

MINUTES OF THE Senate COMMITTEE ON Economic Development

The meeting was called to order by Senator Dave Kerr at
Chairperson

8:00 a.m./~~p.m.~~^{XX} on April 25, 1991 in room 123-S of the Capitol.

All members were present except:

Senator Janice McClure (Excused), Senator Jerry Moran (Excused),
Senator Alicia Salisbury (Excused) and Senator Ben Vidricksen (Excused)

Committee staff present:

Bill Edds, Revisor of Statutes' Office
Lynne Holt, Legislative Research Department
LaVonne Mumert, Committee Secretary

Conferees appearing before the committee:

Mike Heim, Legislative Research Department
Tom Docking, City of Wichita
Hank Blase, Sedgwick County Counselor

Senator Dave Kerr, Chairman, called the meeting to order and asked Mike Heim to explain HB 2124.

HB 2124 - Groundwater contamination cleanup, financing of.

Mike Heim provided an explanation of the bill (Attachment 1). He said the bill was requested by the City of Wichita to provide a financing mechanism for the cleanup of groundwater pollution in a downtown Wichita site. He explained that the bill amends the tax increment financing law to establish a separate procedure and a special provision which would allow a city which has entered into contracts with the Department of Health and Environment or the U. S. Environmental Protection Agency to pledge future tax increments to pay costs of cleanup. In response to a question from Senator Feleciano, Mr. Heim said that the bill does not affect the conditions currently in statute for creation of a redevelopment district.

Tom Docking supplied written testimony in support of the bill (Attachment 2). He explained the steps taken by the City of Wichita in dealing with the groundwater pollution. He described the provisions of an agreement between the city and The Coleman Company. Mr. Docking used a diagram to illustrate the area for which Coleman has agreed to pay 100% of the costs of cleanup, a second area for which Coleman has agreed to pay 50% of the costs and a third area for which the city will pay. Mr. Docking said the city proposes to issue certificates indemnifying property owners against liability for cleanup costs. Lenders and third-party purchasers will also be protected from liability. The intent is to revitalize the debt market and the third-party purchase market within the district to restore the fair market value. Mr. Docking said that Wichita supports the amendments which will be proposed by Sedgwick County. Answering questions from Chairman Kerr, Mr. Docking said that Wichita and Coleman have agreed to pursue other possible polluters in the subject area and attempt recovery of costs from them as well. Chairman Kerr asked why the property owners in the subject area are bearing the costs rather than having the costs spread over the entire city. Mr. Docking answered that this language provides a means by which the fund can be defined but does not work as a means of obtaining the funds. The tax increment fund is a budget item for the city, county and school district. Senator Feleciano asked about an agreement between the city and financial institutions. Mr. Docking said that agreement will not be signed until after a meeting next week involving banks, savings and loans, city representatives and regulatory authorities. Senator Feleciano asked what assurance can be given that such an agreement will actually be signed. Mr. Docking responded that because it is in their own best interests, he is confident that the financial institutions will enter into the agreement. He noted that the

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Economic Development,
room 123-S Statehouse, at 8:00 a.m./~~XXX~~ p.m. on April 25, 1991

city, county and school districts will all have another look at the project and have the option of issuing an adverse impact ruling. Senator Winter asked Mr. Docking his reaction to amending the bill so it would be contingent upon an agreement between the city and financial institutions. Mr. Docking said there had been great concern by members of the House of Representatives about whether or not the city and Coleman would be able to reach an arms-length agreement and those members wanted to be sure the bill is sent to conference committee so the agreement can be scrutinized. He went on to say that the city has attempted to limit any further amendments to the bill so as to not "upset the applecart". Mr. Docking stated that he thinks the reason such a provision was not originally in the bill was that it was not perceived that there would be any problem in reaching an agreement between the city and the financial institutions.

Hank Blase provided a balloon of the bill with several amendments which he explained are primarily technical in nature.

The Committee was also provided a letter from the City of Wichita, Department of Law, including a copy of the minutes of the Wichita City Council meeting wherein the agreement with Coleman was approved (Attachment 3). Copies of the Consent Order between Coleman and the Department of Health and Environment (Attachment 4) and the agreement between Coleman and the City of Wichita (Attachment 5) were supplied as well.

Senator Feleciano moved that the bill be amended as provided in the balloon. Senator Winter seconded the motion, and the motion carried. Senator Francisco moved that the bill, as amended, be recommended favorably for passage. Senator Brady seconded the motion, and the motion carried.

Senator Francisco moved that the minutes of the April 5, 1991 meeting be approved. Senator Petty seconded the motion, and the motion carried.

The meeting adjourned at 9:00 a.m. The next meeting of the Committee will be at 12:30 p.m. on April 25, 1991.

Date 4/25/91
8:00

SENATE ECONOMIC DEVELOPMENT
VISITOR SHEET

(Please sign)

Name/Company

Name/Company

Name/Company	Name/Company
Mike Taylor	KAKE TV
Willie Martin	Sedgwick Co
Bill Abbott	BOEING
John Rippe	KASB
Steve Jones	Boeing
Jacque Oakes	SQE
Brad Smoot	BANK IV
Dione Gjerstad	House

MEMORANDUM

Kansas Legislative Research Department

Room 545-N -- Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

February 28, 1991

To: House Committee on Economic Development
From: Mike Heim, Principal Analyst
Re: Wichita Groundwater Contamination Cleanup: H.B. 2124
Background and Other Options

Background

H.B. 2124 was introduced at the request of the City of Wichita to provide a financing vehicle for the cleanup of a groundwater pollution site located in the downtown Wichita area.

Summary of H.B. 2124

H.B. 2124 amends a provision of the tax increment financing law. The bill permits the governing body of any city, which has entered into contracts with the Kansas Department of Health and Environment (KDHE) or the United States Environmental Protection Agency (EPA), to pledge tax increments receivable in future years to pay costs related to the investigation and remediation of environmentally contaminated areas. Contract provisions dealing with the pledging of the tax increment are exempted from requirements of the cash basis and budget laws. (Note that the project will involve capital costs as well as long-term operation and maintenance costs. Any financing plan apparently would require a statutory exemption from the cash basis and budget laws to comply with consent decree requirements set by KDHE and EPA.) Projects must be completed within 20 years from the date the city enters into a consent decree with either KDHE or EPA.

Kansas Tax Increment Financing Law Overview

The Kansas Tax Increment Financing Act appears at K.S.A. 12-1770 *et seq.* The law permits cities to use the tax increment redevelopment tool in blighted areas, central business districts, or in areas designated enterprise zones. Some of the steps in creating a redevelopment district include:

1. mailed notices to property owners and published notice and a public hearing on the issue of creating a redevelopment district;
2. the preparation of a comprehensive redevelopment plan;

Attachment 1
4/25/91 - 8:00
Sen. Eco. Devel.

3. the ability of either the county or school district governing bodies to veto within 30 days of the public hearing any aspect of the plan that involves the acquisition and redevelopment of privately owned property; and
4. the ability of 3 percent of the electors to file protest petitions and thus require an election on any bond issue where the full faith and credit of the city was pledged.

The tax increment concept involves capping property values at their predevelopment amount, then levying taxes against the growth in value above this frozen amount to pay off the tax increment bonds issue to pay redevelopment costs. Taxing entities continue to receive taxes based on the capped value of property only. In Kansas only three taxing subdivisions forgo the tax on the incremental growth, *i.e.*, cities, counties, and school districts. See Attachment I for an explanation of the tax increment concept that appears in Gelfand, *State and Local Government Debt Financing*, Section 9.14.

The Comprehensive Environmental Response Compensation and Liability Act

"Superfund" is the generic name commonly used to identify the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) at 42 USCA § 9601 *et seq.*, as amended by the 1986 Superfund Amendments and Reauthorization Act (SARA), which governs the cleanup of hazardous waste sites in the United States. It was not the intent of Congress that only Superfund monies be used for cleanups, but rather that the maximum amount possible first be obtained from those who created or were responsible for the hazardous waste sites, and that any monies necessarily drawn from Superfund be recouped from those individuals to the greatest extent possible.

"Responsible parties" under 42 U.S. § 9607(a) subject to CERCLA liability include:

1. generators of the hazardous substance,
2. current owners and operators of the disposal site,
3. owners or operators at the time of the disposal,
4. transporters of hazardous waste, and
5. those who arranged for the disposal of the hazardous waste.

An individual who personally, or through a sole proprietorship or partnership, contributed to a Superfund site in one of the above listed capacities, can be held liable under CERCLA. The extent to which "behind the scenes" individuals and entities, such as corporate officers, directors, parent corporations, individual majority shareholders, and even successor corporations can be held liable is still evolving in the courts. Creditors and trust departments in limited circumstances also may be potentially liable under the definition of "owner or operator" under CERCLA which provides:

4/25/91
8:00
1-2

"Owner or operator" means . . . (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility . . . Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility." See 42 U.S.C. § 9601(20)(a).

The theory of liability under CERCLA is one of strict liability since there is no requirement that fault by a defendant be shown. Further, liability is considered joint and several, meaning that any capable party, even if more capable parties are involved, may be required to pay the entire cost of the remediation.

The only defenses to CERCLA liability are set forth in Section 42 U.S.C. 9607(b). An owner is not liable if he can show that the contamination resulted from:

1. an act of God,
2. an act of war, or
3. the release, or threatened release, was caused solely by acts or omissions of a third party and did not occur in connection with a contractual relationship with the allegedly innocent landowner (this is referred to as the innocent landowner defense).

**Kansas Department of Health and Environment
and the Wichita Site**

KDHE has entered into a cooperative agreement with EPA under which KDHE will perform investigations of selected contaminated sites in Kansas. The investigations are conducted in accordance with the requirements of CERCLA. The purpose of the investigations is to determine if sites qualify for listing on the National Priority List (NPL), thus making them eligible for federally mandated Superfund cleanups.

As part of the agreement, KDHE conducted a preliminary assessment (PA) and scanning site investigation of the Gilbert and Mosley site located in Wichita, Kansas. A KDHE report submitted to EPA in November, 1989, recommended that a listing site investigation be conducted at the Gilbert and Mosley site to document information necessary for proposing the site for the NPL.

The Gilbert and Mosley site is approximately four miles from north to south and one to one and one-half miles from east to west in the middle of downtown Wichita. It includes all areas where volatile organic chemicals (VOCs) have been detected in the groundwater. Land use within the site is a mixture of residential, commercial, and industrial. The industrialized sections are generally limited to areas near the railroad tracks. Commercial areas within the site include the downtown business district and property along major streets.

The KDHE *Listing Site Investigation* published August, 1990, for the Gilbert and Mosley site contained the following conclusions:

4/25/91
8:00
1-3

1. VOC contamination at the Gilbert and Mosley site covers an extensive area, extending approximately four miles north and south, and one to one and one-half miles east and west. Levels of contamination are relatively high in local areas, and the contamination can be expected to pass under the Arkansas River to eventually threaten public water supply wells to the south.
2. The main source areas of the chlorinated hydrocarbons PCE, TCE, and DCE are near the north end of the area, with at least one of the contaminants, TCE, spreading from a source at the Coleman Company facility at 250 St. Francis. The large continuous area of general contamination indicates that the contamination has probably existed for several years, because it has traveled approximately two miles from the nearest apparent source area in some locations. Another source of PCE, TCE, and DCE contamination is located near the Western Lithograph facility at Industrial and Hydraulic.
3. The levels detected in most of the samples within the area exceed the current safe drinking water standards, and some areas have fairly high levels of contamination.
4. The groundwater in the Gilbert and Mosley site should not be used as a drinking water supply due to the levels of VOC contamination that are present. If the contaminated water were consumed over a long period of time it could present a health hazard.

All residences located within the site are provided with city water. All private and commercial wells in the area are used for lawn and garden or for industrial purposes. Several (21) Wichita public water supply wells located approximately 1.4 miles northwest of the site. These wells are used by the City of Wichita during periods of high demand, generally during the summer. Due to their location, it is highly unlikely that the wells would be affected by the contamination at this site.

The KDHE report recommended that a remedial investigation be completed at this site to further define the extent of the contamination, and outline the remedial alternatives available to clean up and prevent the migration of the contaminants. This investigation and corrective action may be completed by one of the following alternatives:

1. One or more of the potentially responsible parties (PRPs) should assume the lead to address the remediation of activities at the site in accordance with the National Contingency Plan.
2. KDHE will complete the Hazardous Ranking System (HRS) for the site. If the site ranks high enough to be considered for the NPL, the site will be recommended as a candidate site to be considered for the NPL.

4/25/91
8:00
1-4

Policy Options

Options the City of Wichita has in dealing with the Gilbert and Mosley groundwater pollution site would appear to fall within one of three broad categories: (1) do nothing; (2) finance the cleanup by the city taxpayers at large; or (3) create some type of special assessment or benefit district and have those who have caused the problem or those who will benefit from its amelioration pay most or all of the costs. These options are discussed briefly below listing some of the pros and cons of each course of action or inaction and some policy questions that may be raised regarding each. A list of policy questions regarding the Wichita tax increment proposal follows.

1. Do Nothing

It can be argued that the City of Wichita should do nothing and let KDHE and EPA take the lead in the cleanup and let these government agencies and private parties involved sort out the cleanup and cost responsibility.

Pros. Since the city is not itself liable, it could avoid the problem simply by standing aside and letting the other actors involved take care of it. The city could avoid political fallout by becoming involved since any solution proposed by the city likely will not please everyone. The city would thus save numerous hours of time and expenses related thereto.

Cons. There may be more political problems created for the city by inaction due to the size, location, and value of the properties involved in the contamination site. Doing nothing may result in a significant devaluation of property affected, thus lowering the overall assessed valuation of the city and of other local taxing units such as the county and school district. The potential result is that revenues will be lost from property taxes. The city and other taxing units will have to suffer the loss or otherwise raise taxes. If the city does nothing the cleanup may be delayed and extended legal battles may be generated among the various parties.

Policy Questions. Who will be benefitted if the city does nothing? Who will be hurt? Does the city have a responsibility for the overall health and viability of the city to be an active participant or leader in this cleanup?

2. City At Large Pay Cleanup Costs

There are various methods that could be proposed whereby the city at large would pay for the cleanup costs. Options could include any or a combination of the following: a general tax levy against city residents, a general obligation bond issue to finance improvements needed, a surcharge on or increase in water bills, or solid waste collections fees, a sales tax increase, or some other form of general tax.

Pros. Any city at large payment proposal would arguably be fairly easy to understand and perhaps easy to implement. General obligation bond issues, a general tax levy, a surcharge or fee increase for water service or solid waste collection services arguable could all be accomplished by the City of Wichita under home rule power or existing statutory authority without state legislative action. A sales tax increase would require additional statutory authority.

4/25/91
8:00
1-5

The city could proceed quickly and get the cleanup work started. This method would not foreclose the city from negotiating for reimbursement of some or most of the cleanup costs with those parties who caused the environmental mess nor would it foreclose the filing a lawsuit against culpable parties if reimbursement negotiations failed.

Cons. Many city residents may object to paying for the cleanup associated with the activities of businesses whose business practices created the problem. The city governing body may object that the city would be setting a precedent for city at large payment of CERCLA. State laws may need to be enacted or amended to insure that the city can proceed on a particular at large option.

Policy Questions. Should city taxpayers pay the bill for environmental problems created by business and industry? Should this be considered a taxpayer responsibility to insure the continued economic viability of the community? Would this course of action encourage more environmentally careless behavior on the part of business and industry?

3. Special Assessment or Benefit District.

This general approach could encompass a variety of different options all involving the creation of a special benefit district of some type and requiring property owners within that district to pay all or some portion of the costs of the cleanup. Financing mechanisms could be patterned, for example, after districts created under the City General Improvement and Assessment Law (K.S.A. 12-6a01 *et seq.*); a Business Improvement District (K.S.A. 12-1781 *et seq.*); a self-supported Municipal Improvement District (K.S.A. 12-1794 *et seq.*); or a tax increment financing district (K.S.A. 12-1770 *et seq.*).

Pros. A benefit district approach arguably is a fair method since those who would benefit directly from the cleanup would pay most or all of the costs. Two of the options noted above provide for the appointment of an advisory board or planning committee for input from those most directly affected by the improvements.

Cons. The actual apportioned costs or imposition of fees among residents may result in controversy, lawsuits, and delays in the cleanup. Any of these approaches most likely would require modifications to existing state laws.

Policy Questions. Should innocent property owners be singled out to contribute more to the cleanup than other taxpayers at large just because they live within the special benefit district? Is there a way to cause the parties most responsible for the problem to pay most of the costs using a special benefit district vehicle? (Note that under the tax increment proposal property owners in the district will arguably be held harmless, *i.e.*, they will pay the same rate of property tax as before, will forego their right to a lower valuation of their property as a trade off for financial institutions conducting business as usual in this area and as a trade-off for the cleanup.)

Questions Regarding the Wichita Tax Increment Proposal

4/25/91
8:00
1-6

Proposal. The following are specific questions that may be raised about the Wichita Tax Increment

1. Is there adequate legal authority for the county appraiser to lower property values in the cleanup site and then raise them again in light of assurances the cleanup will occur and lenders will be willing to conduct business as usual in this area?
2. What is to prevent individual property owners from challenging the county appraisers actions? Will all property owners have to agree to this?
3. What is the impact of the consent decree that Wichita and KDHE are about to consummate? Will this consent decree be legally binding on anyone other than the two parties to the agreement? What are the key terms of this consent decree?
4. Who will be the parties to the agreement involving the banks and financial institutions where they will agree to continue to loan money for property within the cleanup area?
5. What remedy would be available to individual property owners or the city if these financial institutions refuse to comply with their agreement to conduct business as usual in this area?
6. Will property owners agree to forego lawsuits under CERCLA or under other causes of action against one another? What impact would such lawsuits have on the tax increment financing method?
7. Is it Wichita's understanding that it would have to comply with all of the procedural steps in the tax increment financing law such as preparation of a plan, notice, and a public hearing?
8. Is it clear enough under the tax increment law that the county or school district could block this plan?
9. What other moneys is the city planning to use besides the tax increment proceeds?

The Public Use of Private Capital: A Discussion of Problems Related to Municipal Bond Financing, 35 Va L Rev 285, 295-96 (1949).

⁶ See Mitchell, The Effectiveness of Debt Limits on State and Local Government Borrowing, 45 NYU Inst Fin Bull 1, 17-22, 26-27 (1967).

⁷ See Mandelker, Netsch, & Salsich, State and Local Government in a Federal System 241 (2nd Ed 1983); Gelfand, Seeking Local Government Financial Integrity Through Debt Ceilings, Tax Limitations and Expenditure Limits: The New York City Fiscal Crisis, the Taxpayers' Revolt, and Beyond, 63 Minn L Rev 545, 560-61 (1979), and sources cited therein.

§ 9:14. — Tax Increment Financing.

