

Approved March 21, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

3:30 ~~am~~/p.m. on March 14, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Kenneth F. Kern, Executive Director, State Conservation Commission
Karl W. Mueldener, Kansas Department of Health and Environment
Douglas R. Henkle, President, Kansas Water Well Association
Francis Cox, Executive Director, Kansas Water Well Association
Wilbur Leonard, Committee of Kansas Farm Organizations
Charlene Stinard, Kansas Natural Resource Council, Kansas Rural
Center, Sierra Club, Kansas Wildlife Federation
Charles M. Dirck, Haysville, Kansas

The meeting was called to order by Chairman Dennis Spaniol.

Senate Bill 84 - Protection of riparian and wetland areas.

Raney Gililland of the legislative research staff gave a brief explanation of this bill, noting that it clarifies a section of the statutes dealing with conservation districts. In essence, it reenacts a section which was inadvertently omitted in legislation passed in 1988.

Kenneth Kern of the Conservation Commission told the committee that he had the rules and regulations prepared when he was notified that he lacked statutory authority because that portion of the law was removed in the 1988 session. He commented that this was debated in 1987 and passed both houses without any problem.

Senate Bill 121 - Civil enforcement of Kansas groundwater exploration and protection act.

Karl Mueldener spoke on behalf of the Department of Health and Environment, noting that the bill would require licensing of well drillers and establishment of construction requirements for water wells. It would give the Department the authority to pursue violations by attempting to gain compliance through administrative measures, then by civil measures. If all other attempts fail, the Department could then proceed with criminal charges. Attachment 1.

During discussion, Mr. Mueldener was asked if there might be some way to treat the areas that have sandpoints in a different manner. He replied that sandpoints are not really addressed in existing regulations, but technically now have to be handled as a variance. The Department still wants to know the legal location when one is put in and a basic description of how it is installed. A long term answer is to revise the state regulations on sandpoints. The water well regulations were revised in 1984 or 1985. Further discussion followed relative to sand point wells.

Doug Henkle, President of the Kansas Water Well Association, testified in support of Senate Bill 121. He noted that this bill would make

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S Statehouse, at 3:30 ~~a.m.~~/p.m. on March 14, 1989

enforcement of the Kansas Groundwater Exploration and Protection Act much less difficult, providing the incentive for everyone dealing with groundwater in Kansas to comply with the regulations. Attachment 2.

During discussion, Mr. Henkle suggested that an amendment to Senate Bill 121 to exempt sandpoints might be considered.

Francis Cox, Executive Director of the Kansas Water Well Association, spoke in favor of Senate Bill 121. He discussed the problem of enforcement of the Kansas Groundwater Exploration and Protection Act and felt that passage of this bill would improve the situation. Attachment 3.

Wilbur Leonard appeared on behalf of the Committee of Kansas Farm Organizations, speaking in support of Senate Bill 121. His group also felt that this bill would provide an improvement in enforcement of the Kansas Groundwater Exploration and Protection Act. Attachment 4.

Charlene Stinard represented the Kansas Natural Resource Council as well as the Kansas Rural Center, Kansas Chapter of the Sierra Club, Kansas Wildlife Federation and the Kansas Audubon Council. These organizations were strongly in support of Senate Bill 121 as a means of improving enforcement of the Kansas Groundwater Exploration and Protection Act. Attachment 5.

Discussion relative to water well contractors followed.

Charles Dirck, operator of A-Plus Plumbing & Well Service in Wichita, Kansas, spoke as an opponent of Senate Bill 121, commenting that it would be unenforceable in his area. He noted that he is a licensed water well driller in the State of Kansas, but he only works on sand point wells. He commented that he is for regulations, for the protection of water wells and for the protection of underground water. He felt that exempting sandpoints would defeat the purpose of the law. Attachment 6. Attached to Mr. Dirck's written testimony was an illustration comparing a shallow well with a deep well, 6a, and a copy of a letter he had addressed to Meredith E. Wilson, Department of Health and Environment on October 28, 1986, 6b.

