the three years since the passage of SB 498 and we expect the same problems to continue.

Donald P. Schnacke



KANSAS INDEPENDENT OIL & GAS ASSOCIATION

500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297

A. SCOTT RITCHIE
PRESIDENT
DONALD P. SCHNACKE
EXECUTIVE VICE-PRESIDENT

December 19, 1985

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* EXECUTIVE COMMITTEE

Mr. Jack Alexander
Kansas Department of Health &
Environment
Forbes Field
Topeka, Kansas 66620

Dear Jack:

The final draft of the "Blue Ribbon" Committee report transmitted to me under your letter of December 13, 1985 has been received and reviewed.

I'm signing the report with the understanding that my signature merely reflects my participation on the Committee and not the endorsement of the Kansas Independent Oil and Gas Association, or that I concur with all of the written material found in the report.

I have discussed the content of the report with several members of the Committee and they concur that the report is not reflective of some of the action taken.

I have recommended to those I've talked to that they sign the report to keep the process moving. After all, our last meeting was September 20, 1985. They are aware I intend to insert this letter with the final report pointing up the objections noted.

It will be difficult to make these comments since many of the pages are unnumbered, but the following comments and clarifications should be noted.

Under "Task Force Recommendations", Alternate #1 (pg. 2), it should be clarified to include groundwater protection activity related to producing properties presently with KDH&E.

The reference to Chairperson Janis Butler's proposal (pg. 3) was not adopted as a long range goal and should not be so referenced. The action was to remove the reference to the Kansas Engineering Society and merely permit Ms. Butler's report be attached to the overall report for information only. The Subcommittee summarily rejected her report as not being germane to the study.

Jack Alexander
December 19, 1985
Page -2-

Issue II(c) (pg. 5), the reference to "existing statutes" was taken out by action of the Committee and should not be so referenced. Again, under the recommendation section, the reference to "statutory" responsibilities was not intended to be included in the report. There was general objection to participation in "remedial actions" to restore water quality in polluted aquifers because of the lack of technical knowledge or financial ability to accomplish this goal.

Again, reference to the "Kansas Engineering Society" (pg. 8) was intended to be dropped and submitted merely as a statement of Ms. Butler. The same was intended for "Kansas Natural Resource Council" (pg. 8). It was intended that no outside association statement would be specifically included - only those statements by the sponsoring Committee members.

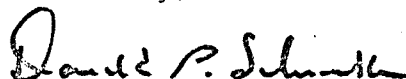
Under Section No. 4, the report of the Organizational Review Subcommittee was to have specifically included a statement, concerning positive contributions by the oil and gas industry to the State of Kansas and to its economy. This was agreed to because of the speculative and negative "potential threat" statement attributed to the industry as found on page 2 of the Environmental Review Subcommittee's report, found in Section No. 5. I fail to find the statement that was requested.

Again, in Section No. 6(c) (pg. 1), the reference to the Kansas Engineering Society should be dropped. Also, in Section No. 6(d) (pg. 1), the reference to the Kansas Natural Resources Council should have been replaced by "Ms. Peterson", the contributing author.

Although I recognize the purpose of the study was to look into the regulatory program related to the Kansas oil and gas industry, I was very disappointed by some of the members of the Committee's willingness to apply a double standard to potential polluters of groundwater in Kansas. No other industry or activity is more regulated or pays for the cost of this regulation more than the Kansas oil and gas industry. The vast majority of pollution of groundwater is totally unregulated and ignored. Until this attitude is addressed, the oil and gas industry will continue to be restless, as persons outside our industry and without technical knowledge of the industry, continue to look at our practices.

Again, Jack, I will appreciate your inserting this letter with the final report as it begins to be circulated to those that are interested in this subject.

Sincerely,



Donald P. Schnacke

DPS:pp

cc: Committee Members

REPORT
of the
ORGANIZATION REVIEW SUBCOMMITTEE
of the
JOINT PROGRAM REVIEW COMMITTEE

Date Submitted:
August 23, 1985

Don Schnacke, Chairman
Robert Anderson
Bob Barnett
Representative Ken Grotewiel
R.C. "Pete" Loux
Senator Merrill Werts

Attachment 4

House Energy and Natural Resources 2/3/86

The subcommittee on Joint Program Organization (hereinafter, subcommittee) is comprised of the following members of the Joint Program Task Force: Donald Schnacke, chairman; Robert Anderson; Bob Barnett; Representative Ken Grotewiel; R.C. (Pete) Loux; and Senator Merrill Werts. The subcommittee was formed to study the organizational efficiency of the Joint Program; and the subcommittee had three meetings during the period of June 25, 1985 to August 23, 1985 for that purpose. The review of the organizational efficiency of the Joint Program included principally an analysis of the program functions of the Office of Oil Field and Environmental Geology of the Kansas Department of Health and Environment (hereinafter, KDHE) and the Conservation Division of the State Corporation Commission of Kansas (hereinafter, KCC), the budgetary and personnel allocations made by KDHE and the KCC in implementing those program functions, and the communication channels between and within each agency. Additionally the subcommittee met on August 8, 1985 for further review of the draft report submitted on July 25, 1985 to the whole committee, in light of all comments received.

After review and discussion of relevant documents and material, a majority of the subcommittee concluded that regulation of the oil and gas industry could best be accomplished by one agency. One agency administration will provide more efficient appraisal and management of the oil and gas regulatory program, resulting in better protection of groundwater than was attained by the jointly administered regulatory program. With split authority over oil and gas production practices, Kansas finds itself off step with all other major producing states.

It is the recommendation of a majority of the subcommittee that all activities and practices related to oil and gas production should be regulated by the Conservation Division under the supervision and control of the State Corporation Commission of Kansas (hereinafter, "proposal No. 1"). As an alternative, the subcommittee recommends that all program activities of the KDHE office of Oil Field and Environmental Geology related to regulation of the oil and gas industry be consolidated under the regulatory authority of the KCC (hereinafter, "proposal No. 2"). It should be noted that both of these alternative regulations are entirely consistent with the regulatory programs now being implemented in most, if not all, oil or gas producing states. Moreover, it should be noted that, under either alternative, the KDHE would continue its historic role. Finally, if the joint regulatory program is to remain, there should be a thorough assessment and correction of its existing inefficiencies.

This report is comprised of four sections. First, the organizational and regulatory history of each agency will be highlighted. Secondly, some of the inefficiencies inherent in the Joint KDHE-KCC regulatory structure will be highlighted. The subcommittee's rationale for recommending that all activities and practices related to oil and gas production should be regulated by the KCC will then be presented. Finally, a skeletal implementation strategy will be recommended. For brevity, only proposal No. 1 will be described in detail; however, the movement of programs and employees under proposal No. 2 will be highlighted. It should be noted that this report is preliminary and should not be read as containing an all-inclusive review and description of the joint regulatory program. It is, however, the belief of the subcommittee that this report presents a compelling case for adoption of the one-agency program hereinafter described.

History of the Oil and Gas
Regulatory Program

Although KDHE was given authority over water pollution initially in 1907, it does not appear that the agency was given authority over oil field pollution until 1933.¹ The 1933 act provided that KDHE, for the purpose of preventing stream pollution detrimental to public health, could make rules and regulations concerning the disposal of industrial sewage wastes, including oil field wastes. Interestingly, the storage of salt water, oil or refuse in surface ponds was specifically allowed in the 1933 act. In 1945, KDHE was given authority to prevent brine storage in ponds when such storage was found likely to cause pollution of any fresh water strata or supply.