Tax Increment Financing (TIF) is a sophisticated method of financing public improvements, usually the redevelopment of blighted urban areas.¹ TIF combines elements of the special district (by singling out a particular geographic area for treatment different from other areas),² special assessments (by charging property owners who benefit from a public improvement for its cost),³ and revenue bonds⁴ (by pledging the revenues produced by a public improvement to liquidate the debt incurred to finance its construction).⁵

Basically an inducement to private investment,⁶ TIF freezes the amount of property taxes payable to all preexisting taxing entities at their predevelopment level. After the redevelopment, the values of the properties involved are reassessed, usually at much higher levels.⁷ Taxes imposed on these postdevelopment property values, above the frozen level, are pledged to the governmental entity overseeing the redevelopment (a special redevelopment authority or the municipality itself). This body then uses these funds either for additional construction or service delivery improvements in the tax increment area or to retire bonds issued to finance land acquisition, construction, and other costs connected with the redevelopment.⁸ The preexisting taxing entities continue to receive taxes, but only at the frozen predevelopment level. They also benefit indirectly from the redeveloped area, as it generates intangible benefits during the TIF period and increased taxes afterward.⁹ Ideally, the redevelopment will produce benefits for adjoining neighborhoods as well.

The concept behind TIF emerged in the federal urban renewal programs of the 1940s, which allowed local governments to recoup their share of program costs through in-

4/25/91
8:00
1-8

creased property taxes on reassessed properties within the urban renewal area. TIF, however, was only rarely used until the replacement of federal urban renewal by the Community Development Block Grant Program in 1974.¹⁰ Communities were then forced to devise other financing methods for redevelopment projects. Today, more than half the states have adopted some form of TIF,¹¹ and its use is increasing dramatically.¹²

Authority for municipalities to use TIF generally must be granted by state legislation.¹³ TIF schemes have been able to withstand attacks based upon the equal protection, due process, and uniformity of taxation clauses.¹⁴ At least two schemes, however, have been held to violate more specific state constitutional provisions.¹⁵

TIF enabling statutes usually exempt TIF bonds from municipal debt limitations,¹⁶ but at least one court has held such bonds are subject to the state's debt ceiling.¹⁷ Like other exemptions from the debt limit, TIF schemes can be abused.¹⁸ A more pressing concern, however, is whether a particular TIF scheme is really needed to spark private investment or is merely a windfall for developers and a loss of tax revenues for the existing taxing entities.¹⁹

¹ McQuillin Mun Corp § 44.20 (3rd Ed)

² See § 9:15.

³ See §§ 9:11-9:12. See also § 10:19

⁴ See §§ 9:13, 10:17-10:18.

⁵ Davidson, Tax Increment Financing as a Tool for Community Redevelopment, 56 U Det J Urb L 405, 413 (1979).

⁶ 56 U Det J Urb L at 413-14.

⁷ For TIF to be successful, the redevelopment project must be fairly large and capital intensive, in order to boost the property values and taxes to a level sufficiently high to retire the bonds. Smaller, less profitable projects are generally inappropriate. Comment, Tax Increment Financing for Development and Redevelopment, 61 Or L Rev 123, 133-34 (1982).

⁸ Davidson, Tax Increment Financing as a Tool for Community Redevelopment, 56 U Det J Urb L 405, 411-12 (1979).

⁹ The TIF period is usually fifteen to thirty years. See, e.g., Real Property Tax Increment Allocation Redevelopment Act, Ill Rev Stat ch 24, § 11-74.4-7 (20 years); Ohio Rev Code Ann § 725.07 (30 years); Tex Rev Civ Stat Ann art 1066e § 11g (20 years). But see NM Stat Ann §§ 3-46-45(5), 3-60A-21 E (5 years); 3-60A-25 (additional 5 year extension).

¹⁰ Note, The Mitchell I. Rev 62 Program is disc

¹¹ See, e.g., A Health & Safety Tax Increment 74.4-1 to -11; 10 §§ 125.1801-125 art 1066e; Wash

¹² In Califor Tax Allocation I had grown to 87 Allocation Bond (1983).

¹³ McQuilli

¹⁴ For an a Comment, Tax 61 Or L Rev 1

¹⁵ See Tuc held to violate ted to a vote by Authority, 539 tutional pledg municipal pov

¹⁶ See, e.g. ment Allocat Rev Code Ann debt ceilings

¹⁷ Richar See also tum in opini requirement).

¹⁸ See go ¹⁹ See D developmen

See also Community Crouch, 30

§ 9:15. C

Perh: constitut of capita which ha

4/25/91
8:00
1-9

TESTIMONY TO THE KANSAS SENATE

ECONOMIC DEVELOPMENT COMMITTEE

HONORABLE DAVE KERR, CHAIRMAN

H.B. 2124

HEARING DATE: APRIL 25, 1991

TESTIMONY BY: THOMAS R. DOCKING
ATTORNEY AT LAW
FOR THE CITY OF WICHITA, KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS TOM DOCKING. I AM AN ATTORNEY PRACTICING IN WICHITA AND REPRESENTING THE CITY OF WICHITA. I WISH TO THANK YOU FOR THE OPPORTUNITY TO OFFER TESTIMONY IN SUPPORT OF HOUSE BILL 2124, A BILL WHICH WOULD CONSTITUTE ENABLING LEGISLATION ALLOWING MUNICIPALITIES TO ESTABLISH A SPECIAL TAX INCREMENT FUND TO BE USED FOR THE PURPOSE OF INVESTIGATING AND CLEANING UP GROUNDWATER POLLUTION WITHIN THE TAX INCREMENT DISTRICT.

AS THE MEMBERS OF THE COMMITTEE ARE AWARE, THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT HAS COMPLETED A SITE LISTING

INVESTIGATION WITHIN THE CITY OF WICHITA AND HAS IDENTIFIED AN AREA OF GROUNDWATER POLLUTION WHICH IS DESCRIBED AS THE GILBERT AND MOSELY SITE, AND WHICH INCLUDES A GEOGRAPHIC AREA APPROXIMATELY ONE MILE WIDE AND FOUR TO FIVE MILES FROM NORTH TO SOUTH. THIS AREA INCLUDES MOST OF DOWNTOWN WICHITA AND COMMERCIAL AND RESIDENTIAL AREAS OF THE CITY, INCLUDING THOUSANDS OF FAMILY RESIDENCES.

THE CITY OF WICHITA HAS TAKEN A MULTI-STEP AND COORDINATED APPROACH TO ADDRESSING THE EXISTENCE OF GROUNDWATER POLLUTION AT THE GILBERT AND MOSELY SITE. THE COORDINATED APPROACH I DESCRIBE HAS INCLUDED VALUABLE INPUT, ADVICE AND SUPPORT OF SEDGWICK COUNTY, UNIFIED SCHOOL DISTRICT 259, THE DEPARTMENT OF HEALTH AND ENVIRONMENT, THE DIVISION OF PROPERTY VALUATION, KANSAS DEPARTMENT OF REVENUE, THE DIVISION OF ACCOUNTS AND REPORTS-MUNICIPALITIES-OF THE KANSAS DEPARTMENT OF ADMINISTRATION, NUMEROUS INDIVIDUAL MEMBERS OF THE KANSAS HOUSE OF REPRESENTATIVES AND SENATE, AND MANY OTHER CONCERNED CITIZENS AND GROUPS.

4/25/91
8:00
2-2

THE MULTIPLE STEPS I REFER TO AND THE OVERALL OBJECTIVES WE SEEK BY THEM INCLUDE THE FOLLOWING:

1) HOUSE BILL 2124. WITHOUT THE ENACTMENT OF H.B. 2124, THE CITY WOULD BE UNABLE UNDER THE CASH BASIS LAWS TO COMMIT TO THE ESTIMATED 10 TO 20 YEAR PERIOD NECESSARY TO INVESTIGATE, CONDUCT AND COMPLETE THE CLEANUP.

2) CITY OF WICHITA-COLEMAN AGREEMENT. AS THE KDHE SITE LISTING INVESTIGATION HAS IDENTIFIED THE COLEMAN COMPANY AS A LEADING OR EVEN THE LEADING POTENTIALLY RESPONSIBLE PARTY FOR THE GROUNDWATER POLLUTION, IT HAS BEEN A CRITICAL OBJECTIVE OF THE CITY TO REACH AN ARMS-LENGTH AGREEMENT WITH COLEMAN WHICH WILL REQUIRE COLEMAN TO PAY ITS FAIR SHARE OF THE COST OF THE CLEANUP OF POLLUTION AT THE GILBERT AND MOSELY SITE. I WOULD BE HAPPY TO GO INTO MORE SPECIFIC DETAIL WITH RESPECT TO THAT ARGEEMENT SHOULD THIS COMMITTEE DESIRE IT, BUT IN SUMMARY I WOULD DIRECT YOUR ATTENTION TO THE DIAGRAM SHOWING A POTENTIAL IDENTIFICATION OF POLLUTERS IN THE DISTRICT WHICH ILLUSTRATES HOW COLEMAN'S SHARE OF

4/25/91
8:00
2-3

THE COST OF THE CLEANUP WILL BE FIGURED. AGAIN TO GREATLY SIMPLIFY, WITHIN THAT AREA FOR WHICH IT IS DETERMINED THAT CLEANUP IS REQUIRED BECAUSE OF THE EXISTENCE OF POLLUTANTS CAUSED BY COLEMAN, COLEMAN WILL PAY 100% OF THE CLEANUP COST. THIS IS TRUE WITHOUT REGARD TO WHETHER OTHER RESPONSIBLE PARTIES EXIST IN THIS AREA OR NOT. THE NEXT AREA IDENTIFIED IS THAT AREA WITHIN WHICH IT IS DETERMINED THAT POLLUTANTS FROM COLEMAN ARE PRESENT, BUT AT LEVELS WHICH BY THEMSELVES WOULD NOT REQUIRE CLEANUP. WITHIN THIS AREA IT IS DETERMINED THAT THERE EXIST POLLUTANTS FROM ENTITIES OTHER THAN COLEMAN, AND WHICH BECAUSE OF THE COMBINATION OF POLLUTANTS, CLEANUP IS REQUIRED. WITHIN THAT AREA, COLEMAN HAS AGREED TO PAY FOR 50% OF THE COST OF THE CLEANUP. FINALLY, WITHIN THAT AREA IN WHICH CLEANUP IS REQUIRED BUT IT IS DETERMINED THAT COLEMAN HAD NOTHING TO DO WITH THE POLLUTION, THE CITY WILL PAY FOR THE COST OF THE CLEANUP (AND PURSUE THE RESPONSIBLE PARTY IF IT EXISTS AND HAS THE WHEREWITHAL TO PAY). THIS AGREEMENT WAS SIGNED BY COLEMAN LAST WEEK, AND HAS RECEIVED THE CONSIDERABLE PUBLIC

4/25/91
8:00
2-4

SCRUTINY IT DESERVES SINCE THAT TIME. THE CITY COUNCIL OF WICHITA HEARD PUBLIC COMMENT ON THE AGREEMENT AT ITS REGULAR MEETING TWO DAYS AGO; AFTER FULL DISCUSSION AND NUMEROUS QUESTIONS, THE CITY COUNCIL APPROVED THE AGREEMENT BY A VOTE OF 6-TO-0. THE MEMBERS OF THIS COMMITTEE HAVE RECEIVED A TRANSCRIPT OF THE WICHITA CITY COUNCIL MEETING ON THIS SUBJECT, AND ALTHOUGH THERE HAS NOT BEEN MUCH TIME TO DO SO, IT IS HOPED THAT A REVIEW OF THE PUBLIC COMMENT SECTION OF THE TRANSCRIPT WILL OFFER THE SENSE OF URGENCY CONVEYED BY RESIDENTS AND BUSINESSES WITHIN THE DISTRICT, AND THE REAL ECONOMIC HARM BEING SUFFERED WITHIN THE DISTRICT, AS THOSE WITHIN THE DISTRICT FIND THAT THEY CANNOT BORROW AGAINST THE VALUE OF THEIR PROPERTY AND ARE UNABLE TO SELL THEIR PROPERTY.

3) CITY OF WICHITA - FINANCIAL INSTITUTIONS AGREEMENT.

UNDER THE TERMS OF THIS PART OF THE PROPOSAL THE CITY WILL ISSUE CERTIFICATES INDEMNIFYING INNOCENT PROPERTY OWNERS WITHIN THE DISTRICT AGAINST LIABILITY FOR ANY COST OF THE CLEANUP. THIS CERTIFICATE WILL SIMILARLY PROTECT ANY LENDER AGAINST LENDER

4/25/91
8:00
2-5

LIABILITY AND THIRD-PARTY PURCHASERS FOR ANY LIABILITY FOR THE CLEANUP. THE INTENT OF THIS AGREEMENT AND THE CERTIFICATE PROGRAM IS TO RE-CREATE TWO MARKETS FOR PROPERTIES WITHIN THE DISTRICT WHICH ARE CURRENTLY VIRTUALLY FROZEN: THE DEBT MARKET AND THE THIRD-PARTY PURCHASE MARKET. IT IS BELIEVED THAT IF THESE MARKETS ARE RESTORED, MUCH OF THE DECLINE IN FAIR MARKET VALUE WITHIN THE DISTRICT WILL BE RESTORED.

AMENDMENTS

THERE ARE BEFORE YOU CERTAIN TECHNICAL AMENDMENTS TO H.B. 2124 UPON WHICH I WILL TOUCH BRIEFLY. THE FIRST INVOLVES CERTAIN CLARIFICATIONS AND IMPROVEMENTS TO WORDING WHICH HAVE BEEN SUGGESTED BY SEDGWICK COUNTY. IN MY OPINION THESE REPRESENT IMPROVEMENTS TO THE BILL AND ARE ENTIRELY CONSISTENT WITH THE PURPOSE AND SCOPE OF THE LEGISLATION.

THE SECOND INVOLVES A CHANGE IN THE EFFECTIVE DATE OF THE BILL, AND IS OFFERED MERELY TO ENSURE THAT THE HOUSE CONFERENCE COMMITTEE CAN BE AFFORDED A FINAL REVIEW OF THE BILL IN LIGHT OF

4/25/91
8:00
2-6

THE CITY'S AGREEMENT WITH THE COLEMAN COMPANY, WHICH AGREEMENT IS NOW PUBLIC AND SUBJECT TO APPROPRIATE SCRUTINY.

I ENCOURAGE YOU TO APPROVE OF THE AMENDMENTS AS SUBMITTED.

CONCLUSION

WE URGE THE PASSAGE OF H.B. 2124 FOR A NUMBER OF IMPORTANT REASONS. THE EXISTENCE OF THE GROUNDWATER POLLUTION AT THE GILBERT AND MOSELY SITE HAS EFFECTIVELY CUT OFF LENDING TO BUSINESSES AND RESIDENTS WITHIN THE DISTRICT; SIMILARLY, THEY HAVE BEEN PREVENTED FROM SELLING THEIR PROPERTY. FOR THOSE BUSINESSES WISHING TO EXPAND, FOR THOSE ELDERLY RESIDENTS WHO HAD PLANNED TO SELL THEIR HOMES TO PROVIDE FOR THEIR RETIREMENT INCOME, THE FAILURE TO IMPLEMENT THIS LEGISLATION AND TO ESTABLISH THE OTHER COMPONENTS OF THE COMPREHENSIVE PLAN WILL STRANGLE THEM ECONOMICALLY. I CAN OFFER NO MORE ELOQUENT STATEMENT OF THIS REALITY THAN THE INDIVIDUALS WHO SPOKE TO THE CITY COUNCIL THIS TUESDAY AND WHOSE STATEMENTS HAVE BEEN PROVIDED TO YOU. ADDRESSING THE CONTINUED DECLINE IN THE FAIR MARKET VALUE AND TAX BASE OF THE CORE OF THE

4/25/91
8:00
2-7

CITY OF WICHITA, SEDGWICK COUNTY, AND U.S.D. 259, ARE ALSO
IMPORTANT PUBLIC POLICY REASONS FOR SUPPORTING THE LEGISLATION
BEFORE YOU.

THANK YOU FOR YOUR TIME AND ATTENTION TO THIS MATTER OF
EXTREME IMPORTANCE TO THE PEOPLE OF KANSAS.

4/25/91
8:00
2-8

THE CITY OF WICHITA

THOMAS R. POWELL, Director of Law and City Attorney



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202 - 1635
(316) 268-4681

April 24, 1991

TO: Members of Senate Economic Development Committee
Sedgwick County Delegation

RE: H.B. 2124 - Groundwater Contamination - City/Coleman
Agreement

The Wichita City Council unanimously approved the agreement between the City and the Coleman Company on April 23, 1991. This agreement provides for Coleman's participation in the costs and coordination of activities in the downtown cleanup.

Enclosed for your information is a copy of the minutes of the City Council session. I would like to call your attention to the public comments on the need for the agreement and cleanup plan. The City believes that the overwhelming support expressed by the public at this meeting reflects the strong public sentiment for favorable legislative action on H.B. 2124.

Thank you for your attention to this important matter.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas R. Powell".

Thomas R. Powell
Director of Law

TRP:kh
Enclosure

Attachment 3
4/25/91 - 8:00
Sen. Eco. Devel.

T R A N S C R I P T

OF THE PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,
INSOFAR AS THEY RELATE TO CONSIDERATION OF AGREEMENT WITH THE COLEMAN
COMPANY RELATIVE TO GROUNDWATER CONTAMINATION COSTS.

Wichita, Kansas, April 23, 1991

The Council met in regular session with Mayor Knight in the Chair.
Council Members Ferris, Gooch, Kamen, Ojile, Reeser, Ward; present.

Mayor Knight The Chair would recognize that Council Member Kamen has a conflict of interest concerning this Item, and let the record reflect that he has neither participated in the discussions or voted.

Council Member Kamen I might ask, Attorney Powell, do you agree with that?

Tom Powell Yes, I do.

Council Member Kamen Okay, then I will excuse myself.

(Council Member Kamen left the Bench.)

Mayor Knight I'm sorry Chris.

Chris Cherches I was indicating I would like to ask the City Attorney to review the proposed agreement with the Coleman Company relative to the groundwater contamination. I would ask Tom to review that in detail for the City Council and the audience.

Mayor Knight Mr. Powell.

Tom Powell Mr. Mayor, I am going to step to the podium and I am also going to ask Dave Tripp and Tom Docking to come forward.

Mayor Knight You might give a little explanation as to the role Mr. Docking and Mr. Tripp have provided the City.

Tom Powell Mr. Mayor and Council Members, I will, as the City Manager indicated, attempt to brief you on the Coleman Agreement that is before you today.

First, I would like to introduce Dave Tripp who is at the table in the middle. Mr. Tripp is a lawyer with Stinson and Mag, a large law firm in Kansas City. He has been employed by the City to assist us in the process of the City coming to grips with the contamination problem Downtown. His expertise is Environmental Law. He has, prior to going with the Stinson-Mag firm, he was Regional Counsel for Region Seven and we feel that he brought the expertise that the City needed to assist us in all aspects of the legal part of the Coleman matter.

Also, Tom Docking is present. Mr. Docking is a lawyer here in Wichita. He has assisted the City likewise. He has some expertise in environmental matters. He also has some expertise in property tax that has assisted us with the Legislature and the Legislative Bill that we have pending.

Both of these gentlemen have played important parts and they are here today to help answer questions that the City Council might have or questions that may be brought up by somebody from the audience.

I might also mention that Joe Lang, of my office, is here and Joe has participated in all aspects of the Agreement and has done a lot of the hard work involved.

First, today, of course, we are here to consider the Agreement with Coleman. The Coleman Agreement represents the third major step in the process the City is taking to assume the leading role in the clean-up of the Gilbert and Mosley site.