Further discussion followed relative to addressing the sandpoint well question.

Attention was called to the minutes of February 27, 28, March 2 and 3 which had been distributed to committee members. There have been no objections to any previous minutes in this session and they stand approved.

The meeting was adjourned at 4:50 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held at 3:30 p.m. on March 16, 1989 in room 526-S.

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field

Topeka, Kansas 66620-0001

Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*
Gary K. Hulett, Ph.D., *Under Secretary*

Testimony presented to

House Energy and Natural Resource Committee

by

The Kansas Department of Health and Environment

Senate Bill 121

The Kansas Groundwater Exploration and Protection Act, K.S.A. 82a-1201 et seq., applies to construction, reconstruction, plugging or treating water wells in Kansas. The act essentially requires licensing of well drillers and establishment of construction requirements for water wells. The law's intent is basically protection of groundwater quality. This bill would authorize the State to enforce the act's provisions administratively, rather than only through the district court.

The Department's enforcement actions are now limited to license revocation or filing of civil enforcement actions or Class B misdemeanor charges in district court. These are our only actions regardless of how serious the violation may be. Many district attorneys do not view most violations to be serious enough for civil or criminal prosecution in district court. Therefore, the Department has difficulty getting civil criminal charges filed on individuals. In the few incidents where civil and criminal charges have been filed, the Department devoted a tremendous amount of time and manpower providing for investigation, documentation, the filing of legal documents with the court and providing for testimony when the action went to trial. In instances where a district attorney does not choose to prosecute a case, the violator will go unpunished and the violation will remain uncorrected.

As the water well industry realizes the State cannot actively enforce the act, violations will increase. Much of the industry already believe violators have an unfair competitive advantage over water well contractors who strive to meet all the regulatory requirements. Because of this, there appears to be an economic incentive to violate the act.

With the passage of this bill, the Department will have the authority to pursue violations in what we believe is a logical manner by first attempting to gain compliance through administrative measures, then

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through civil measures. If all other attempts to gain compliance have failed, the Department could then proceed with criminal charges.

This bill will improve compliance with the Kansas Groundwater Exploration and Protection Act by streamlining the enforcement process and thus helping to achieve the purpose of the act, which is to protect and preserve the groundwaters of the State through proper water well construction and abandonment procedures.

Testimony presented by: Karl W. Mueldener
Director, Bureau of Water Protection
March 14, 1989

STATEMENT OF DOUGLAS R. HENKLE
PRESIDENT - KANSAS WATER WELL ASSOCIATION
AND
WATER WELL CONTRACTOR/PUMP INSTALLER FROM GARDEN CITY
BEFORE THE
HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON
SENATE BILL NUMBER 121

MARCH 14, 1989

Chairman Spaniol and members of the Committee, I thank you for the opportunity to testify on Senate Bill Number 121. I am currently serving as president of the Kansas Water Well Association (KWWA) and the views I will present have the full support of the Board of Directors of that organization.

The purpose of the Kansas Ground Water Exploration and Protection Act, as stated in the act, is to provide for the exploration and protection of ground water through the licensing and regulation of water well contractors in Kansas and to protect the health and general welfare of the citizens of this state. It further states that in order to achieve these objectives, this act requires licensing of water well contractors and provides for the establishment of standards for well construction, reconstruction, treatment, and plugging. The board and general membership of the KWWA support the stated purpose and intent of the Kansas Ground Water Exploration and Protection act wholeheartedly.

One weakness we see in the act is it's enforcement. Prosecuting violators of the act is not high on the list of District Attorneys' priorities. We readily admit that protecting Kansas ground water is not on the same plane as prosecuting murders, rapists, and thieves, and understandably so. However, as the act now reads, the only means the Depart-

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ment of Health and Environment has to deal with violators of the act are to file class B misdemeanor charges and apply to the District Court for enforcement. These measures are often too severe for the actual violation, and in many cases, too slow to prevent ground water contamination from occurring. As a result, enforcement of the Kansas Ground Water Exploration and Protection Act is difficult to achieve, so most violators go unpunished, with no incentive to comply with the act. This puts those of us who follow the state regulations at a price disadvantage due to the additional cost of the time and materials required to meet current regulations.