The KCC was initially given authority over protection of fresh water from oil field practices in 1931, in conjunction with authority to prevent the waste of crude petroleum. The 1931 act conveyed authority to the KCC to adopt rules and regulations concerning the construction of oil wells so as to protect fresh water strata. While the 1931 act gave the KCC authority to prevent pollution of fresh water strata through proper well construction, it was not until 1935 that the KCC was given the basic framework to act as an independent agency to prevent pollution from oil field practices.² The 1935 act provided that the KCC had authority to

¹ While the 1907 act granted authority to KDHE (then the State Board of Health, until executive reorganization in 1974) to control the discharge of sewage into the waters of the state, sewage was defined so as not to include oil field wastes. Under the 1907 act, KDHE was given authority to permit sewage systems and to order the discontinuation of sewage disposal when injurious to the public health (Sections 3-9).

² The 1931 act provided that enforcement of KCC rules, regulations or orders was through the district court. As such, there was no administrative hearing process, and it is clear that the KCC was not given independent authority to enforce any rule preventing pollution of fresh water strata in wells drilled in Kansas.

prevent waste of oil and natural gas and to protect the correlative rights of oil and natural gas producers. In addition, salt water disposal and repressuring wells were to be permitted by the KCC, upon proper application, before operation of such wells commenced.³ The KCC was also given authority to prescribe procedures concerning the plugging of abandoned wells. Most importantly, the KCC was given jurisdiction and authority to hear and determine all matters involving the application and enforcement of the 1935 act.

Although both KDHE and the KCC were given authority over oil field pollution, each agency's jurisdiction appears to have been divided by program function until 1945.⁴ K.S.A. 55-1003 was enacted in 1945 and prescribed the regulatory scheme by which salt water disposal wells would be permitted. Salt water disposal wells were required to be approved by both the KCC and KDHE prior to being used. In its part of the process, the KCC was to ascertain whether or not the salt water injection well would protect oil-bearing and gas-bearing strata. KDHE was to determine whether or not water-bearing strata would be protected by the proposed salt water disposal well. In 1953, the regulatory scheme was amended to provide that KDHE would prescribe the maximum pressure under which salt water could be

³ It should be noted that an operator had the statutory right to dispose salt water into any highly mineralized water formation (Section 1, Chapter 211, L. 1935).

⁴ KDHE was given the duty to prevent stream pollution and was authorized to regulate the disposal of oil field wastes. The Commission was given the duty to prevent subsurface pollution of water and authorized to regulate well construction and abandonment. Even in these early days of regulation, however, there was a possibility of conflict between the regulatory authority of each agency. Both KDHE and the Commission were given authority concerning the disposal of salt water associated with oil production. What the Commission may have allowed pursuant to Chapter 211 of the 1935 session laws, KDHE may not have allowed pursuant to Chapter 85 of the 1933 session laws (special session).

injected in a disposal well. In 1957, KDHE was given authority to prescribe the minimum depth at which salt water could be disposed. The KCC enforced these standards through its permitting process. In 1974, the United States Congress enacted the Safe Drinking Water Act. Under Section 1425 of the Act (as amended in 1980), state agencies could acquire primary enforcement responsibility for the control of salt water disposal wells and underground injection related to the recovery and production of oil and natural gas (class II wells). In 1984, the KCC, in conjunction with KDHE, acquired primary responsibility for the class II injection well program. The act provides that the state enforcement program must achieve certain goals aimed at ensuring that salt water disposal and repressuring wells are operated so that fresh and usable waters are protected. As can be seen, permitting salt water disposal wells was the first statutorily-provided area of joint responsibility between KDHE and the KCC; and joint responsibility for the UIC Class II program has become more complex throughout the period from 1945 to the present.

There are other areas of joint responsibility between KDHE and KCC with respect to oil and gas activities. For example, the KCC's authority to investigate abandoned oil and gas wells, either upon complaint or upon its own motion, for the purpose of ascertaining whether or not the wells were causing or likely to cause pollution of any fresh water supply, was granted in 1949. The statute provided that KDHE could file complaints regarding abandoned wells with the Commission. In 1955, the statutory scheme was amended to list the conditions under which conservation fee fund monies could be expended to plug abandoned wells.

In 1957, the KCC was given authority to promulgate rules and regulations concerning the cementing in of surface pipe to protect fresh water and any additional pipe needed to protect usable water. The statute

defined fresh water as containing less than 500 ppm chlorides and usable water as containing less than 5000 ppm chlorides but more than 500 ppm chlorides. The regulations were to be made in accordance with the joint recommendations of the KDHE, the State Geological Society and the State Water Resources Board.

Both the KCC and KDHE have authority to control, abate and clean up pollution related to oil and gas activities. KCC's authority is contained in K.S.A. 55-140a and K.S.A. 55-121. KDHE's authority stems from 65-171d.

In 1982, the Kansas Legislature enacted Substitute Senate Bill 498, which provided the Joint KCC-KDHE regulatory scheme which is the subject of this subcommittee's inquiry and report.⁵ The Act provides that all operators and contractors must be licensed with the KCC, prior to commencing operations in the state. In addition, before any well is drilled, the operator must file a notice of intention to drill with the KCC; the intent to drill is to be jointly reviewed by the KCC and KDHE and approved prior to the time drilling operations begin. In addition, an operator must notify the KCC prior to setting surface casing or plugging any well; before the washing down or re-entering any abandoned well, the operator must notify the KCC 48 hours in advance. Either the KCC or KDHE may conduct on-site inspections of such drilling or plugging operations. Under the act, KDHE and the KCC have joint authority to investigate abandoned wells believed to be causing or likely to cause pollution or loss of any fresh or usable water strata or supply.⁶

⁵ The act provides that administration of the program is to be set through an interagency memorandum of agreement between the two agencies.

⁶ SB 498 enlarged the scope of the waters which the agencies were authorized to protect. Enforcement of the plugging of abandoned wells, as well as the expenditure of fee fund monies to plug abandoned wells, is left in the sole discretion of the Commission.

Substitute Senate Bill 498 set up a 10-member Advisory Committee which is chaired by the State Corporation Commission Chairman. In promulgating rules and regulations, the KCC is to consider the recommendations of the 10-member committee. Field enforcement of the rules and regulations is jointly administered by the KCC and KDHE. The agencies have entered into a memorandum of agreement concerning the joint operation of the six district offices. Finally, the act provides a scheme of administrative penalties and fines to aid enforcement of the act. In summary, KDHE and the KCC have joint regulatory responsibility in the following areas: Oil and gas well completions, Class II (oil and gas) injection wells, the plugging of abandoned oil or gas wells, and the pollution caused by or likely to be caused by oil or gas wells.

In addition to its responsibilities under the joint program, KDHE has the responsibility to license water well contractors, pursuant to K.S.A. 82a-1201 et seq. Approximately 30 percent of the water wells permitted by KDHE are for oil field water supply.⁷ KDHE also is responsible for the control, abatement and clean up of hazardous material spills.

Under the Safe Drinking Water Act, KDHE is responsible for primary enforcement of the following classes of injection wells: Class I (industry), Class III (solution mining), Class IV (hazardous waste) and Class V (other). Pursuant to K.S.A. 65-171d, KDHE regulates the storage of salt water, oil and refuse in surface ponds. KDHE also regulates salt solution mining operations. Finally, KDHE is responsible for the regulation of underground petroleum storage tanks and LPG storage.

