

Approved

Stephen R. Cloud 3-12-86
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Stephen R. Cloud at
Chairperson

9:07 a.m./p.m. on March 6, 1986 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Carolyn Rampey - Legislative Research Dept.
Avis Swartzman - Revisor

Conferees appearing before the committee:

George Barberich - Alternate Fuels, Inc., Arma, KS.
Nadine Martinez - Attorney, MLCRB
Joyce Stover, Executive Director, MLCRB
John Spurling, Member, MLCRB

The meeting of the House Governmental Organization Committee was called to order on March 6 at 9:07 a.m. by Representative Stephen R. Cloud, Chairman. Copies of the March 4 and 5 meetings were distributed. The Chairman asked members to read the minutes and be ready to act on them at the end of the meeting.

The hearing on HB 3040, concerning the Mined-Land Conservation and Reclamation Board, began. The Chairman introduced George Barberich, Alternate Fuels, Inc., Arma, KS, to give his testimony. Mr. Barberich told the committee that when there is a deficiency somewhere in the regulatory program, a 733 letter is written to the Governor stating that inspection and enforcement standards are not being met. Kansas is the only state where the 733 letter has been lifted. Kansas is, of course, a very small coal producing state as compared to the State of Pennsylvania, where the 733 letter has not been lifted. Mr. Barberich thinks the Board is doing a good job and would welcome the sunset review process.

The Committee was told that if the bill passes it would not abolish the Board, but would put it under the sunset law so when it comes up for the review process the role the Board plays would be looked into, as well as answer such questions as whether the Board is organized to the best possible advantage. There might be a way to increase its efficiency. This is the direction a review would take next session.

Nadine Martinez, Attorney for the MLCRB, stated the Board would not like to be sunsetted. She provided copies of 'The Director's Findings on the Status of the Kansas Permanent Regulatory Program' to the Committee. (See Attachment A) This report outlined the strengths and weaknesses of the Board, what is taking place now, what needs to be improved, and what is being done.

Joyce Stover, Executive Director, MLCRB, said the Board is made up of 14 members consisting of heads of state agencies such as Fish and Game, coal operators, employees of coal companies and representatives of the general public. The KCC has principle oversight, with the Chairman of the KCC serving also as the Chairman of the MLCRB. When a request for a permit comes before the Board the application is reviewed, the Board makes a determination and then takes the appropriate action. She mentioned the acronym AOC, Approximate Original Contour. This is a process by which the Board works with the land owner for the reclamation of the land.

Ms. Stover was asked if she felt the Board had all the tools it needed to correct its problems or does it need further oversight. She replied the Board is doing a good job now and is proud of its record. She invited the Committee to visit the Southeast Kansas area.

John Spurling, MLCRB member, stated that he had worked long and hard to get this law passed and he would not like to see it tampered with. The law he referred to was Federal Law 9587. He saw the land being devastated and fought to get this law passed. He also invited the Committee to visit the area. Mr. Furley described the Big Brutus shovel, which is now a museum. It is as tall as a 15 story building and when it was operational, took three men to operate. Many other statistics were cited. Mr. Furley gave the phone number 316-362-4232 as the number to arrange for a bus tour.

This concluded the hearing on HB 3040.

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.

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CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,
room 522-S, Statehouse, at 9:07 a.m./p.m. on Thursday, March 6, 1986

The Chairman directed the Committee's attention to HB 2700, the bill that would extend the Secretary and Department of Health and Environment eight years.

Representative Brown moved HB 2700 be recommended favorably for passage.
Representative Harder gave a second to the motion. The motion carried.

The Committee turned to HB 3041, concerning laboratory equipment fee funds for KDHE. Secretary Sabol made available a letter with the costs of laboratory services the Department provides. (See Attachment B)

Representative Sutter moved HB 3041 be recommended favorably for passage.
Representative Bowden gave a second to the motion. The motion carried.

The Committee took up HB 3040, putting the MLCRB under the provisions of the Kansas Sunset Law. Representative Roper moved HB 3040 be reported favorably for passage.
Representative Sughrue gave a second to the motion. The motion was defeated.

Discussion was held on what might possibly happen to the Board without this bill. Representative Roper moved to reconsider HB 3040. Representative Sughrue gave a second to the motion. The motion carried.

Options the Committee could take, the different choices it could make with respect to passage or defeat of the bill and the decision as to what role the Committee would play in the Board's future was deliberated. The bill was voted on and passed.

The Chairman asked for action on the minutes of March 4 and 5.

Representative Sutter moved the minutes of the March 4 and 5 meetings be approved.
Representative Walker gave a second of the motion. The motion carried.

The Chairman thanked the Committee for a good first half and adjourned the meeting at 9:58 a.m.



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

JAN 31 1986

Honorable John W. Carlin
Governor of Kansas
Topeka, Kansas 66612

Dear Governor Carlin:

On March 11, 1983, you were informed that the Office of Surface Mining Reclamation and Enforcement (OSMRE) had reason to believe that serious problems existed with regard to the State's administration of its permanent regulatory program governing surface coal mining and reclamation operations as approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The action in 1983 was initiated pursuant to 30 CFR 733.12(b) of the Federal regulations. At that time, problems were identified in the program areas of permitting, inspection and enforcement, administrative procedures and records, civil penalty assessments, bond release procedures, and staffing.

In response to OSMRE's letter, the State expressed its desire to maintain primacy and correct any problems that were identified. Since then, the State has worked diligently to correct those problems and we have been encouraged by the progress Kansas has made. The State has allocated additional staff resources and funding for the implementation of the Kansas regulatory program. The Mined Land Conservation and Reclamation Board (MLCRB) has developed a manual and procedures for preparing, reviewing, and tracking permit applications. The State has revised its inspection system and improved its inspection reports. The MLCRB has reviewed all permits for completeness, and is requiring operators to supply the data necessary for technically adequate permits. Kansas is following its bond release procedures and has taken steps to improve its civil penalty assessment procedures.

OSMRE will continue to work with the State on program areas as necessary. This is especially important until the State's permitting staff gains additional experience.

We appreciate the efforts of Mr. Michael Lennen, Chairman of the Kansas Corporation Commission, Ms. Joyce Stover, Executive Director, Mined Land Conservation and Reclamation Board, and your office over the last two years to strengthen the program. Congress clearly intended for the

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Attachment A

Honorable John W. Carlin

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States to regulate the surface coal mining and reclamation operations within their borders. With the State's continued commitment, Kansas will be able to properly administer the program as Congress intended.

Thank you for your cooperation in this effort.

Sincerely,

~~Handwritten~~ JED CHRISTENSEN

~~Handwritten~~ Director

Enclosure

cc: Michael Lennen, KCC
Joyce Stover, MLCRB

4310-05-11

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Director's Findings on the Status of Kansas'

Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM),
Interior.

ACTION: Final rule.

SUMMARY: On January 21, 1981, the State of Kansas received conditional approval of its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). All six conditions were removed on April 14, 1982, and full approval was granted. On March 11, 1983, the Director, OSM, notified the Governor of Kansas that OSM had reason to believe that serious problems existed and were adversely affecting the implementation of Kansas' approved regulatory program. After a public hearing and opportunity for public comment, the Director finds that while Kansas was experiencing some difficulty in adequately implementing certain aspects of its approved program, corrective measures have been initiated which will ensure that the Kansas program is implemented in accordance with the State program as approved by the Secretary of the Interior.

The action initiated under the provisions of 30 CFR Part 733 ~~are~~^{is} now being terminated. The Director, OSM, will continue to provide the State with assistance and guidance as necessary to ensure that the Kansas permanent regulatory program continues to be implemented as approved by the Secretary. OSM will monitor the State's actions through its ongoing oversight program.