A second, more serious, problem caused by the difficulty with which the act is enforced is, or eventually will be, experienced by not only the conscientious water well contractor and well owner but by all Kansans. That problem is ground water pollution. Water well owners and contractors alike, are interested in saving money but often times that savings comes at the expense of our state's clean ground water. It is always cheaper, in the short run, to leave out the 20' surface seal required to protect the aquifer from surface contaminants when a contractor is completing a well, or for the well owner to just throw a board and a cement block over an abandoned water well and walk away, rather than properly plugging the well in order to prevent aquifer contamination or personal injury. As the enforcement procedure of the Kansas Ground Water Exploration and Protection Act now reads, there is no incentive to comply with the act because enforcement of the act, in all but a few cases, is impractical. Senate Bill 121 would make enforcement much less difficult, and thus, much more practical, providing the incentive for everyone dealing with ground

water in Kansas to comply with the regulations that were enacted to protect our precious ground water.

I see our clean ground water being threatened in many different ways throughout Kansas and it greatly concerns me. I have a son who is interested in the water well drilling business. Our careful protection of clean ground water now will help to ensure that there will be clean ground water for his use and livelihood when he comes of age.

I thank you for your favorable consideration of Senate Bill 121 and I would be happy to try to answer any questions you might have.

I am Francis Cox from Clifton. I have spent my lifetime in the water well drilling and pump business. I am currently the executive director of the Kansas Water Well Association. I have close contact with most of the drillers in Kansas.

One of the most important, if not the most important goals of our Association is the protection of our ground water. The Kansas Groundwater Exploration and Protection Act contains the "Rules and Regulations" for constructing, reconstruction and servicing all water wells in Kansas. These requirements are very good. They need to be updated periodically to reflect new knowledge gained from experiences. The corrective measures and civil penalties section of the Act need to be changed to be more effective and efficient. We the drillers and pump installers are required to follow these laws. Not all drillers and pump installers do. Many of the violations of this Act threaten the quality of our ground water. Many of the violations in well construction and pump installation allow surface drainage and pollution to enter the ground water strata. Cleanup is very costly and in most cases not corrected.

The K.W.W.A. has educational seminars frequently to better educate anyone involved in the water well and pump industry to better inform our people of the proper ways, methods and importance of ground water protection. It is not required they attend these seminars, therefore those needing this information most don't attend. For those attending, the seminars are very helpful. The better informed the contractor is, the less violations there will be.

Anyone in violation of the "Rules and Regulations" should be required to correct the violations or be penalized. Recently a driller had been drilling without a Kansas drilling license, not following the proper requirements, and advertising as a licensed driller. With the present corrective process, it took two years to get anything done. Our state personal has more to do than spend a lot of time to correct each violator. With the passage of SB #121, corrective measures and /or civil penalties could be made in a short time and they can go ahead with their other important duties. There are similar cases when the K.D.H.E. was unable to bring the violator to court because the county district attorneys weren't interested. This is not fair to the contractor doing the job right as well as many times being a threat to the ground water protection.

If a contractor is penalized for violations or required to go back and correct the violations, word soon gets around. If contractors hear of fines being imposed on other contractors, they will study the laws and try harder to do it right. With the present enforcement structure, the drillers and pump installers don't have much to worry about being fined for violations, because it takes too long to bring it to trial.

I along with the Kansas Water Well Association would like to recommend the passage of SB #121. We feel this would help toward the protection of our ground water. This will not be a cure all, but it is certainly a step in the right direction. Passing this bill will show your interest in ground water protection.

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Attachment 3

Committee of . . .