The KCC is solely responsible for the licensing of oil and gas well operators and contractors, implementing the Natural Gas Policy Act of 1978,

⁷ Water appropriation for oil field water supply wells must be permitted by the Division of Water Resources, pursuant to K.S.A. 82a-727.

hearing and determining new pool applications pursuant to the Kansas Mineral Tax Act, and preventing waste of hydrocarbons and protecting the correlative rights of producers of natural gas and oil. This last responsibility includes, among other things, the setting of oil and gas allowables, determining well locations and exceptions, controlling the venting of natural gas produced in conjunction with crude oil, determining applications for unitization and special field rules, and gas and oil well capability testing.

The agencies have undergone some growth in view of the increased responsibilities. In 1960, KDHE's responsibilities with respect to oil field pollution was administered by the Sanitation Division of the Department. The oil field section was one of six sections of the Sanitation Division; the Division was also responsible for such programs as inspection of sewage facilities, swimming pools, waste-treatment plants, and the chemical, bacterial, and radiological examination of air, water and waste samples. During the 1970s through the early 1980s, oil field pollution was regulated as part of the Division of Environment. Specifically, oil field pollution was regulated under the program description of Groundwater Pollution Control. Currently, regulation of oil field pollution is administered under the program name of the KDHE Office of Oil Field and Environmental Geology. Program operations, from 1981 to present appear to be approximately the same, under both program names; and until February 18, 1985, the oil field section was under the control and supervision of the Division of Environment.⁸

⁸ On February 18, 1985, Bill Bryson was appointed as the Director of the KCC Conservation Division/KDHE Office of Oil Field and Environmental Geology; and with respect to oil and gas related matters, he reports directly to the Chairman of the KCC and Secretary of KDHE.

From 1981 to 1984, the oil field section has added four actual full time positions (from 28 in 1981 actual to 32 in 1984 actual); actual salaries and wages expenditures have increased from \$533,120 in 1981 to \$812,066 in 1984. Overall actual expenditures for the program have increased from \$707,021 in 1981 to \$958,228 in 1984.⁹ Budget appropriations for KDHE have increased approximately \$200,000 between fiscal year 1984 and fiscal year 1985. (\$1,044,678 was budgeted in fiscal year 1984; \$1,247,254 was budgeted in fiscal year 1985.) The Office of Oil Field and Environmental Geology is comprised mostly of Environmental Geologists. Of its current structure (Fiscal Year 1985), there are 16 geologists, an administrative staff support of 10 (including the Bureau Manager), and nine lower level field personnel. There are three basic sections: The Technical Service section, which is principally responsible for technical analysis and support for responsibilities under the Joint Program; the Regulation and Permitting section, which is responsible for the administrative processes of permitting and licensing under the statutory mandates given to the Office; and, the Environmental Geology section, which is principally responsible for groundwater contamination inspection and monitoring of UIC wells, as well as implementing spill containment responsibilities.

Until February 18, 1985, the KCC Conservation Division was administered by an administrative director who was responsible directly to

⁹ Budgetary Documents prior to Fiscal Year 1983 were not comparable to Fiscal Year 1983 budget documents and those following. For comparison purposes (and particularly since the scope of this report concerns implementation of Substitute Senate Bill 498 from July, 1982), the authors of this report chose to use actual expenditures for the Conservation Division and Bureau of Oil Field and Environmental Geology from 1981 to 1984. Actual expenditures for Fiscal Year 1985 had not yet been compiled at the time of this report.

the three-member Commission. Matters concerning the oil and gas activities regulation by the Division are discussed and decided by the three Commissioners in regularly scheduled meetings which are open to the public. For some matters, the Oil and Gas Advisory Committee is consulted prior to discussion and decision by the Commission. Actual full time employee positions of the KCC Conservation Division have grown from 36 in 1981 to 69 in 1984. The positions added have principally been field-level staff and a technical section. Actual expenditures for the Division have increased from \$907,790 in 1981 to \$2,243,755 in 1984; actual salaries and wages expenditures have consistently comprised approximately 60 percent of the total expenditures (\$596,515 in 1981 to \$1,472,220 in 1984). The second largest line item expenditure for the Division is travel and subsistence (which is principally used to pay vehicle mileage for field inspections). Budget appropriations for the KCC increased approximately \$600,000 from fiscal year 1985 to fiscal year 1986. (\$2,966,931 was budgeted in fiscal year 1985; \$3,593,440 was budgeted in fiscal year 1986.) The current structure of the Wichita Conservation Division office (Fiscal Year 1986) is principally comprised of administrative staff (31 positions, which includes both mid-level and upper-level management and all clerical support). The Division has a technical support staff of eight (which includes a hydrologist, a chief engineer, a petroleum engineer, two geologists and three attorneys). Field staff comprise the remainder of the Division (37 employees), and were added in Fiscal Year 1982 and Fiscal Year 1983, in response to the enactment of Substitute Senate Bill 498.

Evaluation of the Joint Regulatory Program

It should be noted at the outset that it is the perception of this subcommittee that passage of Substitute Senate Bill 498 was a worthwhile

measure taken in the regulation of the oil and gas industry. Senate Bill 498 addressed a number of the inefficiencies which existed in the regulatory program prior to 1982. It is, however, the view of the subcommittee that there are some inherent inefficiencies in the jointly administered program which could logically be addressed by consolidating regulation of all activities related to oil and gas production into one agency.

Prior to the enactment of Substitute Senate Bill 498, there was a low level of enforcement between both agencies. There would seem to be three major causes of the low level of enforcement: (1) There appears to have been a low level of budgetary emphasis placed on field level implementation of regulatory goals. (2) There appears to have been little formal coordination of effort between the two agencies in preventing oil field pollution. (3) There appears that there was an inadequate amount of remedial or enforcement measures available to the agencies, once a violator was found.

Since the passage of SB 498, field-level staff between the two agencies has approximately doubled in size. In addition, the staff of both agencies have been moved into six joint district offices. There has been a considerable effort made to cross-train field staff employees in some areas. High level management meetings between the two agencies have been regular and have helped to ensure the consolidation of regulatory effort. The 10-member Oil and Gas Advisory Committee has been used to ensure that regulatory policies are technically sound. Finally, the administrative remedies and penalties, in conjunction with the licensing of oil and gas operators and contractors, has helped to increase compliance with regulatory goals.

The subcommittee perceives that the agency heads of both KDHE and the KCC have worked hard to implement the mandates expressed in substitute Senate Bill 498. The subcommittee also perceives that, although improvements have been effected, implementation of the joint program goals and coordination at the field level and midmanagement level of both organizations has been weak. It is believed that some of the implementational obstacles were due to the personalities involved, while others lie in the nature of any jointly administered program between two agencies.

First, and perhaps foremost, both agencies could use a more efficient compliance and permitting tracing system.¹⁰ At present, compliance tracking at the district level is performed through a permanent file system in conjunction with a log book. All matters which come into the district office are entered in the log book. Until the matter is resolved, the relevant documentation is retained in a pending file. Once the matter is resolved, all documentation is placed in a permanent file. In some districts, a bulletin board is used to indicate matters which require further district action.

It is the perception of the subcommittee that the present system of compliance tracking is inadequate, for a number of reasons. First, to ascertain the status of any given matter pending requires considerable effort. The file must be located and reviewed. Moreover, there does not appear to be any readily available method to set field priorities in cases of more a routine nature. Finally, there does not appear to be any readily available means of classifying matters which have

¹⁰ It has been brought to the attention of the subcommittee that both agencies are in process of computerizing a compliance tracking system.

been addressed and/or resolved by district staff. The inadequacy of the present tracking system hinders the efficiency of central management of district staff. The lack of information which can be compiled and channeled through the hierarchy appears to result in a forced decentralization of decision-making. It is the belief of the subcommittee that considerable discretion should be allowed to district staff in the implementation of the joint program; however, information on action taken by district staff must be readily available if there is to be an optimal amount of managerial control. ¹¹

A computerized tracking system could also enhance the permitting and licensing systems of both agencies.¹² Such a system would allow the agencies to easily ascertain the specific industry operations which have and have not been permitted. Consequently, compliance efforts could be enhanced. In addition, such a system could be used to track the status of applications pending before the agencies. That information would, in turn, allow improved managerial analysis of time and resource allocations in joint agency programs.