This notice sets forth the Director's detailed findings regarding this action and the status of corrective actions initiated by the State of Kansas.

EFFECTIVE DATE: [Insert 30 days from date of publication.]

ADDRESSES: Copies of the Director's decision and the Administrative Record documents referenced in this notice are available for public inspection and copying during regular business hours at:

Office of Surface Mining, Room 5124, 1100 "L" Street, N.W.
Washington, D.C. 20240; Telephone: (202) 343-4855

Office of Surface Mining, Kansas City Field Office, Room 502,
1103 Grand Avenue, Kansas City, Missouri 64106; Telephone:
(816) 374-5527

Mined Land Conservation and Reclamation Board, 107 West 11th
Street, Pittsburg, Kansas; Telephone: (316) 231-8540

FOR FURTHER INFORMATION CONTACT:

Raymond Lowrie, Assistant Director, Western Field Operations
Office of Surface Mining, Suite 1702, Executive Tower Inn,
1405 Curtis Street, Denver, Colorado 80202;
Telephone: (303) 844-2459

William Kovacic, Director, Kansas City Field Office, Office of
Surface Mining, Room 502, 1103 Grand Avenue, Kansas City,
Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program to administer and enforce the permanent regulatory program under SICRA. All six of the conditions were removed on April 14, 1982.

On March 11, 1983, the Director, OSI notified the Governor of Kansas that he had reason to believe that the State, through the Mined Land Conservation and Reclamation Board (MLCRB or the Board) was not adequately implementing its approved program to regulate surface coal mining and reclamation operations (KS-247). The Board is a duly constituted agency under the direction of the Kansas State Corporation Commission (KSCC) which is designated to administer the regulatory program. The Chairman of the KSCC also serves as the Chairman of the

Board. The Board represents multiple interests, and its members include heads of State agencies, employees and operators of surface coal mines, and representatives from the general public. The Board's staff, headed by an Executive Director, implements the State program.

The Director, OSI, cited problems in Kansas' program implementation in several areas including 1) permitting, 2) inspection and enforcement, 3) administrative procedures and records, 4) civil penalty assessment, 5) bond release and 6) staffing. A more detailed account of the Director's concerns can be found in the May 31, 1983 Federal Register (48 FR 24073).

On April 14, 1983, the Governor responded to the Director's March 11, 1983 letter by providing assurances that Kansas would correct the deficiencies outlined in the Director's letter (KS-258).

On May 6, 1983, the State requested an informal conference with OSI under the provisions of 30 CFR 733.12(c) (KS-250). The Director agreed to Kansas' request, notified the public (48 FR 24073) and held an informal conference with Board officials and the KCC on June 16, 1983, in Pittsburg, Kansas. (See KS-254 for conference transcript).

At the informal conference, OSI requested that Kansas provide additional information on many of OSI's concerns. Kansas submitted additional written information on July 30, 1983 (KS-255), August 30, 1983 (KS-257), and September 30, 1983 (KS-259).

In August 1983, OSI's Annual Report on Kansas' Permanent Program was completed and submitted to Congress. The report contained an evaluation of the performance of the Kansas Mined Land Conservation and Reclamation Board in implementing its approved program for the period from April 1, 1982 to April 30, 1983 (KS-290).

A meeting was held between OSI and the State on November 10, 1983, to discuss OSI's concerns and the State's progress in resolving issues identified in the annual evaluation report. (KS-260)

On November 17, 1983, after evaluating Kansas' performance for the period of eight months from the time he wrote of his concerns to the Governor, the Director announced in the Federal Register (48 FR 52297) that he still had reason to believe that Kansas might not be adequately implementing its approved State program and scheduled a public hearing and public comment period (KS-262). In addition to announcement of the public hearing in the Federal Register, announcements were made in a newspaper of general circulation in the State of Kansas and in two newspapers serving population centers in the State's coal region. Also, copies of the Federal Register notice were made available to citizens having expressed an interest in the State's enforcement of its regulatory program (and whose names were available at OSI's Kansas City Field Office), all coal operators in the State, and environmental groups.

The Director's decision to hold a public hearing and solicit public comments was based on unresolved concerns in the following areas: permitting, inspection and enforcement, administrative procedures and records, civil penalty assessment, bond release and staffing. A more

detailed account of the Director's concerns regarding the status of Kansas' program can be found in the text of the announcement of the public hearing (48 FR 52297).

On December 16, 1983, OSI conducted a public hearing in Topeka, Kansas regarding the status of the Kansas program. In addition to presenting testimony at the hearing, the KCC and the Board submitted to OSI additional information concerning issues raised previously by OSI (KS-264, 279, 281, and 283). Also, during the course of the hearing, OSI requested that the State provide additional information addressing many of OSI's concerns. The comment period closed December 30, 1983. A copy of the transcript of the public hearing was placed in the Administrative Record (KS-263).

After December 30, 1983, OSI received additional material addressing the status of the Kansas permanent regulatory program. This material consisted of information submitted by the State, meeting notes, telephone conversation records and several documents generated by OSI. The additional material was included in the Administrative Record (KS-267 through KS-319). Therefore, OSI reopened the comment period for an additional 15 days, from April 30, 1984 to May 15, 1984, to allow the public sufficient time to review and comment on the above documents (49 FR 18296).

During the period between November 17, 1983, and May 15, 1984, a number of comments were received from the public. All written comments have been made a part of the Administrative Record, either by inclusion in the transcript of the public hearing, or as written comments received by OSI.

on or before the close of the comment period. Also, all documents on file in the OSI Kansas City Field Office relating to the Kansas permanent regulatory program since March 11, 1983, obtained in the ordinary course of OSI business from the public, OSI Kansas City Field Office employees, the KCC, the Board or other government agencies, excluding internal memoranda (including telephone call notes, meeting notes, decisionmaking documents, and advice of counsel) have been placed in the Administrative Record.

On January 23, 1985, OSI's Annual Report on the Kansas Permanent Program for the period from April 1, 1983 to March 31, 1984 (KS-333) was completed and submitted to Congress. On March 25, 1985, OSI reopened the public comment period for an additional 30 days for comment on material received since the close of the April 30, 1984 comment period. No additional comments were received.

All Kansas Administrative Record documents from KS-247 (March 11, 1983) through KS-368 (December 19, 1985) and the 1985 Annual Report which includes information based on OSI findings concerning the actions taken by Kansas to implement its approved regulatory program during the period April 1, 1984 through April 30, 1985 are being considered in this decision.

II. DIRECTOR'S FINDINGS ON THE STATUS OF KANSAS' PERMANENT REGULATORY PROGRAM

On the basis of the record described above, the Director makes the following findings pursuant to Section ⁵²¹~~504~~ of SICRA and 30 CFR 733.12.

A. Administration

The Director's letter of March 11, 1983, indicated a concern that most of the problems with the Kansas program appeared to stem from a lack of commitment by the Board to enforce Kansas' program and the failure to develop and implement effective procedures and practices to accomplish this task.

Since the April 14, 1983 letter from the Governor in response to the Director's letter, Kansas has made several changes to improve the administration of the program. On May 17, 1983, the Governor appointed a new Chairman of the KSCC (who also serves as Chairman of the Board). A new Executive Director was hired effective December 8, 1983. The State has also sought and obtained additional resources to administer the approved program. Staffing is discussed in detail below under B.

Permitting/Bonding.

Other changes made by the Board to improve program administration include the development of revised memorandums of understanding (MOUs) with other State agencies for permit review assistance; the updating of regulations; revising and adjusting inspection procedures; the development and implementation of a civil penalty filing and tracking system; the development and implementation of tracking systems for citizen complaints, ten day notices, and bond activity; and the development of a permit manual for use by operators and procedures for permit review. These procedures and systems are further discussed under the appropriate subject headings below.