Kansas Farm Organizations

Wilbur G. Leonard
Legislative Agent
109 West 9th Street
Suite 304
Topeka, Kansas 66612
(913) 234-9016

TESTIMONY IN SUPPORT OF SB NO. 121
BEFORE THE HOUSE COMMITTEE ON ENERGY
AND NATURAL RESOURCES

March 14, 1989

Mr. Chairman and Members of the Committee:

I am Wilbur Leonard, appearing for the Committee of Kansas Farm Organizations.

We appreciate this opportunity to support the efforts of the Kansas Water Well Association and the Department of Health and Environment to provide additional enforcement tools with respect to the groundwater exploration and protection act. Our members, like all Kansans, have a stake in the quality of water, not only in rural areas but throughout the state. We also have an obligation to work toward elimination of contamination of that water supply.

With the heavy case load in the offices of most prosecuting attorneys it's understandable that violations of the groundwater exploration and protection act don't rate high priorities. By giving the secretary the tools provided in this bill violations may be addressed more promptly and effectively through the imposition of civil penalties and resort to injunctive action. At the same time the violators are afforded their rights through notice, hearing and right of appeal, as provided by the administrative procedure act.

Thank you for your consideration.

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Attachment 4

Kansas Natural Resource Council

Testimony before the House Energy and Natural Resources Committee
SB 121: supplementing the Kansas groundwater exploration and
protection act

Charlene A. Stinard, Kansas Natural Resource Council

March 14, 1989

My name is Charlene Stinard, and I represent the Kansas Natural Resource Council, a private, non-profit organization promoting sustainable natural resource policies for the state of Kansas. I appear today also on behalf of the Kansas Rural Center, the Kansas Chapter of the Sierra Club, the Kansas Wildlife Federation, and the Kansas Audubon Council, whose members share our concern to protect the state's groundwater resources.

The Kansas Groundwater Exploration and Protection Act (82a-1201ff) regulates the licensing and the activities of water well contractors in Kansas. The law sets "standards for well construction, reconstruction, treatment and plugging" in order to protect groundwater from contamination. Proper well construction and plugging are critical factors in preventing pollutants from finding a direct conduit to our groundwater resources.

SB 121 provides additional authority to the Department of Health and Environment to issue administrative orders and to impose civil penalties for violations of the act. We strongly support this bill. The institution of civil penalties can enhance enforcement of the act by (1) creating economic incentives to come into compliance, and (2) assuring that cleanup action will be taken by offending parties.

The bill, as amended in the Senate, clarifies agency authority to require remedial action and to require preventive measures to reduce the likelihood of future groundwater contamination.

We recommend favorable passage of SB 121.



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Attachment 5

Mar 14, 1989

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To: Committee on Energy and Natural Resources

Re: Senate Bill No.121

Charles M. Dirck
DBA/ A-Plus Plumbing & Well Service
7530 So. Broadway
Wichita, Kansas 67233

(316) 522-4746

I would like to be recognized as an opponent to Senate Bill No. 121.

The state water well law as it now stands is unenforcable in my area and it would be unfair to impose a civil penalty for noncompliance when the law is not written to cover situations existing in our State having to do with shallow well sandpoint installations.

The area where I have my business is unique in that we have an area approximately 10 miles wide and 25 miles long on the Arkansas River Bed where the static water level ranges between 7 feet and 15 feet. We often use a type of well called a SANDPOINT well. This type of well can be installed with little or no special equipment which makes it an ideal project of "do it yourselfers", bootleggers and anyone who wants to put down a sandpoint well.

A Sandpoint well is not installed by a big rig such as wells are in Western or Eastern Kansas where you would have few people with the equipment or knowledge to install a well. Within 8 miles of my office there are: many hardware stores, (1) Payless Cashway store, (1) Sutherland Lumber store, (1) Pay and Pack store, (1) T.M.C. Homecenter, (2) Sears stores, (1) electric company, (3) rental stores (just to name a few!!) that all sell, rent and loan the supplies and equipment to install sandpoint (and even cased shallow well) wells. NONE of these businesses are concerned about the State Water Well Laws. A local plumbing and pump wholesale house, F&W Supply Co., even has a sign in the showroom that states that they rent well driving equipment. This equipment is rented without regard to any state licenses.