Another programmatic inefficiency perceived by the subcommittee regards the channels of communication between the two agencies. There appear to be cases where there has been little communication between agencies prior to an action being taken. There have been instances where the Officer in Charge and the Deputy Officer in Charge have failed to communicate on action taken in the district. Moreover, prior to February

¹¹ It is noted that there is a review of district action taken of files and correspondence which are submitted to the agencies' central office.

¹² The Commission is in process of computerizing its operator and contractor licensing department. The system is due to come on-line in or around September, 1985.

18, 1985, there was little inter-agency information affected, either in the form of district-central office meetings or from district staff of one agency to central management of the other agency.¹³ There are obviously two principal inefficiencies which emanate from lack of inter-agency communication. First, if allowed to persist, a perception of mistrust arises between agencies which will affect joint program operations. Secondly, where policy is not discussed between agencies and a consensus of policy made, there arises the possibility that the agencies will require inconsistent procedures to be performed by the industry member affected. Consequently, no clear guidance is given to the regulated enterprises, confusion follows, and there is an inefficient allocation of resources made in terms of compliance goals.¹⁴

It should be noted that improvement in communication and compliance tracking should result in increased access to data such as water quality and geological information. It is a common-sense proposition that monies expended on studies, before ascertaining the information already available and before priorities of informational needs are established, generally result in an inefficient allocation of agency resources.

Despite any improvement which could be made with respect to the above-mentioned inefficiencies, there appear to be three inherent

¹³ District-central office meetings were principally confined to annual or biannual cross-training seminars; Officers in Charge continued to have meetings in Topeka, and Deputy Officers in Charge continued to have meetings in Wichita. It is noted that the Joint Memorandum of Agreement set up district office meetings on a weekly basis.

¹⁴ It is perceived by the industry and other state agencies generally that inter-agency communication has improved since February 18, 1985.

weaknesses in the joint program which could logically be resolved by consolidating all regulation of the oil and gas industry into one agency. The first can be classified as a resource overallocation, and is most noticeable in the intent to drill program, the UIC program, and the joint management meetings mandate. Significantly, these overallocations are required by statute.

K.S.A. 55-151 requires that both the KCC and KDHE review intents to drill which are filed with the KCC. Specifically, the statute requires that the KCC review "the amount of pipe necessary to protect all usable water..." KDHE "shall determine that the proposed construction of the well will protect all usable water."

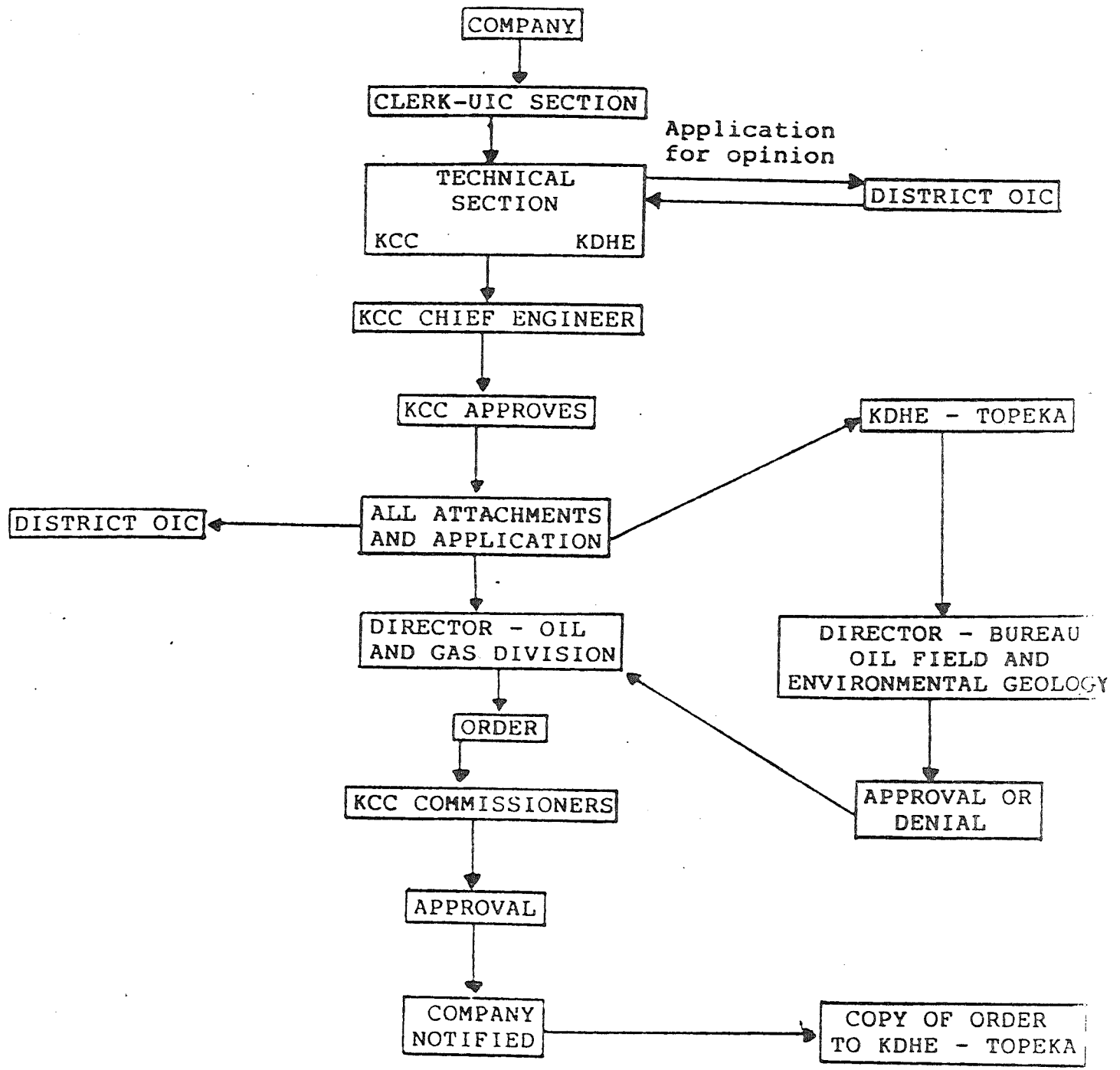
Under K.S.A. 55-901, K.S.A. 55-1003 and the Safe Drinking Water Act of 1972 (Section 1425), the Commission and KDHE review applications for approval to inject salt water in Class II wells. The review of both agencies include the proposed construction of the subject well to ascertain that fresh and usable water are being protected. Figure No. 1 indicates the amount of review given to each UIC application filed with the KCC. As can be seen, a Class II UIC application is reviewed as often as six times and is sent back and forth between Topeka and Wichita, prior to approval being obtained.¹⁵ In addition, meeting EPA mandates under the Safe Drinking Water Act can be somewhat problematical where two agencies are involved in the implementation of the program.