After this major step is taken, if it is taken today, there are three major steps left. The first one of those is the legislation that is now pending before the Legislature and their veto session. The bankers agreement, which we feel will bring back to the City Council within the next two to three weeks. And, lastly, is the creation of the Tax Increment Finance District that, again, the process to form the Tax Increment Finance District awaits the passage of the Legislation.

4/25/91 - 8:00
3-2

I will attempt to review, quickly, what I think the City's goals are in becoming involved in the groundwater contamination. First, I think the City's goal is to solve an environmental problem that poses a potential health problem to citizens of Wichita and to persons that live in the Gilbert and Mosley area.

The second goal the City has, I believe, is to protect the tax base of the City, and for that matter, the tax base of the County and the School Board. We know that at the 29th and Mead Site, that is another contamination site here in Wichita, that once that was listed on the Superfund National Priority List that the property values in that area have dropped 40 percent, for tax purposes.

There has been an analysis made of what would happen in the Gilbert and Mosley area, to our tax base, if that same 40 percent drop occurred to the property in Gilbert and Mosley that occurred at 29th and Mead, which I think that we could expect. That analysis shows that the property, if it dropped 40 percent in value, that to make up the difference in tax loss to the School Board, the County, and the City, there would have to be a combined mill levy increase of approximately 3 mills. On the other hand, and I will get into that in a minute, under the Legislation that is proposed to be passed and under the plan the City has on the Clean-up, the biggest mill levy increase - the maximum, and we do not expect that - that could occur under the Legislation would be a combined mill levy increase of 1.6 mills. So, I think that you can see that the plan the City has would cost taxpayers less to go forward with it than it is going to cost taxpayers if nothing is going to be done. I think that is one of the key ingredients that needs to be considered in this process.

The third goal that the City has in this is to provide, for owners of property, the ability to sell land and obtain financing for improvements. In other words, to protect the owners' economic interest in land and those owners who now own land in the Gilbert and Mosley area. As you know, at the present time, for the most part, that land is not being bought and sold and banks are not making loans on that land for purposes of somebody buying a piece of property or for improvement purposes. The reason they are not is because of the threat of Superfund and the threat KDHE has made on the potential that everybody has to pay for response costs for the clean-up. That is really what the City's goal is, is to relieve that cloud so that the tax base will not be affected, and so that the property in the area can be bought and sold and people can improve their property and go about their business.

As I stated earlier, the City has at this point, and I will review those quickly, taken two steps. The first step was an agreement with Camp Dresser & McKee, who is a nationally recognized environmental engineering consultant firm, who brings, I believe, much expertise to the City. That firm was hired. We have a Contract for them to perform an investigation to tell us what the problems are in the area and, also, to provide solutions as to what action needs to be taken in that area to clean up the contamination. What that is technically known as is the Remedial Investigation and Feasibility Study.

The second agreement that we have, and I think really a key part of what our goals are, is the Agreement that has been executed with the Kansas Department of Health and Environment. In that Agreement, the City is agreeing, first, to perform a remedial investigation/feasibility study - the work that is going to be done by Camp Dresser & McKee. The second thing, in that Agreement, is the City is agreeing to take action, upon completion of the Remedial Investigation/Feasibility Study, to remedy the contamination. So that, in that Agreement, we are agreeing that not only will we find out what is wrong, what needs to be done, but we are agreeing that we will take the action necessary, once that is discovered, to correct the situation.

That leads to the third thing in the Agreement, and probably the most important for the City, and that is that KDHE, in consideration of the City agreeing to do a clean-up, is releasing innocent property owners from Federal liability - innocent property owners in the Gilbert and Mosley Site - from Federal liability for the clean-up. That release will be in the form of a certificate that is issued to the City to innocent landowners. That certificate is what they can take to banks and to potential buyers of their property to show to the bankers and the potential buyers of their property that the cloud has been removed from their property that is now over their property.

The items that I have stated that are yet to come is, first, the legislation. Again, the legislation is important because the legislation, first of all, provides that we can pledge to KDHE that we can fund a clean-up for a period of more than one year. Under the present laws that exist, the City cannot promise to KDHE that we could do a clean-up and pay for operations and maintenance

4/25/91 8:00

expenses for that clean-up for more than a one-year period. The legislation will allow us to do that. It will be a very narrow exemption to what is known as a cash basis in budget laws of the State of Kansas.

The second thing that legislation does that is important to us, and it is important to the bankers and it is important to KDHE, it sets a mechanism that guarantees that an increment will be available from the Gilbert and Mosley area, once we set up a Tax Increment Finance District, along with contributions from responsible parties, to pay for a clean-up.

The last item we have, of course, is the Bankers' Agreement. As I said earlier, we expect to have back to the City Council within the next three weeks, that Bankers' Agreement. We have agreed to it in form with the Bankers. It is in writing now. That Agreement, again, is a very key ingredient to this whole process because that Agreement will help alleviate the cloud that is now over that property. In that Agreement, the Bankers are agreeing that they will not withhold loans in the Gilbert and Mosley area because of the existence of contamination. So, once that is signed, the Bankers will not withhold loans based on the fact that there is contamination in the Gilbert and Mosley area. And I say, once that is signed, their Agreement will be contingent on the City creating the Tax Increment Finance District.

With that background, I will now attempt, briefly, to review the major points of the City's Agreement with Coleman that is before you today.

This Agreement provides for procedures to allocate cost and coordinate activities in the study and remediation of contamination in the Gilbert and Mosley Site. The first major item, as I see it, that this Agreement deals with is the the up-front cost that is going to be incurred in the Remediation and Feasibility Study that is being performed by Camp Dresser and McKee. At the present time, as you know, the City has in agreement with Camp Dresser and McKee for approximately a million dollars. Under the Agreement with Coleman, if we enter into it, Coleman will pay for that portion of the study. If there are any overruns on the Remedial Investigation/Feasibility Study (RI/FS), that is, if the scope of services that we now have in the Agreement that we want Camp Dresser and McKee to perform something beyond what they have agreed to perform, those costs will be shared 50 percent by Coleman and 50 percent by the City.

It is important, also, to know that Camp Dresser and McKee, under this arrangement, will continue to work for the City; and the work that Camp Dresser and McKee is going to be performing will be performed at the City's direction.

There will be a credit adjustment of costs paid by Coleman on the RI/FS after completion of the study. This will adjust the portion paid by Coleman for the Remedial Investigation/Feasibility Study based on Coleman's percentage of responsibility as determined there in the Remedial Investigation Study.

And that brings us to the next major point, and I will attempt to use the drawing on the board here. First, Coleman has entered into a separate Agreement with the Kansas Department of Health and Environment and will be responsible for paying for 100 percent of the cost of the clean-up on the Coleman property. And, in this diagram, that is represented by this area right here. So, in this area the City will not have any responsibility that will be taken care of in an agreement between Coleman and the Kansas Department of Health and Environment. It is important to know that Coleman, in its agreement with the City, and I believe that is another major point, has agreed that any work that it performs in this area will be done in a way that coordinates completely with what the City is doing. In other words, the work that Coleman does up there cannot be done in a manner that would cause a duplication of costs. Also, Coleman has agreed that any work they do up there will not affect the footprint of responsibility for Coleman - will not make it more difficult to determine what Coleman's responsibility is in the over-all scheme of the Gilbert and Mosley clean-up.

The Agreement does contain a formula that sets out the participation that Coleman has in the over-all cost of the clean-up. We did not agree to a percentage, a straight percentage, and this was simply not possible, at this time, because, at this time, there are not enough facts known to be able to say that Coleman is responsible for any set percentage. That is what part of the assignment that Camp Dresser and McKee has is to apply the facts to our formula and determine what responsibility Coleman has. I think the important thing is, and I will go through it, is that the formula provides a mechanism for determining the costs that is going to be paid by Coleman that is fair and will result in Coleman paying its fair share of the costs.

4/25/91 - 8:00

3-4.

The first area that Coleman would be responsible for paying is represented in this area right here, within the brown area. In this area, Coleman will pay 100 percent of the costs of the clean-up. That includes the costs that might be for cleaning up the groundwater that has been contaminated by a, and this depiction is not reality, this is just an illustration only and should not be used for any purpose of trying to determine what Coleman's percentage is because, as I said, that is unknown. And, this again, this depiction right here is just an illustration and does not have any resemblance to reality; but, if a property owner here contaminated the groundwater, and it is within this brown area, Coleman will pay 100 percent of the costs of not only cleaning up its area but also of cleaning up this person's area. The boundaries of this area are determined by the amount of contamination that Coleman has in the area. For example, if KDHE determines that it is necessary to clean the area up, the groundwater, to a point of 5 parts per billion, if Coleman's contamination is 5 parts per billion or more in this area then that is how that area is determined and they pay 100 percent of the cost.

The second area is represented by the green area, and in this area the cost is shared 50 percent by Coleman and 50 percent by the City. Again, we will determine what this area is, or CDM will, and within this area Coleman will have, if we do a clean-up to 5 parts per billion, Coleman's amount of contamination, in this area, will be 4 parts per billion or less. So, any contamination that is 4 parts per billion or less, in this area, that you can directly relate to Coleman, then Coleman pays 50 percent of that. An example of how that might work is that this contaminator right here is contaminated, in this area, 10 parts per billion. Coleman has, in this area, contamination of 3 parts per billion. Coleman is 50 percent, the City is 50 percent.

The third and last area, that is part of this illustration, is the area where Coleman has no contamination whatsoever and it is represented by the white area. In this area, the City will pay 100 percent of the clean-up cost.

I think this brings us to our next major point in the Agreement and that is, we do have an arrangement with Coleman that pertains to recovery of costs from other responsible parties. So that, you should understand, the amount Coleman is paying and the amount the City is paying, that can be set off by recovery from other third parties who have contributed directly to the problem. The way that will work is that the City will recover its proportion of what it has up-front paid from any of those contributors. So, for example, if contributor number 5 - the cost of his contamination in the brown area would be recovered 100 percent by Coleman. The portion in the green area would be recovered 50 percent by Coleman, 50 percent by the City. His portion in the white area would be recovered 100 percent to the City.

The City will take the direction in the recovery cost, that is, it will be the City that will bring the actions and will do the negotiations. Any recovery made by Coleman, that is given to Coleman, will exclude attorney fees that the City has incurred in collecting the money and will exclude consulting fees for expert witnesses and preparation, either for trial or for assisting the City directly, specifically, in recovering costs from a specific individual.

Another major area that has been talked about in the past is that the City does contemplate that there may be some interim measures that are taken to help the clean-up process. The interim measures that we are talking about are measures that would be taken prior to the time that this Remedial Investigation/Feasibility Study takes place. The Interim measures will be designed to clean-up particular hot spots that may be found and designed to control further spread of the contamination. Those interim measures - the clean-up costs for those interim measures will be shared between the City and Coleman using the same formula that I have just gone over.

Another important major part of the Agreement is what happens if the City and Coleman develop a dispute that they cannot work out between them. If that happens, a committee will be appointed - a three person committee. That committee will be made up of one person selected by Coleman, one person selected by the City, and one person selected by Wichita State University. Those three persons serving on that committee will then appoint, as a dispute resolution officer, an officer or senior manager from a nationally recognized environmental firm qualified in the area of environmental engineering, and also a company that has no connections with Coleman, no connections with the City, in other words, a company that not only has a national recognition but is also independent. That company will then serve as a dispute resolution to resolve any disputes that develop between the City and Coleman in the area.

I believe that covers the major points of the Agreement.

4/25/91 - 8:00
3-5

I would like to give Tom Docking an opportunity to address the Council on where we are on the Legislation and how the Coleman Agreement, and your consideration of that Agreement, fits in to the legislative process.

Mayor Knight

Mr. Docking.

Tom Docking

Thank you Mr. Mayor and Members of the Council. I appreciate the opportunity to offer some brief comments on my role in this project, and as was indicated by Tom Powell, to focus on matters that relate to the status of the Legislation, Denominated House Bill 2124, and also to offer a few comments about the proposed Coleman and City Agreement.

The Legislation is enabling, only, authorizing the establishment of a Tax Increment District strictly for the purpose of issuing bonds that are segregated for use of cleaning up groundwater pollution in qualified municipalities. The Bill, itself, has gone through a number of changes, beneficial changes, during its course in the House of Representatives. There was input received from the Division of Property Valuation of the Kansas Department of Revenue and also the Sedgwick County Appraiser's Office which changes related, basically, to initial concerns, which were recognized, regarding the constitutionality of the formation of the Tax Increment as it was originally designed. With proper input from PVD and the Sedgwick County Appraiser's Office, we believe that those constitutional concerns have been adequately addressed and the Bill has been cleaned-up in the sense that it would survive constitutional challenges in the Court system.

There are other more technical changes that have been attached to the House Bill that I will not go into today unless you wish. But, there is one final amendment I wish to bring to your attention. That, all be it a technical amendment, is one that is very important for a clear understanding of where this Legislation is and may go.

There was a meeting with a number of Representatives and Senators in Topeka, the week before last, at which meeting several Representatives expressed, basically, no desire to halt the proposal but expressed concern about their lack of understanding and knowledge of the particulars of the proposed Agreement between the City and Coleman by which Coleman's responsibility for its share of the clean-up would be determined. It was suggested, at that meeting, that perhaps a technical amendment would be attached to the House Bill that the House would, therefore, pass the Bill, so amended, and that the Senate would be, in effect, required to reverse the technical amendment in a manner that required it go back to a House Conference Committee for final approval; thus, giving the Members of the House of Representatives the last clean look that they had expressed a desire to have.

That Amendment which, simply put, places an effective date on the Bill, I believe, sometime in the year 2001, would require the Senate to place a current effective date on the Bill that is amending the Bill and causing it to go back to Conference Committee for affirming the corrective Amendment. It is not intended to change the substance of the Bill at all, but is intended to give the House one last clean look at the whole picture, including the Coleman Agreement.

The reason I go into this kind of detail is to convey to you that the House of Representatives has been somewhat demanding in its requirements for review and approval of this Bill and, of this date, has not yet provided final approval for the Legislation. There has been a great amount of communication among Legislators and between myself and individual Legislators, both on the House and the Senate side, to address as many questions and concerns as we can. Yet, to convey to you, today, that it is a certainty that this Bill will pass the Legislature is not to give you a fair assessment of where this Bill stands. The Bill is up for a hearing before the Senate Economic Development Committee on Thursday morning and, if it is favorably passed out of the Senate, would then go to the Floor of the Senate. If favorably passed there would go back to the House Conference Committee for, hopefully, final approval and a sign-off by Governor Finney.

I do wish to convey to you, however, that although the vote passing the Bill out of the House and over to the Senate was overwhelming, a 122 to one (1), with the only negative vote coming from a Legislator who was not from the Sedgwick County area, I encourage you not to assume that that means that there will be a similar overwhelmingly favorable vote when it comes back to the Conference Committee. I believe that the House of Representatives and the Kansas Senate will be looking

4/25/91 - 8:00
3-6

closely at the substance of your discussion today, and the results of any vote that you may take today, before considering, for passage, this Legislation. I repeat the obvious. If the Legislation does not pass, this has all been a worthwhile but futile effort on everybody's behalf.

Mr. Powell has, in my view, adequately covered the specific terms of the proposed Coleman and City Agreement. I can tell you that I was involved in the major negotiations on behalf of the City and representatives of the Coleman Company. It is my personal opinion, in agreement with Mr. Powell, that this Agreement does require Coleman to pay its fair share of the cost of the clean-up; and, that it is my belief that with adequate public communication the members of the public, at-large, will reach that same conclusion.

In conclusion, I would urge favorable consideration, even unanimous consideration, if it is to be such, by the City Council in your consideration of the Coleman/City Agreement. I feel that the strongest possible message still needs to be sent to the Members of the Kansas House of Representatives and the Members of the Kansas Senate. Anything short of a very strong vote may open the door for questions about the unanimity of the people of Wichita for this proposal.

I ask for your favorable consideration on a number of grounds but, principally, two which form the principle basis for my eagerness to be involved in this issue and those relate to the environmental aspects of this proposal. In my view, anybody who is involved in public service and has a sensitivity to environmental issues cannot be but shocked at the possibility of the continued existence of groundwater pollution and the effect that it will have on the people of the City of Wichita including the residents within the District itself. And, finally, out of interest for the innocent property owners who live within the pollution District. These people in no way contributed to the existence of the pollution. They are suffering economically, on a daily basis, for their lack of ability to borrow against the value of their property and the lack of their ability to sell their property to third parties. These people are in no way responsible for the plight that they find themselves in. I think that your approval, the passage of the Legislation, the Agreement with the banks and the savings and loans, and all the other aspects that have been reviewed by Mr. Powell, are critical and if any one of those pieces of the puzzle fails to fit then no part of the puzzle fits.

In my years of involvement of public service in one capacity or another, and as a resident of Wichita for these many years, I can tell you that I can identify no single issue that I have ever seen that has greater impact on the City of Wichita, and in particular the residents of the pollution District, than the matter that you have before you today.

I urge your favorable consideration of the matter. Thank you.

Mayor Knight

Thank you very much Mr. Docking.

Mr. Powell, will there be additional presentations or does that conclude the..

Tom Powell

Mr. Mayor, that concludes the presentation.

Mayor Knight

I would like to inquire from my colleagues if they would prefer to ask any questions they have now or give citizens an opportunity to address any concerns first.

The Chair recognizes Mr. Ferris.

Council Member Ferris

(Referring to Council Member Ward) His are probably better questions.

Mayor Knight

Okay. Mr. Ward.

Council Member Ward

Tom, could you talk to us about the three provisions in the Contract that require Coleman's written consent before action can take place, and explain why that is in there and what effect that would have if there was a disagreement.

Tom Powell

I will let Dave Tripp answer that question.

Dave Tripp

Mr. Mayor and Council Men. This Agreement has been negotiated with several important goals in mind and I should lay some foundation for this by explaining first that this is somewhat of an unprecedented Agreement in pollution clean-ups because it does have a private party committing, in advance of the clean-up and in advance of the completion of clean-up, to paying a substantial portion of the fees involved. In the context of that, and because of the fact that Mr. Powell mentioned about the large financial commitment to support the funding of Remedial

Investigation and Feasibility Study which is estimated to be around a million dollars, Coleman did negotiate for, and the City's Team did agree, to include provisions for Coleman to provide input to the organization, planning, and implementation of the studies. I do not know exactly which provisions you are referring to. If you would describe them specifically I will come back to them.

I think I know, generally, that there are provisions for the presentation and review of information from Coleman by the City and its consultants in the Remedial Investigation and Feasibility Study as it applies to the definition of the areas that are described on the graphic shown by the overhead projector. That is one example. Part of the purpose behind that was the knowledge that Coleman does have, in its possession, information relating to groundwater contamination because they had been involved, for some time, in a study of this area due to their negotiations with the Kansas Department of Health and Environment. It was important to the City and its team to know that the information that was available there could be used as effectively as possible by the City without reservation so that the City's need for additional investigation could be avoided and no duplication occur or repetition of expense. In other words, the City did not want to re-invent the wheel of information that already existed that could be plugged into the City's Study.

That is one point. Another, and I will invite you to direct me after this, is with respect to the carry-out of the City's program for the adoption of the search for and pursuit of additional responsible parties from whom the City would seek recovery of costs. In that effort, the City also thought it was appropriate for Coleman to have an opportunity to present information to be considered and that that would then be included in the City's demands for those parties to help reduce the costs the City and Coleman otherwise would be required to expend.