The procedure for installation of a sandpoint well are:

1. With a post hole auger, auger 7' to 15' until you hit water. (The sand will be wet and you cannot go further with the auger as the hole will just fill in behind you at that point.)
2. Place sandpont and pipe in augered hole.
3. Drive pipe into ground with well driver to desired depth.
4. Pump with a pitcher pump (hand pump) until water runs clear.
5. Hook up pump.

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I deal with the general public. As a licensed well person, I am required to bring all wells I work on up to State specifications and to make all new wells comply with the State laws. My competitors are not at all bound by these rules and laws as they are not licensed and in fact are not even aware, in most cases, that a State law even exists! The following are situations and comments that I hear every day from my customers and also my competitors after I explain what I have to do to make their systems legal:

1. "I will only water my garden with the well. I own the land and I will put the well anywhere I please on my property."
2. "I don't have to comply with the state laws."
3. "What state law? My neighbor had a well put down by a professional plumber last week and the bid was not half as high as yours. I never heard of having to have a license to put down a well and I've had wells for 30 years. I think you're just trying to get to me on price!"
4. "The guy at the hardware store told me I could put a well anywhere I want to!"
5. "Your company charges way to much to do wells. I can get anyone around here to do what I want for less!"

I would like to say at this point that I am IN FAVOR of having Water Well Laws. We need to do everything possible to protect our underground water. The area where I work probably has the most wells per square mile for any area in the State. We have no one monitoring well installations or enforcing the laws that we have. It is not something that can be done from a desk in Topeka, Kansas.

I have expressed my concerns about illegal wells to KDHE many times in the past (see copies of letters enclosed). During one telephone conversation with Meridith S. Wilson (KDHE) she asked me to inform the department when I encountered any illegal wells being installed.

Example 1.

At 8025 So. Broadway, Wichita, I was called to look at a well problem. This well supplied water for a night club and a new well was needed. I explained to the owner the Kansas laws regarding distances from property lines and septic systems. They felt my bid was too high. On 5-20-87 at 9:50 a.m. I observed a cased well being installed illegally by hand at the South Broadway location. I called Meridith Wilson as she requested and she said she would turn over the information to Darrel Plummer and that they would call me back as to the results. I am still waiting to hear from KDHE.

Example 2.

A few weeks ago I bid a job that had a sandpoint well in a pit. (This method of installation is wide spread in this area). After explaining the state laws about having any kind of well in a pit, I was told that they had other bids on the job and that no one said anything about any laws. I did not get the job and someone else did do it illegally.

Example 3.

I looked at a job where the people wanted a sandpoint well to water their garden. I told them the septic tank was too close to the location where they wanted the well. I explained that by State Law I could not install the well where they wanted me to put it. I did NOT get the job and I drove back by the house in question and there is a new pump and well right by the septic system.

Example 4.

THIS IS THE BIGGEST PROBLEM OF ALL. At 55th street South in Wichita between Seneca and Hydraulic, there are approximately 200 homes that rely on both domestic wells and septic systems. Most of the house lots are only 50' wide! There is no way that they comply or ever could comply with the standards for Water wells.

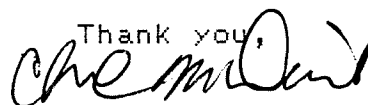
Some years ago I called KDHE about this problem and Mr. Dwight Brinkly came to Wichita and personally looked at the situation. His comment to me was...off the record..."You don't have to call us for well work in this area, do the best you can to do them right." Now they want to make me subject to a possible \$5,000 fine if I do this. We need the law revised to cover situations like this and to develop a way to enforce the law for everyone before it would be fair to ticket anyone for noncompliance in any way.

I have personally refused to send in any water well records. I have told Darrel Plummer, Meredith Wilson and the Sedgwick County Health Department that I will not comply until someone addresses the situation in my area, particularly South Sedgwick County.