Summary Administration Finding

The Director finds that the management changes made in the KSCC and Board staff, the improvements made in existing administrative systems and the development of additional administrative systems evidence the State's resolution of the problems associated with this portion of the program.

B. Permitting/Bonding

1. Staffing: When the Secretary approved the Kansas program on January 21, 1981, he noted in the Federal Register approval document that the Kansas legislature had not yet approved the proposed staffing and budget plan for the Kansas regulatory authority. That plan called for a staffing level of 15 full-time positions, including approximately five full-time equivalent (FTE) permitting positions, to administer the State's regulatory program. The Secretary approved the program based on Kansas' assurance that, until such time as the legislature approved the staffing plan, the State would employ the following measures: (1) contract with qualified consulting firms to provide needed technical support; (2) utilize the expertise of other State agencies; and (3) enter

into an agreement with OSI under the Intergovernmental Personnel Act (IPA) whereby OSI would provide a full-time technically qualified person to Kansas.

In March 1983, there was only one technically trained person on the Kansas staff available part-time for permitting. In its March 11, 1983 letter, OSI indicated its concern that the Board's approved program staffing plan was not being met and that this might be a contributing factor to the problems associated with permit review. OSI noted that the lack of technical expertise was particularly evident in the areas of geology, engineering and agronomy. In the Director's letter, OSI required that the Board identify its plans to fill vacant technical positions needed to ensure adequate permit review. At the informal conference, the State indicated that legislative action would be necessary to authorize additional positions and funding.

Since January 1984, the Board has filled five new positions approved through legislative action. These positions included an engineer and reclamation technician with a soils and agronomy background. Individuals with these particular backgrounds are well suited to address the identified permitting deficiencies related to hydrology, structures, soils and revegetation. OSI's evaluation of Kansas' permitting activities during 1985 noted improvement in these areas and OSI believes that the improvement was related in part to the additional staff.

Kansas also informed OSI that an engineer was detailed to the regulatory authority from another State agency for a minimum of one year to work on the permitting manual. That individual will be working with the Kansas regulatory program staff in Topeka until Spring 1986.

The increase in staff resources devoted to the Kansas program during 1984 is reflected in the FY 85 Administrative and Enforcement Grant. The staff allocations are:

Regulatory	7.75 FTE (Full Time Equivalent)
Loaned Engineer (Permitting)	1.00 FTE
AL	<u>5.25 FTE</u>
TOTAL	14.00 FTE

The 7.75 FTE for the regulatory program includes 2.31 FTE for the permitting function, or 3.31 FTE when the loaned engineer is included.

In the past, because of the lack of technical expertise the Board's staff was responsible only for determining if permit applications were complete, relying upon ten State agencies holding memorandums of understanding (MOU) with the MLCRB to determine the technical adequacy of an application. Seven of these State agencies are represented by members on the Board. These Board members were to act as liaison between their respective agencies and the Board to ensure that interagency review of permit applications was conducted and to be available for a final review when the Board takes action on permit applications. Under the MOUs in existence prior to January 1, 1985, the necessary technical

review, and interdisciplinary review of permit applications was not conducted. Only four of the ten State agencies' responses on technical adequacy could be documented in MLCRB's permit files during OSI's 1983-84 oversight evaluation. A review of these responses showed little evidence that a substantive technical review in those agencies was conducted.

The Executive Director initiated action to revise and strengthen the MOUs. These MOUs have been updated to require that cooperating agencies provide information necessary for the MLCRB to make its written findings. The Board has discontinued three of the MOUs. They were with the State Energy Office, State Department of Economic Development and the State Biological Survey. The Board added one MOU by entering into an agreement with the State Fire Marshal. The eight MOUs currently in effect are between the MLCRB and the State Fish and Game Commission, State Division of Water Resources, State Department of Health and Environment, State Geological Survey, State Historical Society, State Water Office, State Conservation Commission, and State Fire Marshal.

2. Permit Processing: In its March 11, 1983 letter to the Governor, OSI noted that the Board was not conducting adequate completeness and technical reviews of the permit applications and was not preparing adequate written findings. Kansas had no detailed procedures for permit review and had not been able to issue proper permits as required by State and Federal laws and regulations. This was evident by the technical deficiencies identified in the approved permits reviewed by OSI.

As a result of a preliminary review conducted by OSM during December 1983, of two permits issued on June 9, 1983, and October 13, 1983, OSM found that in many instances the technical documentation in the applications did not support the written findings. In addition, OSM found that major technical inadequacies existed in areas of vegetation, prime farmland, hydrology, fish and wildlife, and soils.

The oversight review of Kansas' permitting process conducted by OSM as part of the 1984 oversight review conducted during February 1984 (KS-316), confirmed OSM's previous findings and indicated continued inadequate technical reviews and analyses of permit applications. The permits reviewed by OSM were found to be incomplete, with technical deficiencies similar to those identified during the previous OSM oversight review conducted in February 1983 and the preliminary review conducted in December 1983. The deficiencies were generally the result of a lack of descriptive information in the permit application. OSM found the following permitting problems based on re-review of the three previously issued permits:

- o Approved permits on file were not complete and did not contain information required by the approved State program.
- o Some application requirements were either inadequately addressed, or were based on unrepresentative data. The Board's written findings, when based on this inadequate information, were not accurate. Without the required descriptive baseline information the MLCRB's staff could not properly assess the merits of the reclamation plan. The baseline deficiencies

identified in the permits reviewed dealt with soils; prime farmland, vegetation, hydrology, and fish and wildlife, and taken together indicated a lack of adequate interdisciplinary review prior to permit approval.

- o As a result of technical deficiencies, the permits reviewed did not correlate the operation plan to the reclamation plan so as to prevent or mitigate adverse environmental effects.

- o While there was evidence that the MLCRB was processing coal exploration notices, there was not sufficient documentation in the files to assess how the notices were being processed. Separate files were not maintained for coal exploration notices. The MLCRB had not required companies to submit the necessary information as required by Kansas regulations. There was no documentation indicating that the MLCRB considered the amount of proposed disturbance during exploration activities.

The Board, in response to a request to identify its procedures for technical review and for preparing written findings on applications, submitted a letter dated September 30, 1983, (KS-259) which explained the permit review process, included a detailed application review checklist used to determine completeness, and outlined assignments for staff responsible for application review. The State's response also included flow charts that described the review process for coal exploration, experimental practices applications and lands unsuitable for mining petitions.

Kansas developed a manual for preparing, reviewing and tracking permits. The manual was completed in May 1985. The State has begun to use the manual for permit application preparation and completeness review. In December 1984 the MLCRB approved proposed regulations designed to clarify and strengthen permit and bonding requirements and comply with Federal regulations. The proposed regulations were approved by OSM (50 FR 47216) on November 15, 1985.

Since May 1984 and at OSM's request, Kansas has re-reviewed three previously issued permits for technical adequacy. The coal operators involved have been advised of permit deficiencies found during the review and were given until March 31, 1985, to correct them. The State has received and is currently reviewing follow-up data received from two of the three operators. The remaining operator is collecting the additional information required by the State.

The MLCRB approved one permit application during the 1985 evaluation period of April 1, 1984 through April 30, 1985. OSM reviewed the permit application in conjunction with a review of MLCRB's exploration approvals, permit revision approvals, and newly adopted permit review procedures. The results of that review identified improvement in MLCRB's handling of exploration applications, prime farmland determinations, and fish and wildlife determinations; however, the permit area was small and did not provide sufficient basis for OSM to fully evaluate Kansas' permitting performance in all technical areas. In addition, separate exploration permit files have been established and are now acceptable.