Council Member Ward

Both of those are laudable. What I am concerned about is the part on Page 5, on the last Section 2, where we are talking about defining the vectors that will be used in the model that will determine who caused the pollution and the amounts and we are allowing Coleman to have written consent on that. Will that effect the results? Talk about that a little bit. Why is that in there and the effect it will have on the model.

Dave Tripp

The provision to which you refer is one that starts, generally, with the City's effort to define the areas that are shown, conceptually, on the overhead projection. And, as Mr. Powell correctly pointed out, those are hypothetical based upon the example that we have used to derive a formula. And, as Mr. Powell also pointed out, the study which will be commenced shortly, if this multi-part program can be put together, will develop additional facts that will be used to provide the base of information necessary to accurately draw those lines which divide the areas. In that process, again, we understand Coleman does have available information. They also have available consultants whom they have hired who will be available to assist the City and its consultants in deciding what methodology will be employed and how it will be applied to reach the answers that will define those lines. I think, paramount, from the City's viewpoint in this situation, is the City, effectively, is in the lead - is in control of the process. It is the City's consultant, Camp Dresser and McKee, who will be overall responsible for the final product in this effort to draw the lines as they will exist. Coleman certainly does have a right to input. They have been given a right to provide their written concurrence. However, failing to receive that concurrence, and I think that is conditioned upon the fact that it will not be unreasonably withheld, failing to receive that, I think the parties, that is the City and Coleman, acknowledge that KDHE may insist upon implementation of this project and may require us to go forward and at that point the City then will be compelled to perform.

Also, in looking to the eventuality of a dispute, not with the expectation that we will have one but because of the possibility, there is a dispute resolution process. Out of that, the parties have a mechanism to select or to utilize three designated officials who will select a fourth unattached, unbiased person who will make a ruling on the correctness of the City's consultants position. Finally, if that does not result in agreement among the parties, there is a right of legal appeal, but the party who takes that appeal, if they lose, must pay the legal fees of the other party. So there is some risk in taking the appeal. Beyond that, I think the City will be given some presumption of correctness in its decisions because it is in the lead and as long as its consultant has made a reasonable recommendation supported by the facts we would expect the City's position to be upheld ultimately.

Tom Powell

If I might add to that. I think what Coleman is doing here is giving us a blank check. They do not know how much it is going to cost. I think it would be unrealistic of us to expect them to give us a blank check without some checks and

balances to that. I think on those checks and balances the important thing to remember is that what, in essence, if you read all of those clauses, Coleman has is input and participation in the process that Camp Dresser and McKee and the City are going to use to come up with a solution of whatever we are talking about. So, whatever that final solution is, that is ultimately the decision of the City and Camp Dresser and McKee.

Again, another check and balance is that Coleman has to give its consent, but the important, as Dave pointed out, the important part of that is that they cannot unreasonably withhold consent. So it is not a matter of Coleman saying, "Well, the City is doing it this way. We are doing it that way. We think our way is better. That is the way we should do it." That is not what unreasonably withheld means. What it means is it is not a matter of our way is best, there way is best. They have to be able to show, ultimately, to the Consultant, if it goes to a dispute resolution, that what the City is proposing is unreasonable.

I think that, in all three of those areas that you are talking about, that there is a check and balance, sure, but I think the City is ultimately going to be in control and that is what we want.

Mayor Knight

Mr. Ward.

Council Member Ward

You have another - and I think this has been corrected but I want to make sure of that - on Page 4, in the definition of direct cost, there was some language concerning EPA requirements. Has that been stricken?

Tom Powell

Yes. Coleman has agreed to strike the word EPA on that page.

Council Member Ward

Okay. Thank you.

This Agreement bases a lot of decision making on Camp Dresser and McKee. Can somebody tell us what Camp Dresser and McKee is? I know that probably some of the elder Members of the Council have had this information, but kind of describe what they do, how did we come about getting them, and their independence and their qualifications to do some of the things we are asking them to do.

Tom Powell

Maybe I can describe.

I think Jack Brown is here and he might, from a technical standpoint, be able to better describe what Camp Dresser & McKee is and what they do. I can describe the process that the City used to select Camp Dresser and McKee.

First, Request for Proposals were sent out to dozens of engineering consultant companies that do work in this area. The City Manager, thereafter, appointed a Technical Committee and, again, he can fill you in on the particular expertise that the Technical Committee brought but they were a brought based group from the local community that had various technical expertise. That group reviewed the Request for Proposals that were submitted by the various firms and then they made a recommendation as to which one of the proposals were the best and which one of the proposals should be interviewed for further consideration. At that time, a Screening Committee was appointed by the City Manager. It consisted of several members from the Technical Committee. It consisted of myself and Dave Tripp and, I believe, Dave Warren was on that Committee, and another person that had technical expertise from his office was also on that Committee. At that time, there was about four or five of the firms that made trips to Wichita. They were interviewed and a recommendation was made by the Committee to contract with Camp Dresser and McKee and that came to the City Council and the City Council, after reviewing that process, accepted the recommendation of the Committee.

Jack Brown could explain better than I can what expertise Camp Dresser and McKee has.

Mayor Knight

Mr. Brown, could you respond to Mr. Ward's question concerning the credentials of Camp Dresser and McKee, please, and their expected role.

Jack Brown

Jack Brown, Environmental Health Director. Camp Dresser and McKee has a long history of doing this specific type of investigative project, called an RI/FS. They have completed over 370 of these nationwide.

Mayor Knight

Could you tell us, instead of using initials, what RI/FS would be?

Jack Brown

I'm sorry. RI/FS is Remediation Investigation and Feasibility Study. The first part is investigation into the extent of the problem and defining the problem more precisely, in terms of the extent and boundaries, in this case groundwater contamination; and the feasibility study is the second part which defines the

type of technical devices that will be used to clean up the groundwater, in this case, this groundwater contamination. They would look at the different alternatives that are available to do the remediation.

The Project Manager for Camp Dresser and McKee has done at least 70 of this particular type of investigations and we feel very confident in their capabilities. At this point of the Study, they are looking into existing data and are determining the scope and extent that they will need to further investigate this area.

Mayor Knight

Thank you.

Mr. Manager, for the benefit of the Council, could you just summarize the rationale and the composition of the Technical Advisory Committee?

Chris Cherches

Yes. Essentially, when this process started the City's intent was to establish a Technical Committee which would be comprised of local experts within the community, individuals who live and work in this community that have the expertise in this whole area of environmental laws or hydrology, these kinds of aspects.

On this ten-member Technical Committee we have the retired Director of the Kansas Department of Health and Environmental Services, we have a retired doctor who was Director of the Kansas University Medical Center, we have a number of professors and experts from the University community, we have experts from some of the local industries that have encountered similar problems and who have the expertise in the cleaning up of their problems, their experiences, and so on. I am missing several other disciplines, but I think that gives you an idea of the high caliber of individuals who have volunteered to serve on this Committee. That Committee was not only involved in reviewing the Request for Proposals. Tom said it went out to several dozen. It went out to over 100 national firms in the Country. They reviewed those RFPs - those proposals - the scope of services. They participated in screening the applicants. That Committee will, likewise, be an ongoing Committee that will meet on a regular basis with the Consultants as the Consultants unfold their study to question, to probe, to ensure that the City is getting the kind of information and documentation necessary. They will then be advising Staff, the Legal Office, and the City Council as this matter progresses. So, I think you can be comfortable with the fact that it is not only City Staff involved and the hired experts, but we have people who are very skilled in this area that are local residents and tax payers.

Mayor Knight

Thank you. Any further questions? Mr. Ward.

Council Member Ward

I have a couple of brief ones.

Tom, and you might have said this in your presentation, but this is to clarify - nothing in this Agreement with Coleman prevents us from going after other polluters in this area?

Tom Powell

That is correct. In fact, the Agreement contemplates that is exactly what will happen.

Council Member Ward

Okay. And, Tom Docking, you are familiar with the Legislation. Isn't there a cap on the amount of the Tax Increment District we can make?

Tom Docking

Yes. The Legislation, as it currently stands, would limit the amount of money that could be segregated for the Tax Increment Fund to an amount not to exceed 20 percent of the otherwise generated property tax revenue from properties located within the Tax Increment District as of year one; and that cap will not increase over time. In other words, whatever that 20 percent cap is at year one will not increase based upon improvements to fair market value property, and therefore tax revenue generated. In other words, it is, in the scheme of things, intended to be a relatively low cap.

Council Member Ward

Thank you. Mr. Mayor, that is all the questions.

Mayor Knight

Thank you Mr. Ward.

Mr. Reeser

Council Member Reeser

I, also, am slightly concerned about the written concurrences on Page 5 and 7, though, the one I am most concerned about, though, is the one at the very end of Page 7, top of Page 8, where it says "with input and participation by Consultants for Coleman shall prepare, using their best professional judgment and the various

criteria listed in Exhibition C." Does that give a lot of play with what is punched into the computer on the criteria. I mean, how will the City control what is actually put into the computer for the scenarios?

Tom Powell If you read that entire sentence, Council Member Reeser, I think that maybe you would be a little more comfortable. "The Environmental Consultants for the City," is the first thing, "with input and participation by Consultants for Coleman, shall prepare, using their best professional judgment." So, what that really says to me is that Environmental Consultants for the City shall prepare, using their best professional judgment and the various criteria listed on Exhibit C what they are going to do as part of that process. I do not think that is unreasonable at all, again, because Coleman has written us a blank check for them to be able to have input and participation in it. But, the key is the final say of what is done rests with the City's Consultant and the City.

Dave Tripp Could I add one thing to that Council Man? This is a document that is similar to many others that have been negotiated at clean-up sites around the Country and within this is a provision that when the facts have been gathered and the preliminary Remedial Investigation/Feasibility Study is finalized and the recommendations are made, therein, for corrective action that, at that point, it is required that public involvement be obtained, and that is the public, in general. In that sense, many other parties, Coleman included, will have an opportunity to critique the work by the City's consultant and that information will be part of a record which will be taken into account. But, it is not required that the City follow anything other than its own sound judgment or that of its Consultant in reaching its final conclusions. Ultimately, the remedy itself will be selected in cooperation and concurrence with the Kansas Department of Health and Environment so they also have a regulatory hand in the final choices on this matter.

Council Member Reeser So, the balancing here is what Kansas Department of Health and Environment require us to do, so even if the City wanted to do something, and even if Coleman wanted to do something we would still be bound by what the Kansas Department of Health and Environment needed us to do.

Tom Powell In certain instances that is true. I think the real balance is that the ultimate decision is the Cities. What Coleman has, in that particular part that you were referring to, is input and participation. That does not mean that give the final directions to Camp Dresser and McKee as to what they are going to do. Camp Dresser and McKee decides that on their own. They will review the input and participation by Coleman but they are not required to follow it.

Council Member Reeser I have a couple more questions.
On the end of Page 16, where it says "Nothing in this agreement shall be construed to require the disclosure of any information which is protected by any claim of privilege." Why was that put in there?

Tom Powell That was put in at the request of Coleman. We did not have a problem with that because we think that the information that is going to make up those plumes are going to come from the study that Camp Dresser and McKee is going to prepare and that is what we are going to rely on.

Council Member Reeser How would the public get a chance to be able to scrutinize the Study as well?

Tom Powell Well, the Study by Camp Dresser and McKee will be open to the public. That only refers to material that is held by Coleman. So, it would only be something that Coleman has done that they feel, and that is, protected by a claim of privilege or of confidentiality. It would have nothing to do with what Camp Dresser and McKee is going to prepare. That will certainly be available for the public to review.

Council Member Reeser Okay. And on Page 23, I am not an attorney so there may be a very simple answer to this, but where it is talking about "the releases of persons or entity who have interest in such real property during a time in which the release or disposal of hazardous substances or petroleum products has occurred," should that also say "has occurred from that property" because a case could be made, could it not, that, you know, we a not going to release somebody as long as the hazardous substance is still there. Would it not be clarifying just to say they will not be released "as long as that hazardous substance has occurred from their property?"

I just do not want to see somebody get stuck even though it was not released from their property.

4/25/91 - 8:00
3-11

Tom Powell That certainly is not the intent.

Council Member Reeser I am sure it was not.

Dave Tripp I think, to read this completely you would need to refer back to the pertinent provisions of the Kansas Department of Health and Environment Agreement with the City. I think, in paragraph 61, there is a more full description of the nature and extent of these release documents and I think we can check that and, perhaps, if this needs a clarification, we could make a one-word insert, "releases has occurred thereon" and that would clarify it.

Tom Powell Assuming that Coleman does not have a problem with that, which I do not think they would, we will..

Council Member Reeser Okay.

This is just a real, real basic question. Has the source of the pollution been stopped?

Tom Powell No, it has not. There has not been any remedial action taken at this time and that is part of the consideration that Camp Dresser and McKee is involved in right now and will make recommendations on an interim measure; and I believe the Agreement says that they will provide those to us within five months. So, they have been approximately a month-and-a-half in the process so pretty quickly we should be getting some recommendations on interim measures.

Council Member Reeser Mr. Mayor, I do have a couple more questions but I think I will defer to if anyone else has questions on the Bench, and then if these questions that I have, just a couple more, still need to be asked, I will just ring you again.

Tom Powell I am only as far away as the box.

Mr. Ferris.

Council Member Ferris Thank you Mayor Knight. I just have some very simple questions.

First of all, Mr. Tripp, you mentioned that some of thaws provisions were very standard. Have you done this type of thing before? Is this something you are familiar with?

Dave Tripp Yes. As Mr. Powell remarked, I spent 16 years at the EPA and worked on a number of these agreements while I was with the EPA, and since then I have worked on a number of them while I have been in private practice. I think this document is similar, in many respects to many documents that have been negotiated with private parties and similar settlements.

Council Member Ferris They have been pretty successful?

Dave Tripp Generally, and I think, as I may have said earlier, the Settlement with the Coleman Company is somewhat unique in that it is relatively rare for a settlement of this nature to be reached in advance of a clean-up activity actually starting. Sometimes that does occur and it generally has proved out to be a more efficient way for the parties to solve their problem and avoid the cost of prolonged clean-up which generally increases as time goes by, and also avoid the cost of litigation.

Council Member Ferris Okay. Thank you.

Tom, you can direct this to whoever needs to answer it. It's a pretty simple question. What happens, for example, in the example number one up there if we are unable, that person is now bankrupt, defunct, we are not able to recover? I know the white area - that is where the Tax Increment Financing comes in. Do we have any obligation to Coleman if we are unable to recover from someone who is identified. In other words, the City, is the City responsible to take that TID. money and reimburse Coleman for that area of the clean-up?

Tom Powell No. You are absolutely correct. The increment would pick up the white area, Coleman would pick up the brown area.

Council Member Ferris Okay. So that if we could not pick that up then they are just going to have to take care of that themselves?

Tom Powell That would be their cost.

Council Member Ferris Okay. Now, the last question I have, and I do not know if there is an answer to it - in this area of resolution disputing where we have this problem where people do not agree and we appoint this group and then they hire somebody - is there any time frame? This could take three, five, seven years. Is there some kind of time frame in here to address that, or is there an idea in your mind to how long that might take to resolve that?

Dave Tripp If I could answer that, I believe the Agreement provides, generally, that the parties have the opportunity, first, to reach consensus, if that is possible. If either party announces a dispute, then each has only 15 days to submit a written statement of their position to the dispute official and, after that, the dispute official may ask for more information, if appropriate, but following that the dispute official must provide a written conclusions within 30 days.

Council Member Ferris So it is a pretty quick process then.

Dave Tripp It is a very accelerated process in that regard.

Council Member Ferris Very good. Thank you. That answers my questions.

Mayor Knight Any other questions?

Would you like to proceed now, Mr. Reeser, before we hear from the public?

Council Member Reeser Sure.

(Momentary interruption to reschedule a Time-Certain Hearing on another Item from 11:00 A.M. to 1:00 P.M. not transcribed.)

Council Member Reeser Does the interim clean-up only include the soil or soil vapor clean-up? We are not actually talking about cleaning up the groundwater during the interim measure. Is that right?

Tom Powell It could contemplate anything, including cleaning up the groundwater. That might be used if we found a particular hot spot. Also, the interim measures, as you indicated, certainly would contemplate taking some action to halt further spread.

Council Member Reeser Okay.

On the separate Coleman Agreement that they have with the Kansas Department of Health and Environment, is that included in that figure that says it is going to cost \$20 million to clean this up?

Tom Powell It probably is because that \$20 million figure came from KDHE and when made that maximum estimate. And, again, that is a maximum amount of money that KDHE is saying. They are saying ten to twenty.

Council Member Reeser So we got that \$20 million figure from the Kansas Department of Health and Environment?

Tom Powell Yes, and we also - Camp Dresser and McKee is taking an independent look at that and they have come to the same conclusion.

Council Member Reeser Okay. Just to follow up on that question, you mentioned, while you were up at the screen, that Coleman's clean-up, underneath their plant, would not effect the feasibility study that we need completed by Camp Dresser and that there would be provisions to make sure that footprints, I think that was your term, that footprints are not erased. How is that guaranteed? I mean, would their cleaning up turn the Camp Dresser Study into mush?

Tom Powell No, I do not believe it would and I base that on advice that we have received from Camp Dresser and McKee. There are really three contractual commitments that were made in that regard. First, the City's Agreement with KDHE contains language that the clean-ups that they enter into with Coleman must be coordinated and must do nothing to cause or make more difficult finding Coleman's footprint. The Agreement Coleman has with KDHE, I am sure, contains that same language. The Agreement between the City and Coleman contains that same language. So, there are three separate areas that cover it.

Council Member Reeser Now you say you are sure it is in that Agreement?

Tom Powell I have not personally checked it, but it would have to be because that is the commitment KDHE has to the City.

Council Member Reeser Okay. Just one last question. What are the chances that KDHE will allow us to clean-up less than five parts per billion because I see anything above five parts per billion would save us money. Is that correct? And Coleman too.

Tom Powell It would save us all money. I would not want to speculate on the chances. Part of our agreement with Camp Dresser and McKee, they will be performing a risk assessment that will address that area that can be used to help KDHE come to that conclusion. Also, the City has the ability to institute some institutional control such as passing an ordinance that would require the capping of all water wells so that this water would in no way be exposed to people. Some of those things, we hope, will allow KDHE to come to a conclusion that we do not need a clean-up to five parts per billion - something less than that.

Mayor Knight Mr. Ward.

Council Member Ward Just to clarify. Camp Dresser and McKee will have access to Coleman clean-up and Coleman, you know the Section that Stan (Reeser) pointed to that said that their records will be kept privileged or confidential, that does not include Camp Dresser? They will have access so that they can perform their feasibility study?

Tom Powell Yes. As a matter of fact, Coleman, prior to signing this Agreement, has already turned over all of its records to Camp Dresser and McKee; and Camp Dresser and McKee feels confident that it has the information from Coleman that it needs to proceed.

Council Member Ward Thank you.

Mayor Knight Any other questions by the City Council?

 Mr. Gooch.

Council Member Gooch Mr. Powell, I believe, when you were explaining, you said the white area outlined would be picked up by the Tax Increment Financing. You did not mean to imply that if there were indications, even into that area, that if there were materials found that could be traced back to Coleman they would not have to participate.