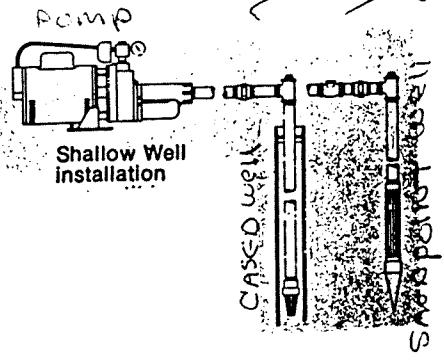
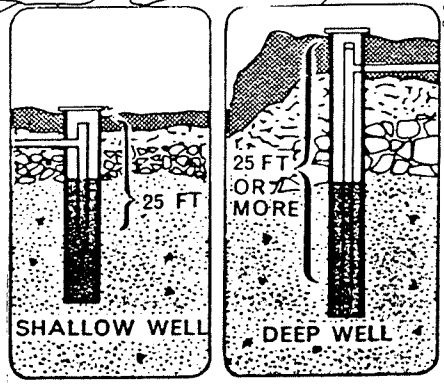
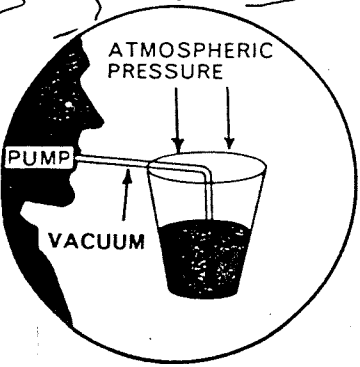
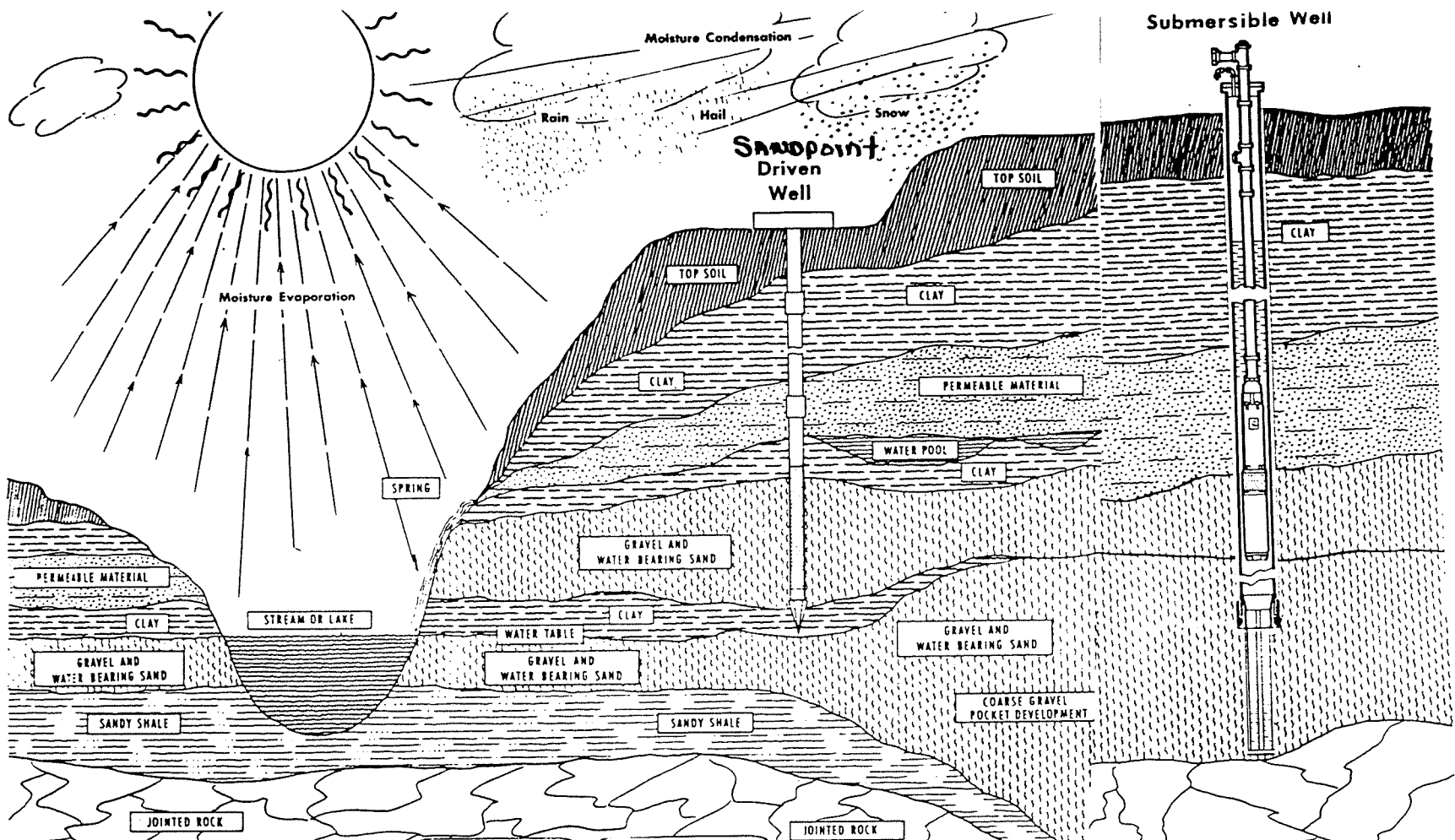
If Bill #121 is passed, I will be out of the well business in my area as there is no physical way, on much of the work needed, that ANYONE can comply with all of the State Ordanances. I would be subject to heavy fines and penalties even though I am trying to do the job correctly.