Pursuant to 55-163, the Secretary of KDHE, the Chairman of the Commission, and upper level management of both agencies are required to meet to discuss joint management on a bi-monthly basis. In each of these

¹⁵ It has been brought to the attention of the subcommittee that the KCC is evaluating the UIC program in order to effect changes for efficiency.

Figure 1

PROCESS FOR APPROVAL OF
INJECTION WELL APPLICATION



areas, resources are allocated in a duplication of review which would not be necessary if one agency had sole jurisdiction over the oil and gas regulatory program. The resources that are allocated for these mandates could be expended in other areas in order to improve compliance for the benefit of the environment as well as the industry at large.

An inefficiency of the joint program which is associated with the duplication of review, can be classified as time-lag. It stands obvious that anytime there is to be a review by two agencies of a specific and individual problem, there is a time-lag associated with the process. In the UIC program, for example, an application must be sent to Topeka for review by KDHE and a letter of approval forwarded to the Wichita Conservation Division from that office before the order is prepared for the Commission's approval. In some cases, mailing and filing time can be significant.

Both of these inefficiencies have costs which affect the industry and protection of the environment. The first cost is the direct cost associated with the allocation of time and resources. Time and man-hours expended in areas where a review is duplicative could be expended in other important areas. The second cost is the indirect cost associated with the time-lag inherent in the mandated review. While the state is achieving duplicative reviews of the problem pending, the industry member affected is realizing costs (a 24-hour delay in the approval of an injection well application can cost up to \$10,000). In addition, there is an indirect cost associated with continuation of an environmental problem while the reviews are being conducted. Finally, there appears to be an external cost associated with the overallocation of time and resources. The time delay associated with the mandated reviews diminishes the relationship between

the industry and the regulator and compliance becomes more arduous.

Certainly it can be argued that duplicate review by the KCC and KDHE serves as a countercheck on the discretion of each agency. The subcommittee considered this benefit; however, the 10-member advisory committee ably fulfills this function as well as the management control inherent in each agency. In addition, there has been a considerable amount of legislative oversight and scrutiny by other agencies of Oil Field regulation; and it appears that the focus on Oil Field activities will remain keen for quite some time.

Another programmatic inefficiency inherent in the joint regulatory program is the lack of control and correction of actions taken by the employees of each agency. In short, the Civil Service guidelines regarding discipline of employees seems ill-suited to a jointly administered program between two agencies. There is a tendency of the authorized agency to discount reports from the other agency involved that an employee of the authorized agency has taken action which should be disciplined. Secondly, there is a reluctance to admit that action taken by one of the agency's own employees is outside of the joint program goals. Consequently, disciplinary steps are often not taken and the employee's behavior is reenforced.

Finally, there has been some confusion among industry and environmental members as to which agency is responsible for certain aspects of regulation of the oil and gas industry. Members of the industry have to ascertain, through the statutes of each agency, which agency is responsible for enforcement of the compliance goals set by the regulatory scheme. Similarly, those who wish to report violations must locate the correct reporting agency. Due to the confusion inherent in a jointly administered program, compliance is achieved inefficiently at best. It is noted by the

subcommittee that Kansas is the only major producing state that does not place oil-related water protection in the agency responsible for oil and gas proration.

Consolidation of the Oil and Gas Regulatory Program
Into the Conservation Division

Given that the oil and gas regulation is to be consolidated into one agency, the next logical step is a justification for locating the program into one agency or the other. There appear to be three principle reasons justifying the placement of the oil and gas program into the Conservation Division under the control of the Commission. These are: The KCC has the most well-established administrative process; stability of the regulatory environment; and convenience of the relocation.

The subcommittee notes that both agencies have procedures by which rules, regulations and administrative orders are made. The subcommittee further notes that basically each of the agencies' procedures are similar. The KCC's hearing procedure seems to be the better established procedure of the two agencies. First, the hearing procedure has been in existence for over 50 years. Secondly, the procedure has been used extensively to process dockets before the KCC concerning all types of oil and gas regulatory matters. In fact, it would be a fair estimate that from 35 to 50 hearings are held before the KCC or its designated agent every month. We fail to see this established system of hearings in KDHE at this time. In addition, the KCC has a well developed set of rules and regulations of practice and procedure. It should also be noted that decisions of the KCC are made after discussion by the three Commissioners in an open public meeting. The three Commissioners often arrive at different perceptions regarding the evidence presented, and the decision is thereby benefitted.

Finally, and perhaps most significant, the scope of review of KCC decisions has been very well outlined by a number of cases from the appellate courts.

It is important to note that, in any matter before the KCC, there are a number of varied interests involved: The applicant, of course, has an interest; the landowner, upon whose land the matter proposed by the applicant is situated; other agencies may have an interest; and there could be any number of offsetting operators and/or unleased mineral owners. Significantly, each and every person involved in a matter before an administrative agency would want a fair opportunity to express their interest and concerns. The fairest opportunity which could be provided is a hearing with all the elements of substantive and procedural due process. It is the contention of this subcommittee that the more established a hearing procedure is, the more clear the pertinent rules are, and the more fairly the varied interests can be expressed and considered. The subcommittee believes that the KCC's hearing procedure best offers these benefits. The subcommittee also notes that, for the past five years, the KCC has developed and used a rule-making procedure which allows direct input of any person who is interested or concerned.

The second reason for locating the oil and gas program in the Conservation Division is stability of regulatory environment. We note that the oil and gas regulatory program has remained a steady responsibility of the Conservation Division for the past 50 years. It is the largest Division of the Commission. KDHE has approximately 15 programs which it administers every year, and it has over 600 full time employees. In addition, KDHE activities regarding the Safe Drinking Water Act and the RCRA are expected to expand by congressional action in the present session. If the oil and gas program were to be located in KDHE, the principle of

span of control would probably dictate that the program be incorporated into the Division of Environment. We note that the Division of Environment has undergone some major changes in the past years. The subcommittee believes that the concerns of the industry and the environment with regard to the oil and gas program warrant the type of specialized attention which the Commission can and will give.

Finally, convenience of the relocation effort is another reason for placing the oil and gas program in the Conservation Division. The Conservation Division has sole responsibility in a number of areas such as establishing of oil and gas market demand, unitization, establishing special oil and gas field rules, administering the Natural Gas Policy Act, implementing some aspects of the severance tax, controlling the venting of natural gas produced in connection with crude oil, and other important areas. Consequently, the statutory authority of the Conservation Division stems throughout Chapter 55 of the Kansas Statutes. KDHE, on the other hand, principally draws its responsibility in the area of the oil and gas related programs, which the subcommittee recommends being placed in the KCC, from K.S.A. 65-171d through 65-171f. It is the belief of the subcommittee that, although any relocation of the oil and gas program into any one agency would have its complexities, the more convenient choice would be to place the program into the Conservation Division. It should be noted that, on July 1, 1983, the Kansas Energy Office was abolished and most of the office's program responsibilities were placed under the jurisdiction of the KCC.

Oil and Gas Regulatory Program
(Structure)

A relocation of agency responsibility should begin with a description of the methodology. The methodology used to relocate the oil and gas

program in the Conservation Division starts with a description of the programs of each agency. The programs must then be allocated between the two agencies. Associated with the allocation of the programs must be an allocation of employees, equipment and budget. The budget should show the collection and expenditure of monies collected. Finally, there should be presented a plan of relocation.