Tom Powell That would be correct but the white area, again, the map is just a depiction it does not have anything to do with reality and the white area depicts an area where there is absolutely no Coleman contamination.

Council Member Gooch Okay.

Tom Powell However, if there are other third party contributors that we find that do have contamination in that white area, we will have the right, and the plan is to proceed to initiate a settlement or if that is unsuccessful to go to litigation, to recover costs from those parties to reimburse the City for all of the white area.

Council Member Gooch Thank you.

Mayor Knight Any further questions from the Council?

 If not, the Council welcomes any citizen who wants to share his or her point of view.

 Margaret, we would ask you to come forward. Give your name and try to confine your remarks to five minutes and we will listen very attentively.

Margaret Bangs My name is Margaret Bangs. I thank you.

 As I appear before you this morning, this will be a different viewpoint. Some Wichitans are doubtful, even apprehensive, as our Mayor, City Manager, and City Council undertake a go-it-alone, unprecedented plan to clean-up our, what some people call "four-mile island" of pollution. A plan financed by a dubious Tax Increment District which bypasses State Cash Basis Law. These doubters remember another Mayor and another City Manager, Jim Donnell and Gene Denton, who, a decade or so ago, were just as determined and optimistic about another go-it-alone plan to build a \$1 billion coal gasification plant with property tax payers the guarantors of this huge project. Fortunately, the plan was blocked for at that same time a large national energy company with sizable Federal subsidies failed in a similar gasification plant in Beulah, North Dakota. Because every Wichita taxpayer is already paying into the Federal Superfund, we wonder why it would not be better to have EPA experience, expertise, and clout in

4/25/91 - 8:00
3-14

charge of the clean-up. Ken Rappleman of the Kansas City EPA Regional Office has stated that Cherches approach is unprecedented, that an EPA clean-up would not take any longer than one managed by the City of Wichita, and that EPA rarely seeks triple damages as we have been told by our City Government.

Wichitans are concerned, as they see the tax base for City, County, and Schools unraveling while more and more Downtown property owners seek devaluation of their properties, and they fear that the taxpayers, not the polluters who generated the waste, will be burdened with the cost of the clean-up. They also question the propriety of Coleman paying for the cost of the Study which will determine who pays for what share of the cost of the clean-up. A more objective Study would be guaranteed if the City, itself, paid for all the costs of the Study. Wichita taxpayers may be uncomfortable with this arrangement because they remember that Ronald Perleman, CEO of Coleman's parent Company, planned to liquidate Coleman's pension plan and purchase annuities for Coleman retirees from Executive Life, an insurance company that invested heavily in junk bonds and has now been seized by California regulators. They have also read that Perleman's debt-laid Revlon Company had to sell its Max Factor line to Proctor and Gamble for \$2 billion to pare down its junk bond debt, but that still leaves Perleman with over \$1 billion of debt. Moreover, Federal regulators are now reviewing so-called sweetheart savings and loan deals put together in late 1988. One of these institutions created in this controversial government deal was First Gibraltar of Dallas, owned by Mr. Perleman, which received Federal Aid totaling \$375 million last year while the thrift itself owned \$95 million for a 34 percent on equity. Knowing that Mr. Perleman has the best financial advisors, I have heard one of them is Felix Roitan, they do not come any better than that, lawyers and consultants in the Country, one can be permitted to question if the City and its legal staff and its advisors are up to bargaining with this New York financier.

Those are my doubts and concerns.

Thank you.

Mayor Knight

We appreciate, very much, you exercising your citizenship.

Mr. Ferris.

Council Member Ferris

Mr. Tripp, based on your experience with the EPA, could you, perhaps, address a couple of things that the Kansas City Director has said - the City is ill-equipped and the time frame and the costs? How has your experience been as you have evaluated those things?

Dave Tripp

Mr. Councilman, the first meeting which I became involved in with the City, on a large scale, was in the EPA Offices in Kansas City, Kansas, EPA Region Seven covering the State of Kansas and other States, in the presence of the Kansas Department of Health and Environment officials, including the Assistant Secretary and General Counsel, with representatives from the City and some of the Banks here in Wichita, to explore, at that time, whether it was appropriate to proceed with the settlement with the Kansas Department of Health and Environment versus an EPA settlement because, on behalf of the City, I thought it was wise to approach that question with an open mind.

Is this really better as an EPA settlement or as a Kansas Department of Health and Environment settlement? That question was openly asked at the meeting in Kansas City with the EPA with the expectation that people present, including EPA officials would respond to us if they saw reasons why we should have an EPA settlement rather than a Kansas Department of Health and Environment settlement. They openly replied to us that this issue is considered a State Lead project under terms of the Federal Superfund, which means that the EPA has given money out of the Federal Superfund to the State of Kansas to, first, prepare the Site Listing Report that came out in November of 1990, and secondly, to provide assistance for KDHE Staff to overview and negotiate with the parties in this matter. EPA has clearly designated this as a State Lead project. They did not have any compelling reasons to offer us why this should be an EPA Lead matter.

From my personal experience, I would observe that were this to become a Federal Superfund site, I think it is realistic to expect that we would be somewhere between three and five years before the study was finished and the public proceedings concluded on the investigation of this matter. Three to five years to finish the studies. After that, at some point in time, a clean-up would commence unless private parties or the City was, at that point, willing to step forward and assume responsibility for the financial burden of the clean-up and that, of itself, may take another two to five years to implement. So, I believe realistically, we would not see a clean-up in Wichita sooner than five years. I may be somewhat in error on that but that is my general experience with EPA

4/25/91 - 8:00
3-15

Superfund sites, and during that time, as has been remarked, the Banks would have no incentive to change their position with regard to funding or providing the loans within this area. That, probably, was the over-arching paramount goal of this, as I understand it getting into this matter, to attempt to restore property value and protect the City's tax base and otherwise return conditions to as good as they might have been before this pollution became known.

So, I think it is less than totally correct to think that EPA could do this more quickly. I think if they did it certainly would not be done as cheaply. The popular wisdom among people who work with Superfund is that EPA Lead projects, typically, may cost as much as one and one-half times to two times, or more, than when the project is done by private parties including municipalities. I think there is not just a time savings but a cost savings inherent in this whole scheme, if it can be put together and made to work.

Council Member Ferris Thank you Mr. Tripp.

Mayor Knight Mr. Gooch.

Council Member Gooch I would like to ask you another question about the Superfund. If, in five years, they commence the clean-up, would they then make an arrangement with the Banks that they would start making loans for development and change which would be the means of changing the value of the property? Would that take place at that time as is compared here?

Dave Tripp That is a very astute question, Councilman. EPA really has no agenda to assist in parties obtaining the loans. It is simply not their purpose to restore the atmosphere in which banks provide loans. There is a great national controversy going on right now over the vulnerability banks feel because of environmental problems. There has been one court case that says that banks can be responsible for the clean-up of a borrower. If the bank is in a loan agreement with the borrower, the bank can become liable for the borrower's environmental problems. EPA has attempted to address that by writing some policies but those have been jammed at the office of Management and Budget, have not been issued and, personally, I do not think that they are going to be issued for quite a long time. I do not think EPA would ever have an incentive to settle with the banks on a matter such as this. Their primary goal is to get the pollution cleaned up and, if that happens, to solve an incidental problem such as the banks on their loan security. That might happen but it is not EPA's purpose to do that as a primary goal.

Council Member Gooch In that case, then, if the clean-up took 15 years, it could be 15 more years before the value of the property could change where the loans for buildings or sale or value would improve?

Dave Tripp That could happen. That is correct.

Council Member Gooch Thank you.

Mayor Knight Mr. Reeser

Council Member Reeser Thank you Mr. Mayor.

Mr. Docking, if we get these five steps that we need to implement this, what are the chances evaluations could still go down and, if they do, as a tax attorney could you give us a figure on what that might be?

Tom Docking That is an invitation to take some license that I am going to be careful about. But, I am going to offer a few general thoughts. The principle initial amendment to the House Bill that we have been discussing was to clarify that the role of the appraisal process, be there a clean-up or be there no clean-up, is to remain unchanged. That the responsibility of the County Appraiser is, at all times, to determine the fair market value which is defined by Statute as what a willing buyer would pay a willing seller, both parties being aware of all relevant facts, and that that responsibility is not to be tampered with by reason of this Legislation. Thus, if the Legislation passes and the County Appraiser determines that by reason of the fact that the various agreements are in place and the Banks and Savings and Loans are now willing to loan against the value of the real estate, that the people then become able to market their property to third parties, then, in my view, again I can not speak for the Appraiser's Office on this, but, in my view, you have done a great deal to eliminate the damage to fair market value that currently exists. Whatever that level would be. Again, that would be for the Appraiser to determine as well.

4/25/91 - 8:00
3-16

So, as a matter of valuation principles, I, and I will admit I have been in some discussions with the people in the County Appraiser's Office on these kinds of questions, I believe, as a matter of valuation principle, the current inability to market ones property and the current inability to sell it is likely to be a measurable downward factor on determination of value and if you remove those then you, at least, lessen the reduction in fair market value.

Mayor Knight

I want to make a quick comment in response to Ms. Bangs. When she speaks about voter concern. Clearly, there should be voter concern, taxpayer concern. It is my judgment that every taxpayer in this County has an economic self-interest as to how this problem is reversed. You also made mention of the fact that the City Manager and I, and several other individuals, were pursuing, I guess, an irresponsible course. Central to my thinking, and I have made this clear in an election that we just went through so, I guess, if you are right there were people that did not seem to understand the position I restated over and over and over and I can not recall an occasion in which I hedged my position on this. But, central to my thinking is a rejection of the notion that the Wichita core area should ever become a Superfund Site. I said that over and over and that was an issue in the campaign that I went through. I made it public and my belief that their is no likely scenario whatsoever, in my mind - in my understanding, how the core area of this community could ever withstand such an eventuality. So, I expressed as clearly as I know how, and as straight forth as I know how, my view on this. I have never professed to be a chemist. I have never professed to be a technician and a specialist. I do not think that I am called upon to be that. I am called upon to listen to men and women who, I think, bring very impressive credentials to the table to try and correct a very serious community problem and one in which I feel a compelling sense of urgency, given the involvement I have had for the last six months. So, you are correct in that I do not believe Superfund is the way to go. I am not sure that I agree with some of your other assumptions but, again, I appreciate you coming down to express them.

Margaret Bangs

Bob, I did not say you were irresponsible. I said it was unprecedented.

Mayor Knight

Oh, I think that is correct. I am sorry I misunderstood you. I think it is unprecedented. Thank you for correcting me.

Next speaker.

Paul Stevenson

Mayor Knight, Members of the Council, I am Paul Stevenson, Executive Vice President, Bank IV, Wichita, and I too appreciate the opportunity to come before you and urge your favorable support of the proposed clean-up plan as recommended by the City Manager and specifically, today, the Coleman Agreement.

As you have heard, Banks are truly concerned as to their potential liability as lenders on property located within the Gilbert and Mosley Site and as to the impact of groundwater contamination or collateral values. Essentially, lending institutions are reluctant to loan or risk further investment in this contaminated area unless the situation changes dramatically and banks can have greater assurance of avoiding clean-up costs in the event of having to take title to property in a foreclosure situation. However, with the City's innovative Policy and their willingness to sign a Consent Decree agreeing to take responsibility for clean-up of the contamination, the lending institutions could once again more confidently consider lending on properties located in this area. The City and representatives of most of the major local financial institutions have held several meetings and reached a tentative agreement which should encourage increased lending activity within the area mentioned if the City is able to enter into the necessary agreements that are a part of that plan.

Your approval for this Agreement is, therefore, vital and without it the economic viability of a important portion of the business community could be in extreme economic jeopardy. I see no other viable solution than that which has been proposed and urge your favorable consideration.

Thank you very much.

Mayor Knight

Thank you Mr. Stevenson.

Next speaker.

Joan Cole

Good morning. My name is Joan Cole. I live at 1351 North Emporia. I am speaking today as the President of Historic Midtown Citizens Association regarding the groundwater pollution problem that confronts our City.

4/25/91 - 8:00
3-17

Historic Midtown covers an area from Central on the south to 21st Street on the north, from the Santa Fe tracks on the east to the River (Arkansas) on the west. This area includes 180 square blocks and approaches \$200 million in appraised valuation.

First, I want to commend you on taking the lead in trying to solve this problem without involving us in the Superfund program. We believe that controlling our own destiny is far preferable than turning the job over to Federal bureaucrats who have no empathy with or understanding of our immediate needs. We believe our efforts to restore and rebuild our neighborhood, while proceeding well, are inextricably linked to the status and future of our Downtown. We believe the lesser and more acceptable risk is to go forward with the clean-up without waiting for litigation or other impediments to interpose their own narrow agendas.

We also know, and believe, that a City Council divided against itself will be exploited by those in Topeka who do not wish us well in this project.

If the tax base represented by our Downtown is reduced, the burden of increased taxes will fall on all residents. While there may be no absolute guarantees of future consequences, the Agreement between the City and the Coleman Company appears to us to be an equitable one and, more importantly, one that allows the clean-up to progress without unnecessary delay. We have no wish to live with the consequences of another Love Canal fiasco in homes significantly reduced in value while facing increased tax liability. We are aware that currently those persons and businesses considering the purchase or property in our area, which is north of the Downtown Core, are incurring the costs of running groundwater tests prior to making a decision.

We urge you to move forward with all dispatch and with unanimity to approve any necessary action to start the clean-up as soon as possible.

Thank you.

Mayor Knight

Thank you very much.

Next speaker please. Could I get a show of hands as to the number of citizens that want to address the Council.

Courtley Jackson

Mr. Mayor, fellow Councilmen, my name is Courtley Jackson and I am President of the Wichita Area Association of Realtors. We wish to applaud the City for taking leadership role to relieve the burden on the many property owners that have real-estate in the contaminated area. We believe that the Wichita Plan, when implemented, will reverse declining property values and encourage lenders to invest in those properties located in the contaminated area.

I believe that one Council Member had a question regarding the valuation process. The key to that valuation process is that lenders are willing to lend. Without the lenders in the formula real estate values plummet and that is what is taking place today. I do not think I need to share with you, today, the devastation that has occurred for those real estate properties located in the Gilbert and Mosley site but it has, basically, halted all transactions from the Downtown area all the way south.

We wish that you would consider favorable the Agreement with the Coleman Company. It is a critical part in the plan that you have proposed and we wish you would proceed today and complete it successfully.

Thank you.

Mayor Knight

Mr. Reeser, I will recognize you if you will give me a chance here.

Just a second Mr. Jackson.

Mr. Reeser.

Council Member Reeser

I was just curious. How many transactions have taken place in this area since the discovery of the pollution?

Courtley Jackson

I am not sure I can tell you how many transactions have taken place. I can tell you an example of an eleven-story office building in Downtown Wichita that has recently sold for \$160,000, to give you an indication of the decline in property

4/25/91 - 8:00
3-18

values. I have had many phone calls, and I am a real estate appraiser that is my area of expertise, but I have had numerous calls from business owners that are considering purchases of the property in the area and, basically, have backed away.

Council Member Reeser Thank you sir.

Mayor Knight Thank you very much.

Next speaker.

David Burk Mayor, Council Members. I am David Burk, Partner in Market Place Properties. I would like to thank you for the opportunity to speak in favor of the City's Agreement with Coleman. I am going to shorten my remarks so that hopefully you can consider this before noon.

As a developer, Market Place Properties has been unable to proceed with the purchase of the properties or construction in the Old Town Warehouse area. Financial institutions will not lend, investors will not invest, even national franchises will not even talk to us. We did not contribute to the problem but we are being held hostage.

I have reviewed the written Agreement, attended the news conference, listened to you this morning, and read the news articles and editorials. I have spoken with numerous land owners in the Old Town area. It is my belief that the consensus of those people believe that this Agreement is a fair one.

I urge your positive vote on this key issue.

Thank you.

Mayor Knight Thank you Mr. Burk.

Next speaker, please.

Larry Soice Mr. Mayor, fellow Council Members, my name is Larry Soice. I am here today as Chairman of the Wichita Area Chamber of Commerce. I would like to make just a brief statement in support of the proposed Agreement.

We believe that the Downtown Groundwater Contamination Clean-up Program is critical not only for the development and redevelopment of property Downtown but for the financial, economic, and environmental well being, really, for all the citizens of our City and area surrounding our City. We further believe that this proposed Agreement is a critical element in the overall process of getting this accomplished.

The Wichita Area Chamber of Commerce has previously voiced its support for the City's leadership and initiative in taking on this project and we think that that is highly commendable and we strongly urge your support and your approval of the proposed Agreement, today, between the City and the Coleman Company.

Thank you.

Mayor Knight Thank you Mr. Soice.

Next speaker, please

Stacey Demaio Mayor, City Council Members, my name is Stacey Demaio, Downtown Action Corporation. I am here, today, on behalf of Hale Ritchie, Chairman of the WI/SE Partnership for Growth. He apologizes for not being able to be here today due to a Board Meeting at his Company. He wanted me to relay to the Council Members that the WI/SE Partnership for Growth has not held a meeting since the Agreement has been publicized, however, they are on record supporting the City Manager and the City's efforts and the process for this cleanup. I would like to echo Tom Docking's comment for a unanimous City Council vote, today, in support of the Agreement and, on behalf of the WI/SE Partnership for Growth Board of Directors, I would also like to encourage you to do so today.

Thank you.

Mayor Knight Thank you Ms. Demaio.

Next speaker.

4/25/91 - 8:00
3-19

Phillip Smith

Mr. Mayor, Council Members, my name is Phillip Smith. I am here representing my father, a retired individual, who has the dubious distinction of owning the property at the intersection of Gilbert and Mosley. Also, the dubious situation of that property becoming vacant at, or about the same time, that this problem was found. As a retired individual, he needs the income from that building and since then, even though the building is - according to three major real estate firms in town - exactly what the public wants, no body wants to look at it. No offer has been made to buy or lease. The taxes have gone up 250 percent in the same period of time, on this building, but no income is coming in on it.

I think we need to follow forth with the City's program. The financial stability of all the property owners in this District is very much in question if we do not get something right away. We cannot wait on the EPA. We need to take steps today in order to relieve the financial possible ruin of those property holders.

Thank you.

Mayor Knight

Thank you Mr. Smith.

Next speaker.

How many more speakers?

Bill Livingston

Mr. Mayor, Members of the Council, I am Bill Livingston. I am President of Gossen-Livingston Associates, a 52 person architectural firm that is located on South Emporia right in the middle of the District. We are in a high growth period in our business and are being road-blocked to any advancement in that business due to our inability to finance expansion on our current property. We feel that this Plan is very creative. We feel everyone should be highly commended for the process that has been developed and one in which we believe very strong in and would support your unanimous support of this process and of the Agreement.

I can speak, briefly, on the value of the real estate. Our property was recently appraised and, as an example, we have an appraisal in our hands, now, that shows our property to be less than one-half of its previous value and actually valued at approximately one-half of what our current mortgage is, which certainly makes our bankers happy.

So, again, I urge your support. Your unanimous support is very important to the efforts of the Legislature and I thank you.

Mayor Knight

Thank you Mr. Livingston.

Next speaker, please.

Jim Aiken

Mr. Mayor, Members of the Council, I would like to comment with the background of being your former Environmental Health Director of your local Health Department.