As far as I know, I am the Only Plumbing Company in Wichita out of 194 Companies that has a State Water Well license. I am NOT by any means the only plumbing company that works on wells or puts down wells!!

Until the State Water Well Laws are fair for everyone, a Bill like Senate Bill #121 is unenforcable and unfair. Please consider this as you review this bill.

Thank you,


Charles M. Dirck



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 4. A **shallow well** is less than 25 feet deep. Operating like a soda straw, the pump merely creates a vacuum in a pipe stuck into the water, and the pressure of the atmosphere pushes water up the pipe.

5. A **deep well** exists when the water supply is below 25 feet. More than atmospheric pressure is needed, so pumping parts must be placed down into the water. Today the two most popular methods are the **jet pump** and the **submersible pump**.

A-PLUS PLUMBING & WELL SERVICE

7520 South Broadway
Wichita, Kansas 67233
(316) 522-4746

October 28, 1986

Department of Health and Environment
Forbes Field
Topeka, Kansas 66620-0110

Attention: Meredith S. Wilson

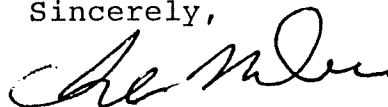
Re: Water Well Records

Dear Ms. Wilson,

Enclosed you will find eight water well records for the wells that we put down. Four of these forms are duplicates of previously submitted forms and the fees on them have already been paid by Check #2335 dated 10-20-86. As we discussed in our telephone conversation of 10-27-86 I duplicated these forms so that we can all have the proper copies. Also enclosed are the four other records that I needed to submit along with my check for \$20.00 to cover the fees on them. Once again, please remember that these are reports on SANDPOINT wells. Your water well record forms are not geared to this type of installation, however, I have done my best to give you all of the information that you need. I hope that we have gotten it right this time.

As I have expressed to you and to others over the years, Darrel Plummer most particularly, I am still very concerned about the many contractors and individuals that put down wells in this area every day with no permits or regulations guiding them at all. I still say that your rules have not and are not being enforced in any way in this area. People have a free reign to do as they please, except (of course) those of us who are licensed and have to bring things up to code and follow the guidelines. By having no one enforcing the rules concerning wells in this area for everyone...you have completely eliminated my competitive bids for well jobs and you have put me out of business as far as doing wells is concerned. Your continued work toward some sort of enforcement measures is badly needed.

Sincerely,



Charles M. Dirck
Owner