OSM has re-examined administrative deficiencies identified in previous oversight reports. The State has either corrected those deficiencies or taken steps to correct them. Kansas has taken positive action to closely monitor the review process for accuracy, compliance, and quality assurance. As previously mentioned, new memorandums of understanding have been developed for all State support agencies currently involved in the permit review process to improve MLCRB permitting operations. A new permit application manual has been developed and put into effect which will improve the quality of initial permit application submissions, and enhance the review process.

3. Review of Existing Permits: The March 11, 1983 letter requested that Kansas provide to OSM a summary of the status of all permit approval actions taken since January 21, 1981, and a schedule for a technical review of those permits, including a timetable for revisions necessary to bring the permits into compliance with Kansas regulations.

In 1983, Kansas had a total of 23 permanent program permits of which 17 were active and six were inactive, as well as inactive interim program permits. Since November 1983, Kansas has reviewed 16 of the 17 active permits for completeness. The remaining permit is scheduled for review in early 1986. The permittees have been notified by the State of permit deficiencies and have been advised to provide necessary additional information. The State has received much of the required information and is currently reviewing the follow-up data submitted by the permittees.

As a component of the current technical assistance program, representatives of the State of Kansas, the OSM Western Technical Center, and the Kansas City Field Office analyzed those permits previously scheduled for a completeness review to determine the present need for complete technical reviews.

As a result of the above effort a specific review was established for each permit still being actively mined and/or reclaimed. The technical review will concentrate on those deficiencies which could have a negative environmental impact.

In a letter dated November 27, 1985 (KS-366), Kansas agreed to re-review for technical adequacy 10 current permits. These 10 permanent program permits are for 4 operations actively mining in Kansas and for 1 company that has recently filed for Chapter 11 proceedings^e in Federal Bankruptcy Court. If any permit deficiencies are identified, written notification of the deficiencies in the form of a Board Order will be provided to operators pursuant to the authority of the Board to review and require reasonable revision or modification of permit provisions. The order will contain a definite date for operator response which will vary depending upon the types of deficiencies which were cited.

If a timely response is not filed, absent a good faith justification, the operator will be issued a notice of violation pursuant to K.A.R. 47-15-1a for failure to comply with the State act, ~~its rules and regulations, etc.~~ and 15 day deadline for compliance will be set. Kansas has committed to have all deficiencies properly addressed by the end of calendar year 1986.

4. Bond Release: In its March 11, 1983 letter, OSM expressed concern that the Board was releasing performance bonds for operations that did not meet the required performance standards. OSM requested that the Board provide procedures for releasing performance bonds including documentation showing that all performance standards have been met, and provide assurances that no bonds will be released prematurely.

Kansas assured OSM by letter dated August 30, 1983, of the Board's policy to follow the requirements of Kansas regulation 47-8-9, incorporating 30 CFR 807.11 (May 8, 1980) in processing interim as well as permanent program bond release requests. This assurance satisfied OSM's request. The MLCRB did not release any interim program bonds during the 1984 oversight period. During the 1985 evaluation period, the MLCRB approved partial bond releases on two permanent program permits and two interim permits. OSM inspected one operation where a partial permanent program bond was released and found that all performance standards were met and release was made properly. OSM has held specific discussions with Kansas concerning requirements for interim permit bond releases and further discussions and joint field evaluations are planned to insure continued adequate releases.

Summary of Permitting/Bonding Findings:

In his letter of March 1983, the Director had found that the technical adequacy of the permits the Board has issued and the completeness of the information in the applications was generally inadequate. The Board had failed to adequately reevaluate existing deficient permits for technical

adequacy and require appropriate modifications. The Director now finds that the State has shown the capability to correct these errors by conducting reviews of the active permits, requiring additional information from permittees, increasing its permitting staff and realigning existing responsibilities to address the previously identified permitting deficiencies.

The Director also finds that the State has made progress in improving its permit review process, most notably by development of an improved permit review system and a permit preparation and review manual. The Director finds that the quality of the Board's review for technical adequacy, analysis of technical components supporting written findings, and timeliness of reviewing existing permanent program permits, has improved. Therefore, the Director finds that Kansas has demonstrated its capability to implement, administer, maintain, and enforce the permitting requirements of the approved program and has corrected or is in the process of correcting previously identified deficiencies.

OSM will continue to provide assistance to ensure that Kansas continues to implement its permitting responsibilities in accordance with its approved program. OSM will continue to monitor the Kansas permitting program through oversight and will reevaluate the need for assistance periodically.

Bond Release

The Director finds that Kansas has identified procedures for processing bond release requests and provided assurances that they will be followed. The Director has concluded that although there has been relatively little recent bond release activity with which to judge compliance, the State has demonstrated its capability to meet bond release requirements.

C. Inspection and Enforcement

1. Inspection Frequency and Completeness of Inspections: In its March 11, 1983 letter, OSM expressed concern that, while State inspection reports indicated that the State appeared to be meeting and even exceeding the required frequency for inspections, such a high frequency level could mean that the quality of the inspections was being compromised or the number of inspections was being improperly calculated. The State program requires an average of one complete inspection per calendar quarter and an average of one partial inspection per month. A complete inspection can substitute for one of the partial inspections. Thus, the program effectively requires four complete and eight partial inspections per year (1 complete and 2 partial inspection per quarter) on each inspectable unit. A complete inspection is an on-site review of compliance with all permit conditions and program requirements. A partial inspection is a review of compliance with some of the program requirements.

During the first year of primacy, Kansas reported that it had conducted 733 complete inspections (344 were required) and thus had exceeded its mandated inspection frequency. However, OSM found that the number of the complete inspections being reported had been improperly "double counted" by the State. Kansas used an inspection system based on inspector specialty in which each of two State inspectors reviewed different performance standards on a particular site at the same or different times. Each of these inspections was counted and reported by the State as a "complete" inspection. OSM secured a commitment from Kansas to correct the practice of double-counting complete inspections as of December 1, 1983. The Executive Director of the MLCRB agreed to require the two inspectors to inspect the same site on the same date, or as near the same date as possible.

Following the agreement to resolve this problem, OSM recalculated Kansas' inspection frequency since March 31, 1983, to eliminate the double-counting and present a more accurate summary of Kansas' complete inspection frequency. Only those cases in which both inspectors inspected the same site within 30 days were counted as a complete inspection.

The number of inspectable units in Kansas ranged from 68 in April-June 1983 to 79 in January-March 1984. Calculated by calendar quarter, the frequency of Kansas' complete inspections showed a steady increase in frequency from a low of 59 percent during April-June 1983 to a high of 84 percent during January-March 1984. This increase indicates a general

level of improvement. However, when inspection frequency was calculated by individual inspectable units, 46 of the inspectable units, or over 50 percent, did not receive the required number of complete inspections during the year.

During January-March 1984, OSI found that of the 79 inspectable units, 66 units received a complete inspection for an inspection frequency of 84%. The remaining 13 units received only one of the two required partial inspections and, therefore, were not counted as receiving a complete inspection. OSI found that the average time between the two site visits required for a complete inspection was an acceptable 10.3 days.

Kansas previously exceeded the required number of partial inspections. The approved program requires eight partial inspections per inspectable unit per year. Kansas conducted an average of 15.7 partial inspections per unit from April 1, 1983 through March 31, 1984, which is almost double the required frequency. This excess of partial inspections and shortage of complete inspections suggested that Kansas was not properly allocating its inspection resources.