Mayor Knight

For the record, this is Mr. Jim Aiken.

Jim Aiken

Yes, thank you. Also as being the former Director of the Division of Environment of the Kansas State Department of Health and Environment, presently serving on the Manager's Technical Advisory Committee and, finally, as a resident of this City.

In my opinion, this is the most creative, innovative proposal that I have been aware of in my long years of experience in Environmental Health. I think the Council and his Staff can be commended for developing this. I think the Council is to be commended for being extremely responsible local Government. I believe in local Government being the best agency to solve the problems that are related to local communities. I certainly commend you in developing and proceeding with this process.

Thank you.

Mayor Knight

Thank you Mr. Aiken.

Bill Cozine

Mr. Mayor, Council, my name is Bill Cozine. I live at 719 Linden Court. I appreciate the comments that other speakers have made. I notice that there are institutions here. I notice that there are associations here. I am here to represent myself.

4/25/91 - 8:00
3-20

I own Broadway Mortuary. Broadway Mortuary has been in existence in Wichita for 78 years. We have been 53 years on our location at Lincoln and Broadway. We are one of the ten largest firms (Mortuaries) in the State of Kansas. We employ a staff of 13 and another 17 directly related to us.

I was aware of the fact that we were in the contaminated area and I, like some of the other citizens, probably thought "well, what does that have to do with me?" On December 31, 1990, I found out. Our Broadway Mortuary caught fire and burned. We had approximately an 80-85 percent total loss. I have spent the last four months trying to rebuild an institution that I have currently been involved with, myself, for 30 years. We have drawn the plans, we have worked through all the process. There are not many manuals out there that say what to do when you have a major fire like that. So, I have gone through all of those things for the last four months and the problem that, obviously, I am faced with is the contamination issue. I have no value, apparently, on my property. I have gone to the banks and the banks are not in the position to be able to loan us funds. We had almost a million dollars in sales due to the number of families we served last year. It is extremely difficult and, for me, it is extremely urgent.

I represent one of those 300 business owners and one, I think, of 5,000 individuals that live in that area. I have a friend who is 60-some years old who has been in business 35 to 40 years. He wants to sell his business for his retirement. As was mentioned, he cannot do it because of the finance. I have another friend who has a major restaurant in the south end of town who has a contract for sale. He cannot sell it because of the financial problems. I know three widow women that live in the south end of town who need to sell their properties to have funds to be able to provide for their medical care and health care. I, personally, have had a piece of property on sale on South Broadway for the last two years. I cannot do anything with it. I cannot rebuild.

It seems to me that we have a window of opportunity for the citizens and the Council to come together and to accept the proposals that have been made. I do not have the luxury of a three to five year study and I do not have the luxury of waiting until next Session, for the State to come into Session. I would recommend that we accept Coleman's proposal. I would recommend that we give a unanimous vote. I would recommend that we show to the State that we are behind this, that we are responsible, and that we want to get on about our business. For me, it is absolutely critical.

I made the comment and, I guess, as a funeral director it would be a natural comment for me. We do not need to worry about putting a 200 foot statue of an Indian, the Keeper of the Plains, in Downtown Wichita. If we do not do something about this, we can put a 200 foot tombstone and mark a spot where we once had a great City, because I think it is absolutely crucial and I would echo all of the other comments that it is imperative that we give a complete approval as a Council.

I thank you.

Council Member Ojile

Mr. Cozine, I thought I would never see the day when a person would extend their deepest sympathy to a Funeral Home, but I am glad that you came down here today. I was hoping that you would because your situation typifies what is going on. You are a businessman who is basically, I guess, pardon the pun, dead in the water until something is done on this. I am hopeful that this resolution will be passed by the Council and will help rectify your situation, other businesses in the area, and also the homeowners.

Thank you for coming down.

Bill Cozine

Well, I normally probably would have been offended by your pun but this is very serious and so I appreciate your concern for us. Thank you.

Mayor Knight

Thank you for coming down.

Does that conclude the speakers? If so, the rest of the discussion will be by the Bench.

Mr. Ferris.

Council Member Ferris

Thank you Mayor Knight. I am not going to make a plea for unanimity. I hope the Council does move this forward in a unanimous sense but I am going to address some of the concerns I think that the Council may have.

4/25/91 - 8:00
3-21

One thing, after sitting on this Council for four years, you should not vote against this because Staff has taken an approach that is not thorough. I have never seen us approach an issue on this Bench that we have been so thorough in bringing in experts, outside people, dotting every I and crossing every T. I am thoroughly impressed with the job the Legal Staff, both the City Staff and those outside have done. I am very confident in Camp Dresser and McKee after seeing their credentials. So, you should not vote against this because you are concerned about those abilities. I have never seen anything that was addressed so thoroughly.

I do not think that you should vote against this because you think that somebody is going to get off the hook. I think Mr. Powell correctly identified this Agreement as, frankly, a blank check for the City. Coleman has no idea what it is going to cost them. I take that back - I am sure they have some formula for ideas. But, I think that the most important thing is, something that Mr. Docking said, that under this Agreement Coleman will pay the fair share. I do not think we have any right to ask them to pay any more than that but I think we have the right to ask them to pay up to that. This Agreement assures us that we will collect that amount.

I hope that everyone on the Council supports this and votes for it. But, if you do vote against it I hope that the reasons are not included in those.

Mayor Knight

Mr. Ward.

Council Member Ward

As I campaigned for this office in the last six months, the number one comment when we talked about groundwater pollution that was given to me was "make sure that the polluters pay." As I look at what has gone on, the steps that were outlined by Mr. Powell, this step is the lynch pin. Whether the Legislature passes is important for the entire process but, for the person who lives in the house who goes to work and earns his hourly allowance, this is the step that has the most impact on his or her life. This is the step that will have the most impact on the tax values, on the mill levies. This is the step that will have the most impact on Mr. Smith's business, Mr. Cozine's business. As a Council Member, I see this as a balance between their interest to maintain their property values and the homeowners and the people who are in the City who have nothing to do with groundwater contamination.

As I vote for this proposal and this Contract and answer the questions that people will ask me, "Does this make the polluters pay?" I can answer, in return, "It gives us the opportunity, the mechanism, the formula by which we can make the polluter, in this case Coleman, pay."

Now it is up to us, those of us on the City Council Bench, City Staff, and the City at-large, the citizens, to ensure that as we go through this process with Camp, Dresser, and McKee that we maintain that same attitude that the polluters pay and that this process results in every polluter, not just Coleman but the plumes 1, 2, 3, 4, and 5 on the this document that is not Coleman, pay.

This Council Member will work vigilantly to ensure that that process is carried out and that the polluters pay.

Mayor Knight

Thank you Mr. Ward.

Council Member Reeser

Mr. Reeser.

One comment was made that the City of Wichita has the best opportunity to solve its own local problems and, while I agree that the City of Wichita should solve its own problems, I do not think that we should kid ourselves that we do have the best avenues due to the fact that we are very restricted in what we can tax and the revenue that we can raise. So, let us go in with this proposal, as I will also be voting for this Agreement with the Coleman Company, let us go in with a sense of reality that there are problems. We do not have the magic wand. We do have an opportunity to solve this problem. Let us approach it in that manner as corporate citizens, as citizens that are going to be in this TIF District, and as a City as a whole and the City Government. Let us use this opportunity that our Staff has worked diligently on. Let us use that opportunity to the best of its ability and let us solve this.

Mayor Knight

Thank you.

Mr. Ojile.

4/25/91 - 8:00
3-22

Council Member Ojile Thank you Mayor Knight.

I need to commend the two new Council Members for all of their questions this morning because they have basically had this situation thrust upon them in the last couple of weeks where the Mayor, Council Member Ferris, Council Member Gooch and I have had dozens of hours of briefings, executive sessions, stacks of reading material to go over this and feel comfortable. But, I commend you both for asking the questions and not voting your conscience until you have had all of the matters resolved.

I would also like to thank the City Manager, Mr. Cherches, for his innovative idea. I have got a feeling that this is going to be something that is going to be written about positively in the future. Mr. Powell, Mr. Docking, and Mr. Tripp for their tireless work on this. The Coleman Company, I think, has exercised the epitome of corporate citizenship for an area that is incomprehensible. They did not have to do this. They realized that in order to be good corporate citizens they stepped forward to enter into this agreement and, my hat is off to you, gentlemen, for coming forward. Likewise with the Banking institutions in the City of Wichita. They do not have to do what they want to do but they all have an interest to see that the City of Wichita moves forward and I thank you for it.

I hope that this matter does go forward and I hope that the people in Topeka have the confidence and wisdom in the City Council and its Staff and the Coleman Company, KDHE, to move forward with this so we can get this problem resolved once and for all.

Mayor Knight

Thank you.

I think that Ms. Bangs indicated that there is certainly community concern. I agree with that. It is a pretty technical and difficult and complicated subject to sort through, particularly when citizens get bits and pieces of the information stream. But, in my opinion, there is only one way to restore public confidence on this issue. I think we must get on with the work of cleaning up the problem and to do it fairly. This is the best plan that I have seen to accomplish these goals.

I want to echo what Mr. Ojile said about Council Members Ward and Reeser. I think their participation, this morning, has been constructive and valuable and it has certainly been worth while in the time that we have spent. I want to thank all of the citizens, whether they agree or disagree with the direction the City is going, for exercising their citizenship.

I would move that we take the recommended action which is to approve the Agreement between the City of Wichita and the Coleman Company and authorize the Mayor to sign.

Council Member Ojile Second.

Mayor Knight Discussion of the motion?

Mr. Ferris.

Council Member Ferris Does that include the change that was made..

Mayor Knight That Mr. Tripp indicated.

Council Member Ferris Also, I think Mr. Powell had one change that he and Mr. Ward had worked on. Is that correct, Tom?

Tom Powell Yes.

Mayor Knight The motion would include that. Who seconded the motion.

Council Member Ojile I did. That is acceptable.

Mayor Knight Any further discussion?

All those in favor of the motion which is to take the recommended action signify by saying aye.

Aye. (Council Members Ferris, Gooch, Ojile, Reeser, Ward, and Mayor Knight)

Motion carries 6 - 0. (Kamen absent)

4/25/91 - 8:00
3-23

Mayor Knight

Before anyone leaves, I also want to echo Mr. Ojile's remarks concerning the City Staff. It has occupied a lot of time and it has occupied a lot of time because it is such a critical factor facing the City. At no point has the City Manager or the Director of Law or anyone else suggested that this is the only possible path that the City can proceed on. To date, we just have not come with a better option and the sense of urgency is reflected in everyone's actions. I would like to thank Mr. Docking.

I do not know what is going on in Topeka today. I know we have had a lot of help by some very dedicated citizen representatives in Topeka, Kansas. In the House, the debate has been vigorous. We have been challenged. The Agreement has been scrutinized and that is precisely the way it ought to be in our form of Government. I am only hopeful and prayerful that the Senate and the House will support the enabling legislation that is required.

Above all else, I want to thank citizens in this community for connecting in and supporting all these people that are trying to do the right thing.

4/25/91 - 8:00
3-24

1 BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
2 Landon Building - Ninth and Jackson
3 Suite 904
4 Topeka, Kansas 66612

5 IN THE MATTER OF:)
6) CONSENT ORDER
7 THE COLEMAN DOWNTOWN)
8 WICHITA FACILITY) FOR SOURCE CONTROL
9) 90-E-124

10 PRELIMINARY STATEMENT

11 The parties hereto, the Kansas Department of Health and
12 Environment (KDHE), and The Coleman Company, Inc. (hereinafter
13 "Coleman"), having agreed that settlement of this matter is in the
14 best interests of all parties and the public, hereby represent and
15 state as follows:

16 1. KDHE is a duly authorized agency of the State of Kansas,
17 created by act of the legislature.

18 2. KDHE has general jurisdiction of matters involving
19 hazardous substance and hazardous substance cleanups under the
20 authority of the Kansas Environmental Response Act (K.S.A. 65-
21 3452a. et seq.), as well as hazardous waste and its clean-up
22 (K.S.A. ~~65-3430~~ et seq.) and has general authority and
23 responsibility to protect the waters and soils of the state under
24 the authority of K.S.A. 65-161, et seq.

25 3. Coleman has voluntarily expended substantial time, money
26 and effort in evaluating environmental conditions on, under and
27 near to its property.

Attachment 4
4/25/91 - 8:00
Sen. Eco. Devel.

28 4. Coleman agrees to undertake all actions required by the
29 terms and conditions of this Consent Order for Source Control.
30 Source control is defined for the purpose of this document as
31 identifying, eliminating and controlling all active contamination
32 source areas, including but not limited to areas of soil
33 contamination from past releases, at the Coleman facility. In any
34 action by KDHE to enforce the terms of this Consent Order, Coleman
35 agrees not to contest the authority or jurisdiction of the
36 Secretary of Health and Environment to issue this Consent Order.

37 5. This Consent Order shall apply to and be binding upon
38 KDHE and Coleman, their agents, successors, and assigns. The
39 signatories to this Consent Order certify that they are authorized
40 to execute and legally bind the parties they represent to this
41 Consent Order. No change in the ownership or corporate status of
42 Coleman shall alter its responsibilities under this Consent Order.

43 6. Coleman shall provide a copy of this Consent Order to any
44 subsequent owners or successors before ownership rights are
45 transferred. Coleman shall provide a copy of this Consent Order
46 to all contractors, sub-contractors, laboratories, and consultants
47 which are retained to conduct any work performed under this Consent
48 Order, within 14 days after the effective date of this Consent
49 Order or the date of retaining their services. Notwithstanding the
50 terms of any contract, Coleman is responsible for compliance with
51 this Consent Order and for assuring that its contractors and agents
52 comply with this Consent Order.

53 7. The activities conducted under this Consent Order are

4/25/91 - 8:00
4-2

54 subject to approval by KDHE and if undertaken in a manner
55 consistent with the approved Work Plan are believed to be
56 consistent with the National Contingency Plan (NCP), 40 CFR Part
57 300.

58 8. While Coleman specifically denies and does not admit,
59 accept, concede, or acknowledge the determinations, allegations,
60 findings of fact and conclusions of law made by KDHE in this
61 Consent Order, and specifically reserves the right to contest any
62 such determinations, allegations, findings, and conclusions in any
63 proceeding regarding the Coleman Property other than actions
64 brought by KDHE to enforce this Consent Order, nevertheless it
65 agrees to enter into this Consent Order to perform the Work as
66 described in the attached Work Plan. Coleman specifically reserves
67 any and all rights (including any right to contribution), defenses,
68 claims, demands, and causes of action which it may have with
69 respect to any other person not a signatory to this Consent Order.

70 FINDINGS OF FACT

71 9. The Coleman Property located at 250 N. St. Francis
72 ("Property") as more specifically shown on Attachment 1, is in an
73 industrialized area of central Wichita.

74 10. Pursuant to Coleman investigations, it has been reported
75 that the groundwater underlying the Property contains volatile
76 organic compounds ("VOC's") including, but not limited to
77 Trichlorethylene, and its degradation products (collectively
78 referred to as "TCE".)

4/25/91 - 8:00

4-3

79 11. Coleman acknowledges that it owned property and operated
80 the facilities on property in the Coleman Operable Unit area or
81 has used, handled or disposed of contaminants which have been
82 identified as being present in the groundwater at some locations
83 in that area.

84 CONCLUSIONS OF LAW

85 12. Coleman is a "person" within the meaning of K.S.A. 65-
86 164, et seq., K.S.A. 65-3430, et seq., and K.S.A. 65-3452a, et seq.

87 13. The presence of the contaminants identified in the
88 groundwater underlying the site constitutes "pollution" as defined
89 by K.S.A. 65-171d.

90 14. Some of the contaminants identified in the groundwater
91 underlying the site are "hazardous substances" as defined by K.S.A.
92 65-3453 and "hazardous wastes" as defined by K.S.A. 65-3430.

93 15. The area defined as the Property in Paragraph 9
94 constitutes a "site" within the meaning of K.S.A. 65-3453.

95 16. The facts above constitute:

96 a) the discharge, abandonment, or disposal of hazardous
97 substances or hazardous wastes;

98 ~~b)~~ the pollution of the land or waters of the state or
99 ~~c)~~ the threat of pollution of the land or waters of the
100 state;

101 c) a hazard to persons, property or public health or
102 threatens to become a hazard to persons, property
103 or public health.

104 17. Under the facts as shown above, the Kansas Department of
105 Health and Environment has jurisdiction over this matter and
106 Coleman agrees not to challenge the Secretary's authority to
107 enforce this Order pursuant to Kansas Law.

108 18. Source control is necessary to mitigate further release
109 or migration of contaminants from the Property, remove the
110 pollution or hazard and to protect the public health and safety
111 and the environment, giving rise to the authority of the Kansas
112 Department of Health and Environment to enter this Consent Order.

113 19. The Kansas Department of Health and Environment has
114 authority to enter the Consent Order herein, and to make the
115 findings of fact and conclusions of law herein stated.

116 20. The Secretary of Health and Environment is authorized by
117 K.S.A. 65-3453, K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq. and
118 the regulations issued pursuant thereto to enter an order
119 confirming the Consent Order of the parties, and ordering that the
120 actions and obligations required by the foregoing findings of fact
121 and conclusions of law, the parties hereto agree to the following
122 activities and the commitments.

123 AGREEMENT

124 21. Coleman has submitted a draft Work Plan to KDHE for
125 approval. Within 30 days of receipt of the KDHE review of the
126 draft Work Plan, Coleman shall submit a revised Work Plan,
127 including a Schedule of Work to KDHE for approval. Upon final
128 approval, the revised Work Plan shall be attached hereto and
129 incorporated herein as Attachment 1.

4/25/91 - 8:00
4-5

130 22. Within 30 days after the date of KDHE final approval of
131 the Work Plan, Coleman shall commence the schedule of work and
132 thereafter implement the tasks detailed in the Work Plan. The work
133 shall be conducted in accordance with the standards and
134 specifications contained in the Work Plan, and in a manner
135 consistent with the NCP.

136 23. Coleman shall provide preliminary and final reports to
137 KDHE according to the schedule contained in the Work Plan.

138 24. After KDHE reviews the preliminary reports and after KDHE
139 reviews the final reports, KDHE shall notify Coleman in writing of
140 KDHE's approval or disapproval of these reports or any part
141 thereof. KDHE shall also notify Coleman in writing of KDHE's
142 approval or disapproval of Coleman's implementation of the approved
143 Work Plan. KDHE agrees to use its best efforts to respond by
144 either approving or disapproving the implementation of the Work
145 Plan within thirty (30) days after submission of a certificate of
146 completion to KDHE. In the event that such is not possible, KDHE
147 agrees to notify Coleman of delays beyond thirty (30) days.

148 25. In the event of any KDHE disapproval of a submitted
149 report or disapproval of Coleman's implementation of the approved
150 Work Plan, KDHE shall send Coleman a Notice of Disapproval
151 delineating the deficiencies, recommending revisions to the reports
152 or the modified work required to cure the deficiencies in the work
153 and setting a schedule for response by Coleman, provided however
154 that any such recommendations are consistent with source control
155 on the Property.

4/25/91 - 8:00

4-6

156 26. In the event that KDHE shall send Coleman a Notice of
157 Disapproval, Coleman shall amend and submit to KDHE revised reports
158 to correct the deficiencies in the reports in accordance with
159 KDHE's recommendations. Such revised report shall be provided
160 within thirty (30) days after receipt of such Notice of
161 Disapproval.