Joint Program responsibility exists in the following areas: Oil and Gas well completions, class II (oil and gas) injection wells, the plugging of abandoned oil or gas wells, the investigation of pollution caused by or likely to be caused by abandoned oil or gas wells and oil spills and containment. KDHE has independent responsibility for the following programs: Hazardous materials spill prevention and containment, all classes of injection wells (except class II), the licensing of water well contractors, the permitting of surface ponds and emergency pits, salt solution mining operations, LPG storage, and underground petroleum storage tanks. The Commission is solely responsible for the licensing of oil and gas well operators and contractors, implementing the Natural Gas Policy Act of 1978, hearing and determining new pool applications pursuant to the Kansas Mineral Tax Act, and preventing waste of hydrocarbons and protecting the correlative rights of producers of natural gas and oil. This last responsibility includes, among other activities, the setting of oil and gas allowables, determining well locations and exceptions, controlling the venting of natural gas produced in conjunction with crude oil, determining applications for unitization and special field rules, and gas and oil well capability testing.

In dividing these programs under proposal No. 1, the subcommittee started with the proposition that only programs directly related to oil and

gas production should be placed in the Conservation Division. Since all programs currently administered by the Conservation Division are so related, these programs should remain as currently situated. Furthermore, all joint program activity should be situated solely in the Conservation Division.

The remaining programs to be divided are those left to the sole jurisdiction of KDHE. The principal area which KDHE administers and which is directly related to oil and gas production is the investigation and abatement of groundwater pollution caused by oil and gas activities and surface pollution caused by the escape of oil, salt water or refuse from the vicinity of wells. These activities would be transferred to the KCC.

The subcommittee notes that approximately 30 percent of the water well contractors licensed seek permission to use the wells for oil field water supply. The subcommittee notes, however, that end use of the water is permitted under the administration of the Chief Engineer of the Water Resources Board. As such, the KDHE part of the water well program is related directly to water and environmental concerns and only the end use of the product should directly affect the oil and gas industry. Since permission is directly related to end use priorities of state water planning as a whole, the subcommittee chose to leave the program as it is currently situated, under proposal No. 1. The water well program would be transferred to the KCC, however, under proposal No. 2.

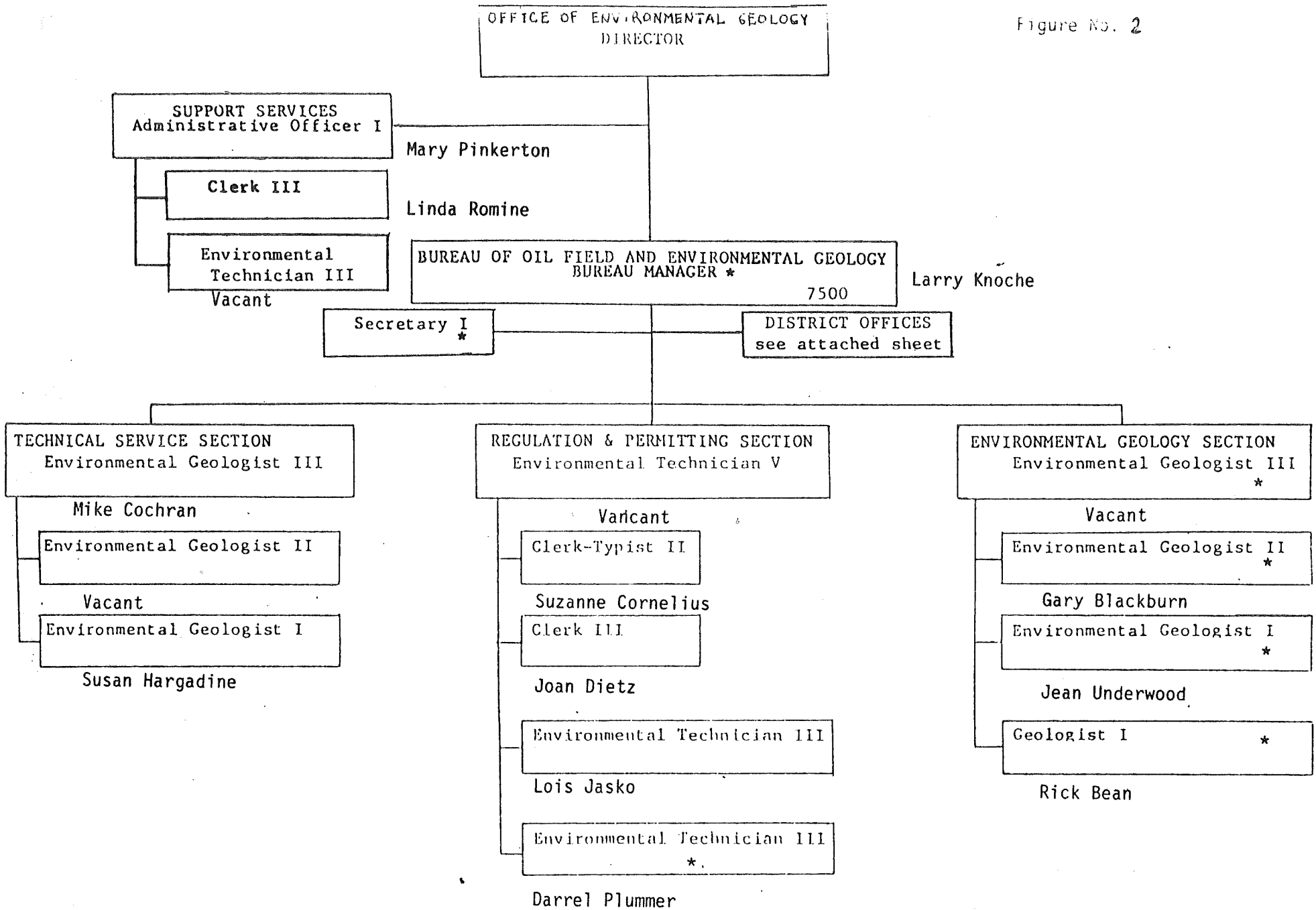
In addition, underground storage tanks and LPG storage, do not appear to be related to oil and gas production. These programs appear to be more closely related to the environmental concerns of the storage of a finished petroleum product than related to the production of oil and gas. Consequently, the subcommittee would place these programs under KCC

jurisdiction only in proposal No. 2. Of similar nature are the KDHE programs of permitting surface ponds and emergency pits. Emergency pits are located in the vicinity of petroleum storage tanks; and, as such, appear to be more closely related to the underground storage tank programs than related to oil and gas production. Surface ponds seem to be more closely related to brine storage (in tanks) and brine hauling than related to the UIC Class II program. If proposal No. 1 is adopted, KDHE would retain its jurisdiction over these programs; both the emergency pit and surface pond programs would be placed under KCC jurisdiction, if proposal No. 2 is adopted.

The next step in the subcommittee's methodology, with respect to proposal No. 1, was to divide the KDHE employees between the two agencies. The subcommittee used the employee responsibilities and time accounting data for Fiscal Years 1984 and 1985 for purposes of this allocation. Approximately 65 percent of the time spent by KDHE employees is spent on the oil and gas related programs mentioned above. Program descriptions of all employees followed approximately this percentage. Upon this information, the subcommittee allocated 23 KDHE employees to the oil and gas regulatory program. The employees retained in KDHE are the Bureau Manager and Secretary, three geologists in the Environmental Geology section, an Environmental Technician in the Regulation and Permitting Section, and four geologists and two environmental technicians in district offices. Schematically the relocation of these positions can be seen on Figure No. 2 and Figure No. 3. The historic role of KDHE should continue. Under proposal No. 2, approximately 26 KDHE employees would be allocated to the oil and gas regulatory program.