On September 1, 1984, the Kansas Director instituted a completely revised inspection system. One inspector is now responsible for conducting all aspects of a complete inspection on a mine site. Kansas also revised the way it counts its inspectable units. By eliminating the counting of permit increments as separate inspectable units, the number of inspectable units was decreased from a high of 83 in 1984 to 50. The new inspection system has eliminated time-consuming double inspections, reduced paperwork, and has improved the quality of complete inspections.

Since the initiation of the new inspection procedure, Kansas has maintained an inspection frequency of at least one inspection per inspectable unit each month. During the period of September 1, 1984 through April 30, 1985, Kansas' inspectors conducted the required number of complete and partial inspections on 100 percent of the inspectable units for both interim and permanent program permit areas. There were no units that lacked the required number of inspections.

2. Inspection Reports: As noted in the Director's March 11, 1983 letter, during the 1983 oversight review, OS1 found that of 132 inspection reports reviewed, only four contained sufficient information to identify the report as that of a complete inspection. Conditions of the permit area and compliance with applicable performance standards were generally not addressed. These deficiencies continued from April through November 1983. No improvements were noted in the Kansas inspection reports until December 1983, when Kansas developed two new inspection report formats, the "inspection report" and the "hydrologic report".

OS1 reviewed from a total of 690 Kansas inspection reports a sample of 49 inspection reports and 49 hydrology reports written from January through May 1984. The reports taken together constituted 49 complete inspections. The checklists included on both inspection report forms cover all the performance standards required to be reviewed during complete inspections. Compared to the situation which existed prior to December 1983, Kansas made improvements in preparing complete inspection reports. During the sample review OS1 found that the checklist was completed on 98 percent of the reports. The narrative section of the

report was considered adequate in 71 percent of the reports. The narratives that were found to be deficient lacked complete descriptions of mining or reclamation activities. Of the sample, 98 percent of the complete inspection reports did, however, contain sufficient information to identify the report as that of a complete inspection. A review of all 137 complete inspection reports submitted to OSM from September 1, 1984 through March 31, 1985 found that 100 percent of the checklists were completed and 98 percent of the narratives described mine site conditions adequately to identify the report as that of a complete inspection. Inspection reports were adequate to support any citations that were issued as a result of the inspector's findings. The improvements noted in complete inspection reports indicate that Kansas has corrected inspection report deficiencies identified by the Director.

3. Enforcement During Field Inspection: On March 11, 1983, OSM notified Kansas that State inspectors had generally failed to take appropriate enforcement actions when violations were observed, and that OSM oversight inspections resulted in the discovery of an inordinate number of observed violations that were not cited by Kansas inspectors.

In response to OSM concerns, the MLCRB Executive Director issued a directive to Kansas inspectors on September 29, 1983, stating that, while past policy regarding issuance of notices of violation (NOV) has been less stringent than the regulations require, an effort must be initiated to ensure that compliance with the regulations is carried out.

In September 1983, Kansas requested assistance from OSM for training to improve the level of inspector proficiency. The training was provided in October 1983. Major topics included in the training were 1) inspection process, 2) permit review, 3) on-site inspection, 4) haul roads, 5) topsoil, 6) revegetation, 7) blasting, 8) enforcement procedures, and 9) special categories of mining.

During the 1984 oversight period, OSM found that the State cited violations at approximately 50 percent of the rate that OSM observed violations. This was an improvement over previous results, but Kansas inspectors still did not cite all observed violations.

A review of all 27 NOVs issued by the State during the 1985 review period indicated that Kansas inspectors are citing violations at a rate which is approximately 80 percent of the rate that OSM observed violations in Kansas. Due to the low number of ten-day notices (5) issued in Kansas as a result of statistical sample inspections (SSI), OSM finds that Kansas is making a diligent effort to cite violations observed during inspections.

Out of the 65 SSIs conducted by OSM during the review period, 22 were conducted jointly with State inspectors. No TDNs were issued during joint inspections; the State issued 2 NOVs during the same inspections. No significant difference was noted in the issuance of enforcement actions by the State during joint or non-joint inspections.

The reduction in the total number of enforcement actions taken since the last review period (68 vs 28), along with a corresponding decrease in the TDNs issued by OSI (17 vs 11), and an increase in the rate at which Kansas cites violations indicates that the level of compliance by Kansas operators has increased. This is a reflection of the State's improved enforcement program.

Timeliness of issuing enforcement actions is reviewed by OSI to ensure prompt citation of violations. Of the 62 NOVs issued by Kansas in the 12 months following the 30 CFR 733 notification, OSI found that 50 NOVs were issued as the result of an on-site inspection. The other 12 NOVs were issued for the permittee's failure to submit required designs or water monitoring reports. No on-site inspection was required prior to issuance of these NOVs. A review of the 50 NOVs indicated that 92 percent, or 46 out of 50 were issued within two days and that the longest period of time taken for issuance of an NOV was seven days. Eight NOVs were issued on the same day that the violation was observed. The average NOV issuance period was 1.7 days. During the 1985 review period, OSI reviewed 28 State enforcement actions to determine the number of days required to issue a NOV or CO following an inspection. The State issued 71 percent of all enforcement actions on the same day as the inspection. The average enforcement issuance period is 0.8 days which is an improvement over the 1.7 days reported in the first annual review. OSI finds that timeliness of issuing NOVs is no longer a problem in Kansas.

4. Ten-Day Notices:

a. Timeliness of Response: In its March 11, 1983 letter, OSM stated that while Kansas had responded promptly to five of seven ten-day notices (TDN) issued by OSM, the State generally did not respond appropriately to the specific problems and issues raised in the TDN. When the State failed to properly address OSM's concerns, OSM conducted follow-up inspections or requested additional information from the State to resolve the issues.

During the period April 1, 1983 - March 31, 1984, OSM issued 17 TDNs to Kansas citing a total of 31 violations. Timely responses were received on 12 of 17 TDNs or 71 percent. Of the five TDN responses not received by OSM within the required 10 day period, the longest period before a response was received was 14 days. The average time for all TDN responses was 8 days. From April 1, 1984 through April 30, 1985, Kansas responded within the required period on 9 out of 11 TDNs, with an average response time of 9 days. OSM does not consider the timeliness^s of response to TDNs by Kansas to be a problem at this time.

b. Appropriateness of Response: In the 12 months following the 30 CFR 733 notification, Kansas responded appropriately to 52 percent or 16 out of 31 violations noted in OSM's 17 TDNs. The remaining 15 responses were judged to be inappropriate. OSM found that in all 15 of the inappropriate responses, Kansas failed to take an enforcement action.

During the period of April 1, 1984 to March 31, 1985, Kansas responded appropriately to 8 out of 11 TDNs issued by OSM. The three inappropriate responses concerned premature bond releases which occurred early in 1983 and do not reflect current MLCRB actions. No evidence of delayed inspection by Kansas was identified. OSM finds that Kansas is now more responsive in enforcing its approved program when compared to the period prior to April 1983. OSM will continue to monitor progress in this area through program oversight activities.

5. Citizen Complaints: Prior to the 30 CFR 733 action, OSM found that Kansas did not respond appropriately to citizen complaints. Specifically, OSM found that the State was not notifying the citizen of (1) its determination or action with respect to the citizen's allegation, or (2) the right to appeal its action or inaction. Additionally, OSM found that the State did not address in its report the specific allegations identified by the citizen.