162 27. If KDHE or Coleman determines that additional work beyond
163 the Work Plan is necessary, written notice of such additional work
164 shall be provided by KDHE or Coleman. Upon written approval by
165 KDHE, such additional work shall be implemented by Coleman in
166 accordance with the procedures set forth in Paragraph 29.

167 28. Additional work described in Paragraph 27 or modified
168 work as described in Paragraph 25 shall be incorporated in this
169 Consent Order and shall be implemented by Coleman as a requirement
170 of this Consent Order in accordance with the following procedures:

171 a. Unless otherwise notified in writing by KDHE,
172 Coleman shall submit a work plan, which shall include a schedule
173 for implementation of the additional work, to KDHE within thirty
174 (30) days (or such other period as shall have been agreed upon) of
175 receipt of the KDHE approval referred to in Paragraph 27.

176 ~~b.~~ KDHE shall approve or disapprove the work plan,
177 consistent with the requirements of this Consent Order.

178 c. If KDHE disapproves the work plan, Coleman shall
179 submit to KDHE a revised work plan pursuant to the provisions of
180 Paragraph 26.

181 d. Upon approval by KDHE, any new or revised work plan

4/25/91 - 8:00

4-7

182 for additional or modified work shall be incorporated by reference
183 into this Consent Order and shall be implemented by Coleman.

184 29. Any additional work beyond the Work Plan may not be
185 incorporated into this Consent Order except in accordance with
186 Paragraph 28; provided however that nothing herein shall be
187 construed to relieve Coleman of their obligations to meet and
188 maintain compliance with the requirements of this Consent Order,
189 nor impair the rights of KDHE to require additional work in a
190 subsequent judicial or administrative action.

191 30. All work performed pursuant to this Consent Order shall
192 be under the direction and supervision of a professional engineer
193 or geologist with expertise in hazardous waste site investigations
194 and remediation. Within 30 days of the effective date of this
195 Consent Order, Coleman shall notify KDHE in writing of the name,
196 title, and qualification of the engineer or geologist, and of any
197 contractors or subcontractors and their personnel to be used in
198 carrying out the terms of this Consent Order.

199 QUALITY ASSURANCE

200 31. All samples analyzed pursuant to this Consent Order shall
201 be analyzed by a laboratory which participates in a quality
202 assurance/quality control program equivalent to that specified in
203 the document entitled "USEPA Contract Laboratory Program Statement
204 of Work for Organic Analysis" and USEPA Contract Laboratory Program
205 Statement of Work for Metals Analysis" (1988) ("Contract Lab
206 Statement of Work") and is approved by KDHE.

4/25/91 - 8:00

4-8

207 32. All sample collection and analysis shall be performed in
208 compliance with EPA-approved methods, including timing of analyses,
209 documentation of sample collection, handling and analysis, as
210 described in the following documents:

211 a. "NEIC Manual for Ground Water/Subsurface
212 Investigations at Hazardous Waste Sites," Document
213 No. EPA/330/9-81-002; and

214 b. Contract Lab Statement of Work.

215 33. Laboratory deliverables as specified in the Contract Lab
216 Statement of Work shall be submitted to KDHE for all analytical
217 work performed pursuant to this Order. Any deviations from the
218 procedures and methods set forth in these documents must be
219 approved in writing by KDHE prior to use.

220 34. Coleman shall use the quality assurance, quality control,
221 and chain of custody procedures specified in the Quality Assurance
222 Project Plan, which is part of the Work Plan, for all sample
223 collection and analysis performed pursuant to this Order.

224 35. All contracts for field work and laboratory analysis
225 shall provide that KDHE representatives are allowed access, for
226 auditing and evaluation purposes, at reasonable times upon
227 reasonable request, to all laboratories and personnel utilized by
228 Coleman ~~for~~ sample collection and analysis and other field work.
229 Upon request by KDHE, the laboratories shall perform analysis of
230 a reasonable number of known samples provided by KDHE to
231 demonstrate the quality of the analytical data.

4/25/91 - 8:00

4-9

REPORTING

232

233 36. Coleman shall provide KDHE with written progress reports
234 quarterly, pursuant to the Schedule in the Work Plan. At a
235 minimum, these progress reports shall: (1) describe the actions,
236 progress, and status of projects which have been taken toward
237 achieving compliance with this Consent Order, as well as the
238 actions which are scheduled for the next quarter; (2) identify any
239 requirements under this Order that were not completed as provided
240 and any problem areas and anticipated problem areas in complying
241 with this Consent Order; and (3) include all results of sampling,
242 tests, data, and conclusions drawn from data generated pursuant to
243 the Work Plan(s).

244

ACCESS

245 37. KDHE and any of its agents or contractors is authorized
246 by Coleman to enter and freely move about the Property for the
247 purposes of, inter alia; interviewing its personnel and
248 contractors; inspecting records, operating logs, and contracts
249 related to the activities set out in the Work Plan; reviewing the
250 progress of Coleman in carrying out the terms of this Order;
251 conducting such sampling and tests as KDHE deems necessary; using
252 a camera, sound recording, or other documentary type equipment
253 subject to claim of privilege as to further dissemination of such
254 records; and verifying the reports and data submitted to KDHE by
255 Coleman. Coleman shall permit such persons to inspect and copy all
256 records, files, photographs, documents, and other writings,

4/25/91 - 8:00

4-10

257 including all sampling and monitoring data, that pertain to work
258 undertaken pursuant to this paragraph.

259 38. To the extent that work required by the Work Plan must
260 be done on property not owned or controlled by Coleman, Coleman
261 shall use its best efforts to obtain site access agreements from
262 the present owner(s) of such property within thirty (30) days of
263 the effective date of this Order. Best efforts includes, but is
264 not limited to, reasonable payment of monies to the property owner.
265 Any such access agreement shall be incorporated by reference into
266 this Order. In the event that agreements for site access are not
267 obtained within thirty (30) days of the effective date of this
268 Order, Coleman shall notify KDHE regarding both the lack of and
269 its failure to obtain such agreements within seven (7) days
270 thereafter. Thereafter KDHE agrees to obtain access for Coleman.
271 Upon KDHE's obtaining access for Coleman, Coleman shall undertake
272 approved work on such property. KDHE shall not be responsible for
273 any injury or damage to persons or property caused by the negligent
274 or willful acts or omissions of Coleman, its officers, employees,
275 agents, successors, assigns, contractors, or any other person
276 acting on Coleman's behalf in carrying out any activities pursuant
277 to the ~~terms~~ of this Consent Order.

278 SAMPLING AND DATA/DOCUMENT AVAILABILITY

279 39. KDHE will review the groundwater analytical data
280 submitted to it by Groundwater Technology, Inc. as consultant to
281 Coleman in connection with the Property to determine its conformity

4/25/91 - 8:00
4-11

282 with the QA/QC plan which KDHE has approved. Data found to be
283 consistent with such QA/QC plan shall be incorporated herein.

284 40. Coleman shall make available to KDHE all results of
285 sampling, tests; or other data generated by or on its behalf with
286 respect to the implementation of this Consent Order. Coleman shall
287 submit these results in the progress reports described in the
288 "Reporting" Section of this Consent Order. KDHE will make all
289 sampling results and other data available to Coleman as it relates
290 to this Consent Order. However, Coleman may perform such other
291 additional investigations and take such additional samples as may
292 be deemed appropriate for their own purposes, and shall not be
293 required under this Agreement to furnish such information to KDHE
294 unless specifically requested by KDHE. KDHE may request such
295 additional information under the authority provided by law, subject
296 to the privileges against disclosure which Coleman may have,
297 including, but not limited to, attorney-client communication, work
298 product privilege, or other legal defense.

299 41. Coleman shall notify KDHE at least seven (7) days before
300 conducting any well drilling, installation of equipment, or
301 sampling, unless conditions do not permit such notice in which case
302 Coleman ~~shall~~ provide KDHE with as much notice as is reasonable
303 under ~~the~~ circumstances. At the request of KDHE, Coleman shall
304 provide or allow KDHE or its authorized representatives to take
305 split samples of all samples collected by Coleman pursuant to this
306 Consent Order. Similarly, at the request of Coleman, KDHE shall
307 allow Coleman or its authorized representatives to take split or

4/25/91 - 8:00
4-12

308 duplicate samples of all samples collected by KDHE under this
309 Consent Order. KDHE shall notify Coleman at least seven (7) days
310 before conducting any sampling under this Consent Order, unless
311 conditions do not permit such notice in which case KDHE shall
312 provide Coleman with as much notice as is reasonable under the
313 circumstances.

314 RECORD PRESERVATION

315 42. Coleman agrees that it shall preserve, during the
316 pendency of this Consent Order and for a minimum of six (6) years
317 after its termination, all records and documents which have not
318 previously been provided to KDHE in its possession or in the
319 possession of divisions, employees, agents or consultants or
320 contractors which relate in any way to this Consent Order. At the
321 conclusion of six (6) years, Coleman shall then make such records
322 available to KDHE for inspection or KDHE's retention or shall
323 provide copies of any such records to KDHE.

324 STIPULATED PENALTIES

325 43. For each period of time that Coleman fails to submit
326 reports or deliverables at the times set out in Attachment 2 which
327 is part of this Order, Coleman shall pay as stipulated penalties
328 the following: \$2,000 for the first week of delay or part thereof;
329 \$5,000 for the second week of delay for the 8th through 14th day
330 and \$1,000 per day of delay thereafter. Any accrued penalties
331 shall be forgiven in the event the next deliverable on the Schedule

4/25/91 - 8:00

4-13

332 in Attachment 3 is completed by the originally scheduled completed
333 date.

334 44. Any stipulated penalties shall be payable within twenty-
335 one (21) days after Coleman's receipt of demand by KDHE and shall
336 be paid by certified check to:

337 Secretary of Health and Environment
338 Landon Building - Ninth and Jackson
339 Suite 904
340 Topeka, Kansas 66612

341 A copy of the check and a transmittal letter shall be sent to the
342 KDHE contact specified herein. Coleman shall remit a check for
343 the full amount of penalty stated in the demand.

344 45. Should Coleman fail to comply with a time requirement of
345 any tasks required by this Consent Order, the period of
346 noncompliance shall terminate upon Coleman's performance of said
347 requirement.

348 FORCE MAJEURE

349 46. The parties hereto recognize and acknowledge that acts
350 of God or other matters of impossibility may prevent Coleman from
351 accomplishing the commitments described in Attachment 2, and agree
352 that, if ~~such~~ acts of God, or impossibility arise, Coleman shall
353 promptly ~~notify~~ KDHE in writing of such matter and the KDHE shall
354 determine the extent to which modifications to this Order are
355 necessary and appropriate and Coleman shall retain the right to
356 appeal any such determination.

4/25/91 - 8:00

4-14

OTHER CLAIMS AND PARTIES

357
358 47. Nothing in this Consent Order or the documents required
359 hereunder, including the Work Plan, shall be used or construed as
360 evidence or an admission in any proceeding other than the
361 proceedings under this Consent Order or to enforce this Consent
362 Order. Nothing in this Consent Order shall constitute or be
363 construed as a release for any claim, cause of action or demand in
364 law or equity against any person, firm, partnership, or corporation
365 not a signatory to this Consent Order for any liability it may have
366 arising out of or relating in any way to the generation, storage,
367 treatment, handling, transportation, release, or disposal of any
368 hazardous constituents, hazardous substances, hazardous wastes,
369 pollutants, or contaminants found at the site.

DISPUTE RESOLUTION

370
371 48. If Coleman disagrees, in whole or in part, with any
372 decision by KDHE pursuant to this Consent Order, Coleman shall
373 notify KDHE within thirty (30) days of receipt of the decision.
374 Parties shall then have an additional thirty (30) working days to
375 attempt to resolve the dispute. If an agreement is reached, the
376 resolution shall be reduced to writing, signed by each Party and
377 incorporated thereupon into this Consent Order. If agreement is
378 not reached, the KDHE shall issue its final written decision on the
379 dispute to Coleman.

380 49. Coleman reserves its rights to appeal any decision of the
381 KDHE, which is not consistent with law or which is arbitrary or

4/25/91 - 8:00

4-15

382 capricious concerning a dispute under this Consent Order, to an
383 administrative body with applicable jurisdiction and thereafter in
384 compliance with the Kansas Administrative Procedures Act. The
385 final decision or resolution of the applicable authority or court
386 shall be incorporated as a part of this Consent Order. For
387 purposes of this Consent Order, final order or decision shall mean
388 an order or decision from which no appeal may be taken.

389 PUBLIC RELATIONS

390 50. Coleman and KDHE shall develop a "Public Information
391 Program" to keep the public informed about actions taken and to
392 allow participation in the process by interested members of the
393 public. Coleman and KDHE shall provide each other a copy of any
394 public releases regarding the site prior to release.

395 RELEASE OF CLAIMS

396 51. Except as provided in Paragraphs 28 and 29, effective
397 upon completion of activities described in the Work Plan
398 as required by this Consent Order, the KDHE hereby covenants not
399 to sue or take any further action against Coleman for any
400 additional requirements in connection with the activities described
401 herein.

402 52. a. KDHE acknowledges that under 42 U.S.C. 9613(f)(2),
403 by entry of this Consent Order, neither Coleman nor KDHE is liable
404 for claims for contribution regarding matters addressed herein, and
405 that this Consent Order does not discharge any person not a

4/25/91 - 8:00

4-16

431 of this Consent Order, Coleman reserves all rights to raise all
432 defenses and challenges, both factual and legal.

433 OTHER APPLICABLE LAWS

434 54. All actions required to be taken pursuant to this Consent
435 Order shall be undertaken in accordance with the substantive
436 requirements of all applicable local, state, and federal laws and
437 regulations.

438 PROJECT COORDINATORS

439 55. On or before the effective date of this Consent Order,
440 KDHE and Coleman shall each designate a Project Coordinator. Each
441 Project Coordinator shall be responsible for overseeing the
442 implementation of this Consent Order. The KDHE Project Coordinator
443 will be KDHE's designated representative. To the maximum extent
444 possible, all communications between Coleman and KDHE and all
445 documents, reports, approvals, and other correspondence concerning
446 the activities performed pursuant to the terms and conditions of
447 this Consent Order, shall be directed through the Project
448 Coordinator. The parties agree to provide at least seven (7) days
449 written notice prior to changing Project Coordinators. The absence
450 of the KDHE Project Coordinator from the Site shall not be cause
451 for the stoppage of work.

452 NOTIFICATION

4/25/91 - 8:00
4-18

453 56. Unless otherwise specified, reports, notice or other
454 submissions required under this Consent Order shall be in writing
455 and shall be sent to:

456 a. For KDHE
457 Mr. Rick Bean
458 Environmental Geologist
459 Kansas Department of Health and Environment
460 Forbes Field, Bldg. 740
461 Topeka, Kansas 66620

462 b. For Coleman:
463 Matt Avcin, Ph.D.
464 250 N. St. Francis
465 Wichita, Kansas 67202

466 c: Hal Pfountz
467

468 REIMBURSEMENT OF COSTS

469 57. Six months after the effective date of this Order and
470 semiannually thereafter, KDHE shall submit to Coleman an accounting
471 of all oversight costs incurred by KDHE with respect to this Order
472 KDHE's oversight shall be no more than \$15,000 per year for the
473 first two years following the execution of this agreement. At the
474 conclusion of the first two years, the amount of KDHE's oversight
475 shall be re-negotiated. Coleman shall, within thirty (30) calendar
476 days from receipt of said accounting, remit a check for the amount
477 of those costs made payable to the Secretary of Health and
478 Environment. Checks should specifically reference the identity of
479 this site, and should be addressed to:

480 Secretary of Health and Environment

4/25/91 - 8:00
4-19

481 Landon Building - Ninth and Jackson
482 Suite 904
483 Topeka, Kansas 66612

484 A copy of the check and transmittal letter shall be sent to the
485 KDHE contact specified herein. Coleman shall remit a check for
486 the full amount of those costs.

487 EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

488 58. This Consent Order shall become effective when signed by
489 the Secretary of the Department of Health and Environment.

490 59. This Consent Order may be amended by mutual agreement of
491 KDHE and Coleman. Such amendments shall be in writing, shall have
492 as their effective date the date on which they are signed by both
493 parties, and shall be incorporated into this Consent Order.
494 Nothing herein shall limit KDHE's ability to require additional
495 tasks as set forth in Paragraph 28 herein.

496 60. Any reports, plans, specifications, schedules and
497 attachments required by this Consent Order are, upon approval by
498 KDHE, incorporated into this Consent Order. Any non-compliance
499 with such ~~approved~~ reports, plans, specifications, schedules, and
500 ~~attachments~~ shall be considered a violation of this Consent Order.

501 61. No informal advice, guidance, suggestions, or comments
502 by KDHE regarding reports, plans, specifications, and any other
503 writing submitted to Coleman will be construed as relieving Coleman
504 of its obligation to obtain written approval, if and when required
505 by this Consent Order.

4

4/25/91 - 8:00
4-20

TERMINATION

506

507 62. The provisions of this Consent Order with the exception

508 of Paragraphs 42, 47, 51, and 53 all terminate upon Coleman's

509 receipt of written notice from KDHE that Coleman has demonstrated

510 that the terms of this Consent Order, including any additional

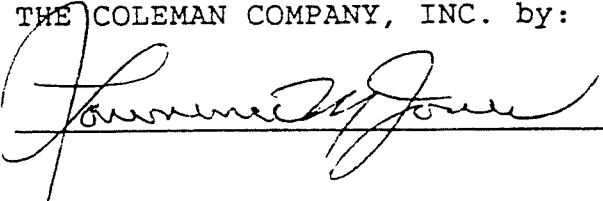
511 tasks which KDHE has determined to be necessary have been

512 satisfactorily completed.

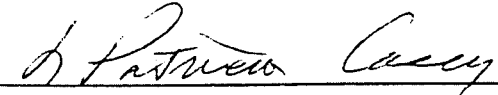
513 IN WITNESS WHEREOF, the parties have affixed their signatures

514 below:

515 THE COLEMAN COMPANY, INC. by:

516  Date: April 15, 1991

517 STATE OF KANSAS:

518  Date: 4/16/91

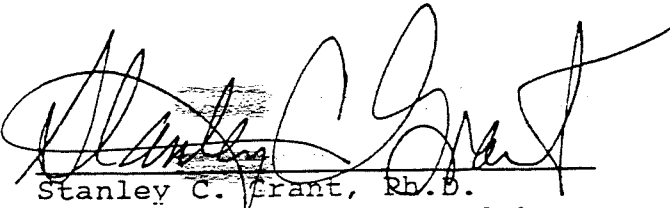
519 L. Patricia Casey

520 Attorney of Health & Environment

521

522

523

524  Date: 4/17/91

525 Stanley C. Grant, Ph.D.

526 Acting Secretary of Health &

527 Environment

4/25/91 - 8:00
4-21

AGREEMENT

BY and BETWEEN

THE CITY OF WICHITA, KANSAS

and

THE COLEMAN COMPANY, INC.