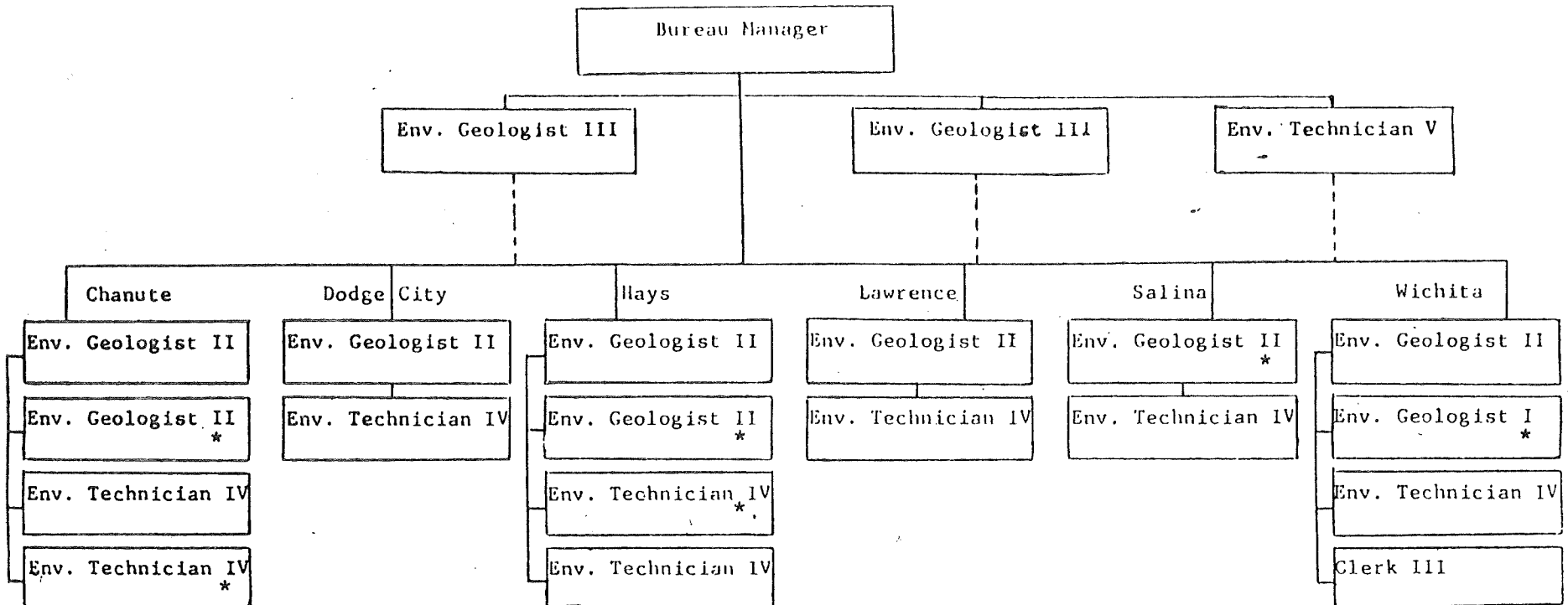
The subcommittee made the assumption that all equipment closely

Figure No. 2



* Indicates Employees Retained at KDHE

Figure No. 3



*Indicates Employees Retained at KDHE

associated with the reallocated employees should be transferred to the oil and gas program. Such equipment would include file drawers, desks, typewriters and other such equipment. Use of other equipment in the oil and gas program would be pursuant to a memorandum of agreement entered between the two agencies. Use of office space (District and Topeka Offices) would also be subject to a memorandum of agreement.

Budget allocation was also made pursuant to the time accounting data of KDHE. The Committee would recommend a transfer of approximately \$810,000 from KDHE to the oil and gas program, under proposal No. 1 (based upon 65 percent of the Fiscal Year 1985 estimated budget). The budget transfer would be comprised of the following fees: Oil and Gas Assessments (currently designated by KDHE as Conservation Fee Fund assessments but excluding assessments made for the surface pond and emergency pit programs), 40 percent of the UIC grant monies and the termination of any transfers of conservation fee fund monies from the Conservation Division to KDHE. The budget transfer would be approximately \$1,000,000 under proposal No. 2.

The subcommittee would recommend the following plan of employee relocation under proposal No. 1. First, reallocated district staff will remain in their present location. The Conservation Division will then be divided into three sections: Oil and Gas Proration, Technical Service, and Permitting and Licensing. The Oil and Gas Proration Section will remain as it is currently staffed. Reallocated KDHE employees will be divided between the Technical Service and Permitting sections. There will be three areas of support services under the reorganization: Administrative Support (located in the Topeka and Wichita offices), Legal Services (in Wichita), and Computer/Data Services (in Topeka). Under the plan of reorganization,

the Oil and Gas Proration section would be responsible for administering the following programs: Gas Proration, Oil Proration, NGPA, and New Pool determinations pursuant to the Kansas Mineral Tax. The Permitting and Licensing Section would be responsible for the administrative processing of the following: Operator Licensing, UIC (Class II) applications, Temporary Abandoned Wells, Intents to Drill, and all forms and reports filed with the Commission or KDHE currently (as related to the oil and gas program). The Technical Service Section would provide technical analysis to all departments requesting such support. The section would also be responsible for field inspections and field compliance matters. The organization chart of the proposed Conservation Division, under proposal No. 1, can be seen on Figure No. 4, Figure No. 5 and Figure No. 6.

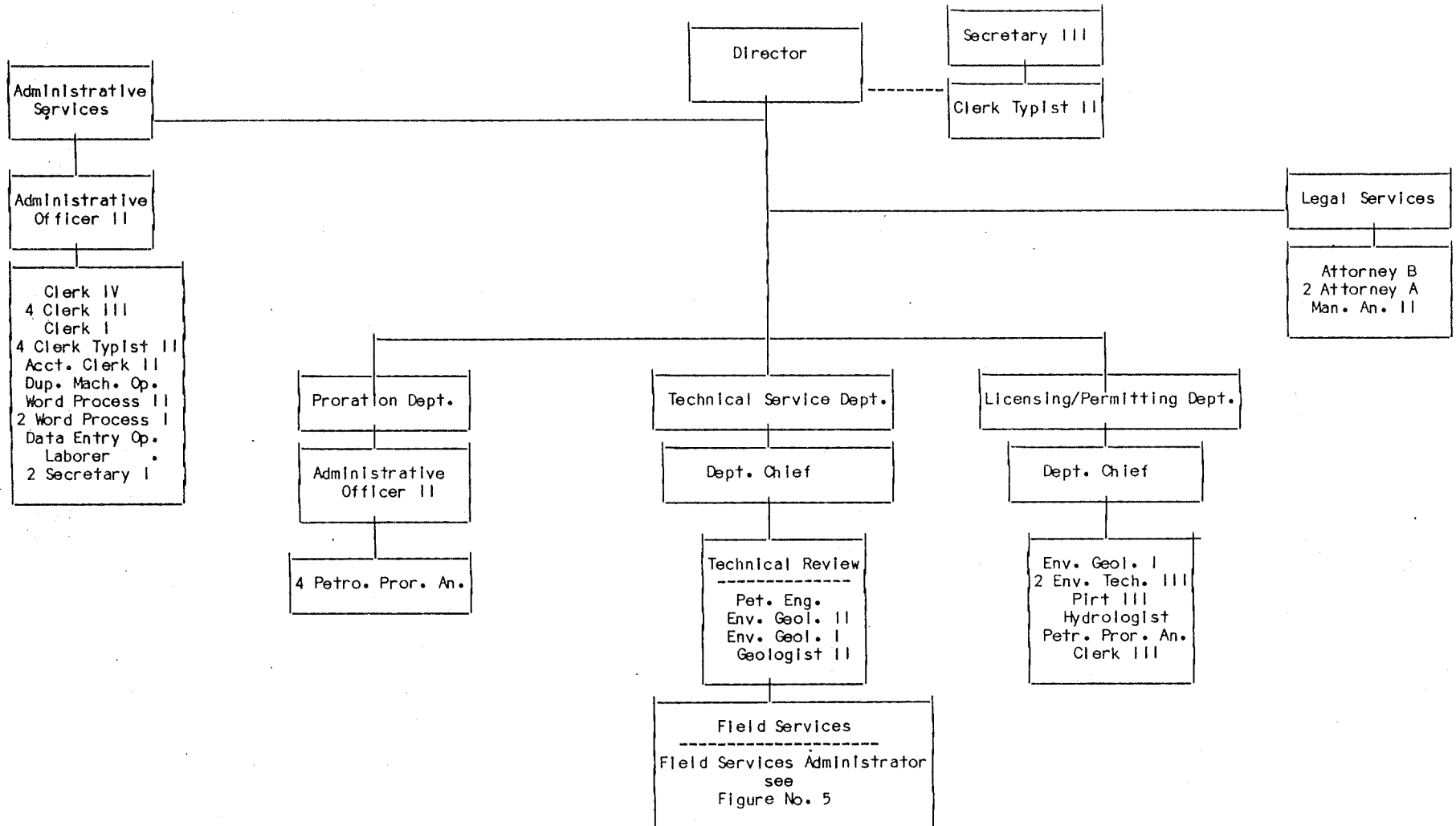
It is important to note that the subcommittee endorses the work of the 10-member Advisory Committee. The Advisory Committee functions well as a forum for discussion and review of KCC regulations and policy relating to the oil and gas industry. The subcommittee recommends the continued use of the Advisory Committee under either proposal No. 1 or proposal No. 2, as outlined in this report.