From December 31, 1983 through March 31, 1984, Kansas received a total of five citizen complaints, four of which were in writing. OSM reviewed all five citizen complaints and found that Kansas initiated an investigation within two days of receipt of the complaints. The State found no violations upon investigation and, therefore, took no enforcement actions. OSM found that the State's documentation of its investigations was adequate to support its decision in all five cases. Kansas responded in writing to four of the five citizens within the approved time period, and the fifth response was only one day beyond the approved time period. OSM found that on four of the five complaints, citizens were not advised of the right to appeal the State's action, but

when this was brought to the attention of the Executive Director, corrections in procedures were made immediately and resulted in the fifth complainant being properly advised. The State developed and submitted a copy to OSI of its citizen complaint tracking log. OSI reviewed this system and concluded that it is adequate to identify, process and track citizen complaints. During the period April 1, 1984 through March 31, 1985, Kansas received 4 oral citizen complaints and 6 written citizen complaints. Three of the oral complaints were later received in writing. The State investigated and responded to all the citizen complaints it received.

OSI no longer considers citizen complaint procedures and investigations to be a problem in Kansas. The Director finds that Kansas has continued to use its system to properly track and respond to citizen's complaints. OSI will continue to monitor the State's effort through the annual oversight process.

Summary Inspection and Enforcement Findings

The Director finds that the Board has met the required frequency for complete and partial inspections and has demonstrated the ability and commitment to continue this practice.

The Director also finds that the number of enforcement actions taken by Kansas has risen compared to the 12-month period prior to the 30 CFR 733 notice and that the percentage of uncited violations observed by OSI has significantly decreased. Kansas' commitment to enforcing its approved regulatory program, hiring of additional staff, and improvement in its

responses to OSI's ten-day notices, particularly since October 1983, indicate that Kansas' inspection and enforcement program is being implemented in a manner consistent with the provisions of the approved Kansas permanent regulatory program.

D. Civil Penalty Assessment:

Prior to initiation of the 30 CFR 733 action, Kansas had not developed a civil penalty filing and tracking system and failed in virtually every aspect to implement its approved civil penalty assessment process. Kansas had not sent proposed assessments to operators within the required timeframe, had not documented reasons for specific point assignments, routinely and inappropriately waived the point system and issued assessments without using methods approved in its program. Kansas also conducted assessment conferences in a manner inconsistent with its established guidelines, and failed to afford an operator the opportunity to request an informal review.

1. Review for Assessment:

Prior to initiation of the 30 CFR 733 action, OSI found that the MLCRB did not review each notice of violation in accordance with assessment procedures outlined in the approved regulatory program. Of the 29 violations cited, seven were not reviewed for penalty assessment.

OSM reviewed five penalty assessments and associated documents during September 1983. That review indicated that Kansas was not following its approved procedures for penalty assessments. At Kansas' request, OSM provided an assessment training course on October 12, 1983. OSM found during reviews conducted in February and April of 1984 that Kansas had improved its method for assessment of points through the proper utilization of the assessment criteria.

A total of 62 violations were cited by Kansas during the period April 1, 1983 through March 31, 1984. Two of the NOV's were later vacated, leaving 60 violations which required assessment. Kansas evaluated all of these violations for assessment and 44 (73%) were assessed a civil penalty. The remaining 16 violations were not assessed a civil penalty because they were assigned 30 points or less and a penalty was discretionary.

A total of 28 violations were cited by Kansas during the period April 1, 1984 through March 31, 1985. Four violations were vacated. Penalties were reviewed and proposed by the Board on 17 violations and the remaining seven were pending Board Review as of March 31, 1985. Of the 17 proposed penalties, 14 were for violations assessed 30 points or less and were waived under the Board's discretionary authority.

The review indicated that Kansas is following its approved procedures for penalty assessments and mandatory criteria are consistently considered. The Board is assessing all mandatory penalties.

2. Penalty Tracking and Filing System:

Prior to initiation of the 30 CFR 733 action, OSM found that Kansas had no system for tracking civil penalties. The information available was inadequate to provide a record of the assessment actions or to allow the Board to track penalties from the initial assessment through the appeal process to collection. Kansas requested assistance from OSM in addressing this problem. OSM provided on October 12, 1983, assessment training and assisted the State in reorganizing its civil penalty records and filing system. During January 1984, OSM reviewed Kansas' assessment files developed after completion of the assessment training and found that the improvement made to the assessment filing system was sufficient to allow the assessment process to be tracked. The filing and tracking system maintained by Kansas is current and complete for tracking and recording assessment actions. A review of all 28 violations during the 1985 evaluation period indicated adequate documentation of the calculations of penalty amounts and reasons for any adjustments or waiver of penalty assessments. Board assessment actions are documented and the operator is notified through the Board Orders.

Documentation of assessment actions was found to be adequate in the 1985 oversight report and Kansas continues using the prescribed system for record maintenance and documentation.

3. Proposed Assessment Notifications:

Prior to issuance of the 30 CFR 733 notice, OSM found that the Board failed to send proposed assessments to operators within the required 30 days of issuance of an enforcement action. Only 6 out of 28 (23%) enforcement actions were assessed within the required 30 days. Additionally, OSM found that operators received no explanation of the penalty calculation, copy of the assessment worksheet, or notification of their right to appeal.

OSM conducted a review of the State's proposed assessment notification procedures and found that not all notices of proposed assessments, which are in the form of Board Orders, were sent within the required 30-day period. Two problems were identified which contributed to the delay:

1. Assessments are proposed by the Board, which meets on a bi-monthly schedule (60 days).
2. After the Board meeting, six to eight weeks were needed to develop and send Board Orders to the mine operators.

OSM has met with both the legal and administrative staffs of Kansas to resolve the timeliness issue. The Board is currently considering certain delegation, to expedite assessment issuance. Consideration is also being given to a program change as part of the pending regulatory reform process.

Improvement in the timeliness of assessment notification has been noted. Recent Board Orders were sent within two weeks of the Board taking action. OSM will continue to monitor the State's assessment notification process through the oversight process. OSI has found that Kansas now routinely provides operators with an explanation of the penalty calculation, a copy of the assessment work sheet, and notification of their right to appeal.

Additionally, the average proposed penalty assessment increased from \$100 to over \$2,300. In the 12 months following the 30 CFR 733 notification, Kansas collected five civil penalties for a total of \$7,250. An additional 29 penalties were due for collection on two abandoned mine sites. Two collection actions were filed by Kansas and are pending a decision in district court for collection of \$104,200 in outstanding penalties.

4. Assessment Conferences:

Prior to the 30 CFR 733 notice, OSI found that Kansas' assessment conferences were conducted in a manner inconsistent with its established guidelines. The conference officer did not serve the person assessed with a notice of his action, including a worksheet, when the penalty was raised or lowered. The reasons for the conference officers' decisions were not documented.

From April 1, 1983 to May 31, 1984, Kansas held no assessment conferences and none were requested. One conference has been held since May 31, 1984. The position of the Board was sustained with no changes in the

penalty. A complete report was made including background findings and conclusions. The operator was notified of his right to appeal proposed assessments in accordance with the Kansas approved program. One assessment conference was held during the 1985 review period. It was scheduled and held within the 60 day time frame established in the Kansas program. OSM will continue to monitor the State's performance when assessment conferences are held.

Summary Civil Penalty Assessment Findings

The Director finds that the State has shown improvement in reviewing all violations for assessment, assessing penalties using the proper criteria and procedures, and collecting civil penalties. The Director finds that the timeliness of the entire assessment process will require constant effort to ensure that Kansas meets its required time constraints. Kansas has however, demonstrated the intent and capability to carry out the civil penalty portion of its approved program by: 1) attending assessment training, 2) instituting a tracking and filing system , 3) computing penalty points for each violation and order, 4) using a point formula in all proposed assessments , 5) verifying Board action in writing, 6) establishing conference procedures and 7) providing opportunity for administrative and judicial review.