In implementing either plan of reorganization, there will have to be a number of memorandum of agreements either executed or amended: These include, at the least, agreements between the Conservation Division and the EPA, KDHE Laboratory Services, KDHE Division of Environment, and the KDHE Division of Administrative Services. In addition, a specific plan for equipment, employee, and fee reallocation will have to be formulated. For the purpose of arriving at an amicable reallocation, it is the suggestion of the subcommittee that the following personnel be directed to formulate such a plan: The Budget Administrative Offices of each agency, the KDHE

Figure No. 4

Proposed Organization Structure

CONSERVATION DIVISION
Wichita Office



Field Services

Field Services Administrator

Plugging

District Field Offices

Dist. #1 Dg. City

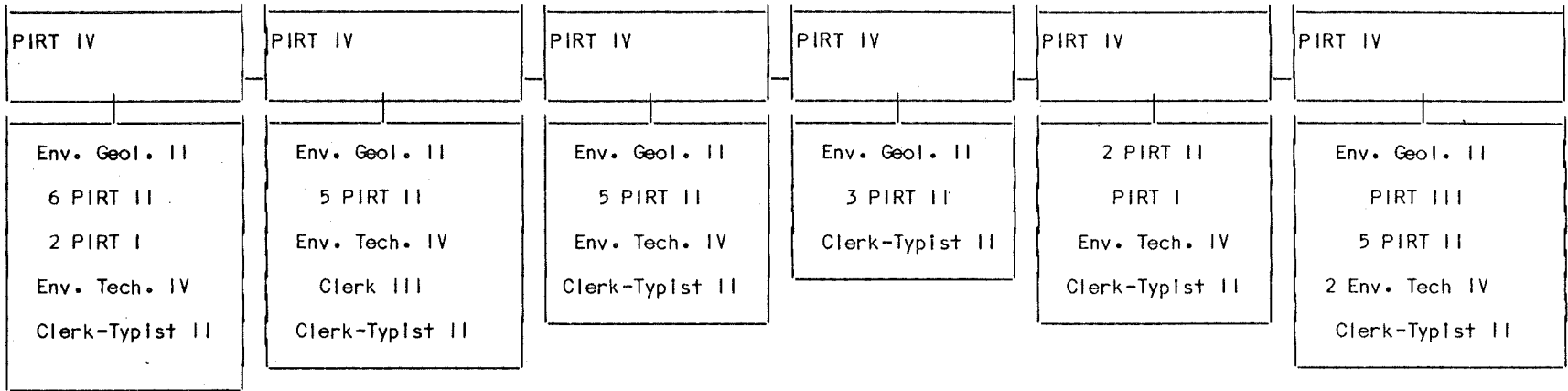
Dist. #2 Wichita

Dist. #3 Chanute

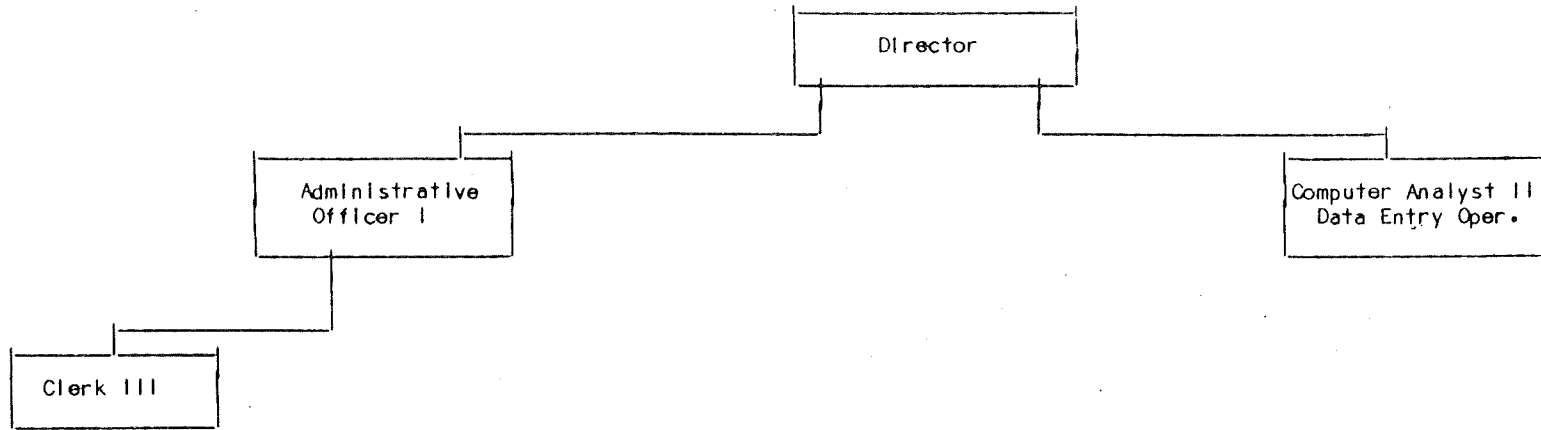
Dist. #4 Lawrence

Dist. #5 Salina

Dist. #6 Hays



Proposed Organizational Structure
Conservation Division
Topeka Office



Bureau Manager, and the Conservation Division Deputy Director. The plan shall be subject to review by the Director of both Divisions and ultimately by the Secretary of KDHE and the Chairman of the Commission. Since the Joint Program Task Force is responsible to the Chairman of the KCC and the Secretary of KDHE, who are in turn responsible to the Governor, it is the recommendation of the subcommittee that the Chairman and the Secretary propose an implementational strategy to the Governor for his approval or modification. The implementation of the reorganization plan of the Secretary and the Chairman, if approved by the Governor, would be accomplished through an order of executive reorganization.