III. DISPOSITION OF COMMENTS

During the public hearing and public comment periods, the Director received comments from the public, coal operators and government agencies. In arriving at his decision, the Director considered the comments received in response to the public comment periods, provided at the public hearing and all of the testimony heard and documents received as a result of the public hearing or received during the public comment period.

One commenter stated that his agency was satisfied with the Kansas Board's enforcement of the reclamation regulations. The commenter also stated that landowners with lands being mined in Labette County were also satisfied with the way their lands were reclaimed (KS-265). The Director has found that the State has taken numerous steps to improve its program implementation as noted in the Findings section of this notice.

A mine operator stated that it was largely OSM's fault for the "economic instability" in the coal marketplace. The commenter stated that Kansas coal mine operators attempted to comply with reclamation standards required by the State program and SMCRA while adjacent States were allowed to operate under "delinquent" reclamation standards, thus distorting coal prices. The commenter also stated that reclamation standards could be better met if the State administers the program. The commenter requested that OSM recognize the improvements made by Kansas in its program and that it be allowed to continue administering the program (KS-263, KS-267). Review by OSM during the period covered by this notice found that initially permits did not comply with State

regulations and that the State was failing to require permit deficiencies be corrected. The Director recognizes recent actions by Kansas to strengthen its program administration and correct permitting and inspection deficiencies. The Director believes that Kansas has taken action to address all identified program deficiencies.

A commenter, who is a landowner, stated that the MLCRB failed to obtain a bond for property he leased to an operator for use as a tipple. He asserted that failure to require the bond violated Kansas Statute (K.S.A. 49-406(a)) and resulted in his land being unreclaimed (KS-270). The Director agrees that the State acted improperly in failing to require bond on the tipple site. Kansas was operating under the interim program when the permit was issued. While Kansas' interim regulations required all land affected by mining operations be included in the permit and be bonded, the MLCRB improperly determined that bond was not required for the tipple. Kansas now requires that all tipples be permitted and bonded.

A commenter stated he and a number of other people were concerned about alleged water problems (flooding) resulting from State approved mining activities. The commenter was concerned about the capabilities of the MLCRB members and their conduct at Board meetings and recommended they be replaced. The commenter also alleged that blasting is not being controlled and that this results in homes being severely shaken. The commenter stated that the MLCRB has not and cannot enforce program requirements (KS-274). Kansas has revised and improved its permit review process to include an extensive review of the hydrologic consequences of mining in order to make the findings required under the

Kansas' approved program. The MLCRB staff is qualified and has nearly doubled in size since the 30 CFR 733 action was initiated . A new MLCRB Chairman and staff Director have also been appointed. Blasting activities are being monitored by the MLCRB and Kansas regulations are being enforced. The Director believes that Kansas has taken action to address the implementation problem cited by the commenter.

One commenter cited some of the findings contained in OSM's 1983 annual evaluation report in pointing out the State's failure to meet its regulatory responsibilities. The commenter cited problems with the regulatory program permits, bonding, inspection frequency and practices, failure to issue violation notices and administrative functions. The commenter alleged that Kansas' failure to meet its regulatory responsibilities has resulted in water quality problems, inadequate reclamation, inadequate public participation and response to citizen complaints (KS-275). The Director agrees that prior to his March 11, 1983 letter, the MLCRB was not adequately enforcing the provisions of the approved Kansas program. The 1983 annual evaluation report prepared by OSI identified several major deficiencies in the Kansas regulatory program including those described by the commenter. The 1984 OSI evaluation report identified generally the same problems noted in the previous year's report but also recognized major accomplishments on the part of the State to increase its staff, improve administrative functions, meet inspection frequency requirements and strengthen its enforcement effort. The 1985 OSI evaluation report indicates that

changes made by the MLCRB in the permitting program should improve the quality of permit applications and permit review. As detailed in the findings contained in Section II of this notice, the Director finds that Kansas has implemented changes to address all known program deficiencies.

One commenter, while supporting Kansas primacy stated that a direct cause of the State's problem in administering its program lies in the MLCRB's failure to properly understand, accept and follow its statutes and regulations. The commenter also stated the MLCRB lacked the staff and expertise needed to properly administer the regulatory and Abandoned Mine Land (AML) program. The commenter pointed out potential conflicts of interest that exist in the present composition of the MLCRB and in the MLCRB being a part of the Kansas Corporation Commission, an agency which regulates the utilities that purchase coal from operators regulated by the Board. The commenter also indicated potential conflict in the use of a KCC employee as a hearing officer (KS-263, KS-281). The Director agrees with the commenter that at the time of the 30 CFR 733 letter the MLCRB was not adequately administering its program. As noted in the responses to previous comments, the Director believes that Kansas has initiated action to address all known program deficiencies.

Another commenter alleged a misguided attempt on the part of the OS1 to over-regulate the coal industry in Kansas. The commenter stated that both OS1 and the State need to "adopt a more common sense attitude in implementing more reasonable reclamation practices in Kansas" (KS-263).

The Director disagrees with the comment that OSM is overregulating the coal industry in Kansas. SMCRA includes provisions to protect society and the environment from the adverse effects of coal mining operations, and establishes minimum national standards for regulating the surface effects of coal mining. OSM has and will continue to ensure that States implement the provisions of the programs approved under SICRA.

IV. DIRECTOR'S DECISION

Having reviewed and considered all available information on the Board's implementation of the Kansas program, including the hearing record, OSM's oversight findings, public comments and all other contents of the administrative record in these proceedings, the Director has made the following determinations.

Kansas has corrected or initiated action to address problems identified by OSM in the State's implementation of its program. The Director has determined that the steps taken by Kansas to resolve the identified program deficiencies, including the addition of technical staff, the development of improved memorandums of understanding with supporting agencies, recent revisions of regulations, pending regulatory revisions, and operating procedures, as well as actions taken by the Kansas HLCRB to implement the approved program, demonstrate the State's intent and capability to administer its regulatory program as approved by the Secretary. For this reason, the Director is terminating the 30 CFR 733 action initiated on March 11, 1983.

To assure that the adverse effects of surface mining are controlled as required under SICRA and the State program, OSI will continue its oversight of the Kansas regulatory program and provide assistance as necessary to the Kansas MLCRB.

/s/ Jed D. Christensen

Date: 1-31-86

Director, Office of Surface Mining

State of Kansas . . . John Carlin, Governor

DEPARTMENT OF HEALTH AND ENVIRONMENT

Barbara J. Sabol, Secretary

Forbes Field
Topeka, Kansas 66620
913-862-9360



March 6, 1986

The Honorable John F. Sutter
House of Representatives
Room 272-W, State Capitol
Topeka, Kansas 66612

Dear Representative Sutter:

Please find attached a summary of fees collected by the KDHE Office of Laboratories and Research for fiscal year 1985. Also attached is a copy of K.A.R. 28-14-1 which authorizes these fees.

Should you have any further questions about our laboratory related fees, please contact me at your convenience at 862-9360 ext. 587.

Sincerely,

Robert Epps, Director
Administrative and Support Services

RE:asc

cc: Sec. Barbara Sabol
Dr. Roger Carlson
Rep. Stephen R. Cloud

thorized by K.S.A. 65-164, 65-165, 65-171d, effective Jan. 1, 1966.)

28-13-11. Applications for disposal well permits. Applications for permits for disposal wells shall be submitted in duplicate to the chief engineer for the board on forms obtainable from his office. Applicants shall supply such other information, plans and specifications as may be needed to adequately review the project. (Authorized by K.S.A. 65-164, 65-165, 65-171d; effective Jan. 1, 1966.)

Article 14.—COLLECTION AND ANALYSIS OF WATER; PUBLIC WATER SUPPLIES

28-14-1. Fees for analysis of samples from water supply systems and wastewater systems. All laboratory analyses conducted in the environmental laboratories of the department of health and environment for other than special samples requested by staff of the department shall require payment in accord with the following schedule of fees. Fees for any unusual analysis not shown in the schedule shall be based on costs of such analysis as determined by the department. (Authorized by K.S.A. 1978 Supp. 65-156, 65-166a; effective Jan. 1, 1966; amended, E-79-13, June 15, 1978; amended May 1, 1979.)

28-14-2. Schedule of fees. All public water supply systems submitting samples for analysis to the environmental laboratories of the department of health and environment in conformance with requirements of K.A.R. 28-15-25 shall pay the appropriate fee in advance of July first of each year to the division of environment, Topeka, Kansas 66620.

(a) Complete chemical analysis consisting of: \$45.00	
(1) Calcium	(13) Sulfate
(2) Magnesium	(14) Nitrate
(3) Sodium	(15) Fluoride
(4) Potassium	(16) pH
(5) Total hardness	(17) Turbidity
(6) Carbonate hardness	(18) Specific conductance
(7) Non-carbonate hardness	(19) Total dissolved solids
(8) Total alkalinity	(20) Phosphate
(9) Bicarbonate alkalinity	(21) Silica
(10) Carbonate	(22) Iron
(11) Bicarbonate	(23) Manganese
(12) Chloride	

(b) Complete heavy metals consisting of:	\$40.00
(1) Iron	(7) Copper
(2) Manganese	(8) Lead
(3) Arsenic	(9) Mercury
(4) Barium	(10) Selenium
(5) Cadmium	(11) Silver
(6) Chromium	(12) Zinc

(c) Partial chemical analysis consisting of:	\$30.00
(1) Calcium	(7) Nitrate
(2) Magnesium	(8) Fluoride
(3) Sodium	(9) Iron
(4) Total alkalinity	(10) Manganese
(5) Chloride	(11) Total Hardness
(6) Sulfate	

(d) Total hardness consisting of calcium and magnesium	\$7.00
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(e) Complete solids consisting of:	\$25.00
(1) Total solids	
(2) Total fixed solids	
(3) Total volatile solids	
(4) Total suspended solids	
(5) Fixed suspended solids	
(6) Volatile suspended solids	
(7) Total dissolved solids	
(8) Fixed dissolved solids	
(9) Volatile dissolved solids	

(f) Individual analysis:	
(1) Total suspended solids (fixed and volatile)	\$5.50
(2) Alkalinity and chloride	5.50
(3) Iron	6.50
(4) Manganese	6.50
(5) Sodium	5.50
(6) Sulfate	6.00
(7) Total phosphate	5.00
(8) Ortho-phosphate	5.00
(9) Nitrate	4.50
(10) Fluoride	4.50
(11) Five-day biochemical oxygen demand	15.00
(12) Chemical oxygen demand	7.50
(13) Phenol	30.00
(14) pH	4.00
(15) Ammonia nitrogen	5.00
(16) Mercury	10.00
(17) Arsenic	7.50
(18) Lead	7.50
(19) Selenium	7.50
(20) Other heavy metals	6.50 each
(21) Organic chemistry (screen for toxic levels of pesticides and herbicides)	175.00
(22) Total trihalomethanes, consisting of the total of chloroform, chloro dibromomethane, dichloro bromomethane and bromoform	30.00
(23) Coliform determination	7.00
(24) Radiation chemistry (screen for gross alpha and gross beta activity)	40.00
(g) Weekly coliform, pH and turbidity tests on swimming pool water:	
(1) Outdoor pools per season (sampling every week)	100.00

(2) Indoor pools per season (sampling every two weeks) 200.00

(Authorized by and implementing K.S.A. 65-156, 65-166a; effective Jan. 1, 1966; amended, E-79-13, June 15, 1978; amended May 1, 1979; amended May 1, 1982.)

28-1-1-3, 28-1-1-4. (Authorized by K.S.A. 1978 Supp. 65-156; effective Jan. 1, 1966; revoked, E-79-13, June 15, 1978; revoked May 1, 1979.)

Article 15.—APPLICATION FOR PERMITS; DOMESTIC WATER SUPPLY

28-15-1 to 28-15-10. (Authorized by K.S.A. 65-162, 65-163; effective Jan. 1, 1966; revoked May 1, 1982.)

28-15-11. Definitions. (a) "Public water supply system" means a system for delivery to the public of piped water for human consumption, if this system has at least ten (10) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. This term includes any source, treatment, storage or distribution facilities used in connection with the system.

(b) "Community water supply system" means a public water supply system which has at least ten (10) service connections used by year-round residents or regularly serves twenty-five (25) year-round residents.

(c) "Non-community water supply system" means a public water supply system which is not a community water supply system.

(d) "Department" means the Kansas department of health and environment.

(e) "Secretary" means the secretary of health and environment.

(f) "Laboratory tests" mean all bacteriological, chemical, physical or radiological tests made by either the departmental laboratory or by an approved laboratory on water samples which were submitted by the operator of a system to confirm the quality of the water.

(g) "Operating records and reports" mean the daily record of data connected with the operation of the system facilities which is compiled in a monthly report.

(h) "Sanitary survey" means an on-site appraisal of a public water supply system

for the purpose of evaluating the adequacy of the water source, facilities, equipment, operation and maintenance.

(i) "Approved laboratory" means a laboratory certified and approved by the Kansas department of health and environment to analyze water samples to determine compliance with maximum contaminant levels, or to perform other required analyses.

(j) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water supply system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system.

(k) "Distribution system" means the system of conduits and the appurtenances by which a water supply is distributed to consumers.

(l) "Turbidity" means the cloudy condition of water caused by the presence of finely suspended matter such as clay, silt, plankton, and microscopic organisms, resulting in the scattering and absorption of light rays. The level of turbidity is measured by use of a nephelometer which is a laboratory instrument containing photoelectric detectors with a readout device to indicate the intensity of scattered light. The higher the intensity of scattered light, the higher the turbidity. Turbidity is measured in nephelometric turbidity units (NTU). NTUs in the range of 1.0 to about 3.0 would appear visually clear, but above 5.0 would begin to appear visually cloudy. (Authorized by and implementing K.S.A. 65-171m; effective May 1, 1982.)

28-15-12. Reserved.

28-15-13. Standards for bacteriological, chemical, physical and radiological quality. (a) Maximum contaminant microbiological levels shall be as follows:

(1) When the membrane filter technique is used, the number of coliform bacteria shall not exceed:

(A) One (1) per one-hundred (100) milliliter as the arithmetic mean of all samples examined per sampling period;

(B) Four (4) per one-hundred (100) milliliter in more than one (1) sample when less than twenty (20) samples are examined per sampling period; or

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Laboratory Services and Research

Breakdown of Water and Sewage Fees
FY 85

K.S.A. 65-156, K.A.R. 28-14-1 and 28-14-2.

The fees listed in the fee schedule narrative are minimal charges for each item. Breakdown of the deposits to the general fund from each source are as follows:

1. Surface Water Source, \$517.	\$ 78,380.
2. Ground Water Source, \$250.	199,935.
3. System which Purchased Water, \$182.	29,120.
4. Non-Community Systems, \$186.	29,697.
5. Complete chemical, \$45.	900.
6. Complete Heavy Metals, \$40.	400.
7. Partial Chemical, \$30.	18,510.
8. Total Hardness, \$7.	35.
9. Complete Solids, \$25.	0.
10. Individual analysis, \$4. to \$15.	232.
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	\$ 357,209.