This Agreement is made as of this 23rd of April, 1991, by and between the City of Wichita, Kansas ("City"), and The Coleman Company, Inc. ("Coleman"), a Kansas Corporation, herein jointly referred to as the "Parties." In recognition and consideration of the mutual interests of the City and Coleman in addressing groundwater contamination in an area at or near downtown Wichita, the Parties have entered into the following Agreement:

WHEREAS, the so-called "Gilbert and Mosely Site" is a commercial, industrial and residential area of approximately 1,800 acres encompassing a portion of central Wichita, Sedgwick County, Kansas, with the approximate boundaries of Second Street (north), 31st Street South (south), Hydraulic Avenue (east), and Wichita Street (west), (the Gilbert and Mosely Site name being taken from a street intersection near the center of this Site), and

WHEREAS, the Kansas Department of Health & Environment ("KDHE") has conducted a "Preliminary Assessment" and "Listing Site Investigation" of the Gilbert and Mosely Site which has

Attachment 5
4/25/91 - 8:00
Sen. Eco. Devel.

identified certain contaminants in the soils and groundwater of the area, including petroleum constituents and chlorinated solvents, and

WHEREAS, although the Listing Site Investigation Report indicates that no present health hazard exists, the KDHE report of November, 1989, and the ensuing investigations undertaken by KDHE, indicate that further investigation of the Gilbert & Mosely site is warranted, and certain remedial actions may be warranted, and

WHEREAS, the chlorinated solvents primarily identified by KDHE are commonly used by many businesses as cleaning and degreasing agents, and the nature of the contaminants at issue and the data analyzed to date suggests, and KDHE agrees, that there are several if not many possible sources of the groundwater and soil contamination within the Gilbert and Mosely Site other than Coleman, and

WHEREAS, the area of the Gilbert and Mosely Site comprises approximately 6.6 percent of the tax base of the City of Wichita, and

WHEREAS, to improve the local economy and eliminate any possible risk to the public health, the City announced publicly its intention to assume responsibility for remediating groundwater contamination in the Gilbert and Mosely Site and has negotiated a Consent Agreement with KDHE ("the KDHE/City Agreement") which will address the completion of a remedial investigation ("RI"), and remedial action ("RA") with respect to the Gilbert and Mosely Site, a copy of which is attached as Exhibit A, and

WHEREAS, Coleman owns property at Second and St. Francis Street ("Downtown Facility"), which property constitutes a portion of the Gilbert and Mosely Site and at which location manufacturing activities have taken place, and

WHEREAS, Coleman, in cooperation with KDHE, has undertaken an investigation of the groundwater contamination at or near that Downtown Facility, and

WHEREAS, Coleman intends to voluntarily enter into an agreement with KDHE for the control of any source of contamination located at its Downtown Facility and the remediation of contaminants in the groundwater beneath that Facility, which actions will be taken at the sole expense of Coleman (the "Coleman/KDHE Agreement", a copy of which will be attached upon completion as Exhibit B), and

WHEREAS, it is the desire of the City and Coleman to coordinate their respective environmental investigations to avoid duplication of effort and expense, to avoid interference or conflict with the City's and KDHE's efforts to investigate and remediate the Gilbert and Mosely Site in a manner required by law and in the best interests of the citizens of the City as a whole, and to share the results of the investigations to achieve an expeditious and effective resolution of this community-wide environmental problem, and

WHEREAS, the Parties wish to enter into an Agreement establishing the procedures and conditions under which Coleman will contribute its fair share of costs to the City's investigation and remediation of the Gilbert and Mosely Site.

NOW, THEREFORE, in consideration of the foregoing facts, understandings, and statements of purpose, it is agreed by the Parties as follows:

1. Performance of Work.

Subject to the limitations of paragraph 85 of the KDHE/City Agreement and as otherwise provided therein, the City shall perform a remedial investigation/feasibility study, and, if necessary, remedial design and remedial action at the Gilbert and Mosely site in compliance with the KDHE/City Agreement as it may from time to time be amended.

2. Cost Allocation.

a. Direct Costs

"Direct Costs" shall include all costs incurred to perform the RI/FS, Interim Response Measures, the RD/RA, and other costs relating to complying with the KDHE/City Agreement or other KDHE requirements relating to the Site, including, but not limited to, payments for consultants, environmental contractors and subcontractors, testing procedures, laboratory analyses, interim response measures, capital costs, operation and maintenance expenses, and handling, disposal or regulatory requirements related to any of the above. Direct costs shall include the appropriate portion of the salary, benefits, and expenses of any City employee to the extent such employee is assigned to project management, operations or maintenance duties directly related to the RI/FS, Interim Measures or RD/RA because of contractual or regulatory requirements, because of specialized knowledge or training, or in good faith effort to minimize the

total costs of the project. No portion of the salary, benefits or expenses of the City Manager, City legal staff or City Finance Director shall be considered Direct Costs under this Agreement. Direct Costs shall not include stipulated or noncompliance penalties, except to the extent that nonperformance by Coleman under this Agreement causes or contributes to the events leading to penalties. The City shall be responsible for all Direct Costs not paid by Coleman. It is contemplated by the Parties that the City will use its best efforts to recover Direct Costs from other responsible parties to be allocated between the City and Coleman under the terms of this Agreement.

b. Remedial Investigation/Feasibility Study ("RI/FS")

All of the Direct Costs of the RI/FS to be undertaken by the City as contained in the KDHE/City Agreement and to be performed under the Agreement for Environmental Consulting Services dated February 12, 1991, shall be paid by the City and reimbursed by Coleman, subject to later reallocation according to the provisions of this paragraph 2. Any cost overruns under the Environmental Agreement for Consulting Services will be paid for equally by Coleman and the City and shall also be subject to later reallocation according to the provisions of this paragraph 2. The City will fully involve Coleman and its consultants in the preparation and implementation of the RI/FS including but not limited to the RI/FS work plan, and will implement the RI/FS only with Coleman's written concurrence (which shall not be unreasonably withheld), unless otherwise required to implement the RI/FS by KDHE. Within one hundred eighty (180) days following the

completion of the RI/FS, the Direct Costs of the RI/FS shall be reallocated, on a one time basis, between the City and Coleman pursuant to the formula set forth in paragraph 2(d)(ii) herein. The amount of Coleman's payments toward the RI/FS in excess of its allocable share, determined under said formula, shall be credited against Coleman's allocable share of the RD/RA. If at any time the City shall obtain contributions toward the cost of the RI/FS from third parties or from the State Petroleum Storage Tank Release Trust Fund, the amount of such contribution shall be allocated to Coleman and/or the City in proportion to their then respective shares of the RI/FS costs, as determined by this paragraph 2.

c. Interim Response Measures

(i) The Direct Costs of any Interim Response Measures ("Interim Measures") proposed by the City and approved by the KDHE as consistent with site remedial actions and which reduce or eliminate environmental contaminants shall be paid as follows:

- (a) Direct Costs for Interim Measures to remediate contaminated groundwater within the surface area described in paragraph 2.d(i)(a) as well as Direct Costs for Interim Measures to remediate contaminated soils, soil vapors within the surface area described in paragraph 2.d(i)(a), if such contaminated soil or soil vapor Interim Measures are required

because of contaminants in the groundwater released by Coleman, shall be paid by Coleman.

(b) Direct Costs for Interim Measures to remediate contaminated groundwater relating to the surface area described in paragraph 2.d(i)(b) shall be paid in equal shares by the City and Coleman.

(c) Direct Costs for other Interim Measures within the Gilbert & Mosely Site shall be paid by the City.

The City will fully involve Coleman in the development of all Interim Measures, will make its staff and consultants available for consultation on such issues and will implement Interim Measures within (a), (b) and (c) above only with Coleman's written concurrence, which shall not be unreasonably withheld, unless required to implement such Interim Measures by KDHE.

d. Remedial Design/Remedial Action ("RD/RA")

The Direct Costs of the RD/RA to be performed by the City pursuant to the KDHE/City Agreement shall be shared by the Parties hereto with Coleman being responsible for its proportionate share of such costs, as periodically determined pursuant to the procedure hereinafter recited.

(i) No later than 180 days after the RI/FS shall have been approved by KDHE pursuant to the KDHE/City Agreement, using the data contained in the RI/FS, and other available, relevant data, the environmental consultants for the City, with

input and participation by consultants for Coleman, shall prepare using their best professional judgment and the various criteria listed on attached Exhibit C:

(a) A definition of the surface area (expressed in total number of acres or fractions thereof) in the Gilbert & Mosely Site, within the boundaries of which a release of contaminants by or from Coleman, exclusive of the presence of contaminants from other sources, has affected groundwater, soils or vapors to the extent response actions are required under applicable environmental criteria being enforced at the Gilbert & Mosely Site, and an estimate of the Direct Costs related thereto, exclusive of the surface area and costs under the Coleman/KDHE Agreement and exclusive of Direct Costs related to soil remediation required as a result of a release of contaminants by persons or entities other than Coleman.

(b) A definition of the surface area (expressed in total number of acres or fractions thereof) within the Gilbert & Mosely Site incorporating within its boundaries all groundwater, soils and vapors contained therein which require response actions under applicable environmental criteria being enforced at

the Gilbert & Mosely Site, and which are affected by a release of contaminants by or from Coleman, excluding the area described in (a), above, and an estimate of the Direct Costs of the response actions related thereto, assuming all contaminated soils are remediated in accordance with paragraph 6, exclusive of the surface area and costs under the Coleman/KDHE Agreement and exclusive of Direct Costs related to soil remediation incurred as a result of a release of contaminants by or from persons or entities other than Coleman.

- (c) A definition of the total surface area (expressed in total number of acres or fractions thereof) within the Gilbert & Mosely Site which require response actions, and an estimate of the Direct Costs of the response actions related thereto, exclusive of the surface area and costs under the Coleman/KDHE Agreement.

(ii) In order to ascertain the relative responsibility of the City and Coleman for the RD/RA, the following formula shall be used:

$$\text{Coleman share} = \frac{A + .5(B)}{C}$$

For purposes of the above formula the following definitions shall be used:

A = the estimate of the Direct Costs of response actions computed under d(i)(a) above.

B = the estimate of the Direct Costs of response actions computed under d(i)(b) above.

C = the estimate of the Direct Costs of response actions computed under d(i)(c) above.

e. The proportionate share of Coleman for each billing of Direct Costs to the City shall equal the product of the proportionate share determined pursuant to the procedure recited in Section 2(d)(ii) above times the Direct Costs.

f. If, at any time prior to termination of this Agreement, information is discovered which demonstrates that the percentage which was calculated as representing Coleman's share of Direct Costs for any given year for RD/RA, Interim Measures, or for the RI/FS, as determined pursuant to this paragraph 2, was based on inaccurate or incorrect information or data, Coleman's Direct Costs shall be recalculated, not more frequently than once per year, except by mutual agreement, using the accurate and correct information and data. If the new information or data increases or decreases Coleman's Direct Costs by 1 percent or more from the original Direct Costs, Coleman's Direct Costs shall be adjusted retroactively to the effective date of this Agreement, using the new information or data.

g. If, at any time, the City shall obtain contributions from third parties or from the State Petroleum Storage Tank Release Trust Fund for response costs relating to the area determined to have been affected by contamination from Coleman (the area determined under d(i)(a) and d(i)(b) above), the contribution amount shall be distributed in proportionate shares to the Parties as follows:

- (i) To the extent the contribution amount would constitute Direct Costs falling within the purview of d(i)(a) above, Coleman shall receive 100% of the amount distributed.
- (ii) To the extent that the contribution amount would constitute Direct Costs falling within the purview of d(i)(b) above, Coleman shall receive 50% and the City shall receive 50%.
- (iii) All other contributions 100% to the City.

Such distribution shall exclude the City's cost associated with recovery of the third party contribution, including but not limited to reasonable attorney's fees, consultant's fees and other related costs, provided, however, that no costs which constitute Direct Costs under this Agreement shall be excluded as costs associated with recovery of third party contribution except that to the extent consultant's fees are incurred specifically for the purpose of obtaining third party contribution, they shall be excluded from any amount distributed under this paragraph.

3. No Admission of Liability, No Third Party Beneficiary

Nothing in this Agreement, nor the conduct of a Party with respect to obligations under this Agreement is an admission of fact, responsibility or liability and may not be so used by

any person or entity not a party to this Agreement. Nothing in this Agreement, nor the conduct of a Party with respect to obligations under this Agreement may be used by or against either Party in any proceeding or action, other than a proceeding or action to enforce, or for breach of, this Agreement. Without in any way limiting the foregoing, the Parties specifically state, and it is so understood and agreed by each Party, that nothing in this Agreement is intended to or shall constitute an admission of liability or fault in any pending or future civil action or proceeding against either Party nor is it intended to constitute an admission by either Party that any property at or near the Gilbert and Mosely Site has been damaged in any way by the environmental contamination at issue herein. It is specifically agreed between the Parties executing this Agreement, that it is not intended by any of the provisions of this Agreement to create a third party beneficiary hereunder, contract rights for the public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

4. Payment of Costs.

(a) The City of Wichita shall initially pay all Direct Costs as defined above, except as provided in 4(b), and upon payment of the same, shall furnish Coleman the detailed invoices for said Direct Costs, together with supporting documents reasonably necessary to verify the Direct Costs expended by the City. Coleman shall pay the City its share of the amounts, subject to reallocation, and adjustments related to subsequent third party

4/25/81 - 8:00
5-12

or other contributions, pursuant to paragraph 2 above, within thirty (30) days after the City submits a statement to Coleman based on the provisions in paragraph 2 herein. Any payments not made to the City in the time required shall be subject to interest at the statutory rate for judgment interest.

(b) Coleman will assume direct contractual responsibility for its proportionate share of capital cost items for the RD/RA attributable to that area defined in paragraph 2.d(i)(a) and 2.d(i)(b). When requested by the City, Coleman will be a signatory, along with the City, to all agreements for such capital costs in the defined area to the extent of its proportionate share of those costs. Upon receipt of a statement for any such costs, Coleman shall pay the City for its share of such capital costs and the City shall make the payment to the person or entity submitting the statements. All contracts for such capital cost items shall be reviewed and concurred upon by both the City and Coleman prior to finalization.

(c) In the event that Coleman should initially advance payment of any Direct Costs that should be paid by the City under 4(a), Coleman will furnish the detailed invoices for said costs to the City together with supporting documents reasonably necessary to verify the Direct Costs expended by Coleman. Coleman will be credited such payment against sums due to the City in the next budget year taking into account requirements for notice and certification of the budget.

(d) Any amounts due from Coleman under paragraph 2.f shall be paid within 30 days from the date of determination of the adjustment. Credit due to Coleman shall be credited against future RD/RA expenses. If the credit due Coleman exceeds Coleman's share of future estimated Direct Costs of the RD/RA, the excess shall be paid by City to Coleman in the next budget year taking into account requirements for notice and certification of the budget.

5. Consultants.

Contracts with consultants or for other services or goods necessary to accomplish the City/KDHE Agreement shall be in the name of the City and shall be subject to applicable federal, state and municipal procurement requirements, including competitive procurement, where applicable.

The City and Coleman shall each have responsibility for entering into all contracts with persons and entities providing services, goods or equipment in connection with the RI/FS, Interim Measures and corrective action undertaken pursuant to their respective Agreements with KDHE. The City and Coleman shall advise the other in advance of all such proposed contracts in time for the other to review and comment on the same, and will also provide the other with reasonable advance notice of all significant interim measures, RI/FS work plan activities and deliverables, and corrective actions undertaken pursuant to their respective Agreements with KDHE. To the extent possible, all contracts for engineering services, consulting services, remedial services, goods or equipment shall be reviewed and concurred upon

by both the City and Coleman prior to finalization. Nothing contained herein shall be deemed to limit or affect the City's or Coleman's rights and obligations to engage consultants and undertake work pursuant to their respective Agreements with KDHE or to prohibit either Party from complying with any order, directive, or legal obligation they may have under federal, state or municipal statute, regulation or directive.

6. Soils Remediation.

Both Parties recognize that early remediation of soil contamination to the extent remediation is required or appropriate under applicable environmental criteria is of extreme importance to the cost effective implementation and overall success of any required groundwater remediation, whether undertaken as an interim response measure or under the RD/RA. Each party hereby agrees that it will perform any soils remediation for which it is responsible under the terms of this Agreement in an appropriate and timely manner, consistent with good environmental engineering practice, the objectives of this Agreement and the objectives of the agreements attached as Exhibits A and B.

7. Coordination.

The City and Coleman shall each have primary responsibility for coordination and contacts with all state, federal and local agencies with respect to matters related to their respective Agreements with KDHE. The City and Coleman shall each give the other reasonable advance notice of meetings with any agency personnel and representatives of each shall have the right to attend such meetings. Nothing in this paragraph

shall be construed to limit or affect the Parties' coordination pursuant to their respective KDHE Agreements or to limit or restrict any other contacts by each with KDHE and/or USEPA as each may deem necessary and appropriate.

As provided in paragraph 84 of the City/KDHE Agreement, Coleman agrees that any environmental investigative and feasibility study activities to be undertaken by Coleman in the KDHE/Coleman Agreement will be coordinated with the investigative and feasibility study activities to be undertaken by the City, will not be unnecessarily duplicative of cost or effort to be undertaken by the City and that the activities to be undertaken by Coleman will not jeopardize the City's ability to determine the full extent of the costs which should be borne by Coleman with respect to the Gilbert and Mosely Site.

The City and Coleman each agree to share with the other data, findings, facts, test results obtained either before or after this Agreement is executed which relate to the Gilbert and Mosely Site. Information to be shared shall include, but is not limited to, final reports or other documents required to be delivered to, or received from, the EPA, the KDHE, consultant's reports, laboratory reports, analytical results, risk analyses or other similar information related to the investigation of environmental matters within the Gilbert and Mosely Site. Upon reasonable advance request, each Party shall also make available to the other duplicate samples taken for analytical purposes; provided, however, that nothing in this Agreement shall be construed to require the disclosure of any information which is

protected by any claim of privilege or confidentiality. All preliminary data, draft reports and similar information shall be clearly marked "Confidential Draft - For Discussion Purposes - Subject to Revision" prior to transmittal to the other Party. All information shared under this paragraph shall be treated as confidential by the Party and its consultants receiving the same and shall not be disclosed to any other person or entity without first obtaining the written permission of the Party furnishing the information.

The City and Coleman will each provide to the other drafts of all proposed deliverables to KDHE or USEPA in advance of the deliverable date for the other Party's review and comment. The Parties shall each notify the other in advance of any milestone meeting with consultants and representatives of each shall have the right to attend any such meeting. Representatives of each party and consultants contracting with each party may communicate directly with any consultant contracting with the other Party in connection with their respective Agreements with KDHE to request documents identified herein or to obtain clarifying information (except for documents protected by the attorney-client privilege, work product or other privilege) but neither party shall have the right to direct such consultants of the other party in the performance of their work under said contracts.

8. Notices.

Any notice required or given pursuant to this Agreement shall be delivered to the following persons:

For the City of Wichita:

Mr. Jack Brown, Acting Director
Wichita/Sedgwick County Department of
Environmental Health
1900 East Ninth Street
Wichita, Kansas 67214

and

Chris Cherches
City Manager
City Hall - 13th Floor
455 North Main Street
Wichita, Kansas 67202

For the Coleman Company, Inc.:

Larry E. Sanford, Esq.
The Coleman Company, Inc.
250 North St. Francis Street
Wichita, Kansas 67202

9. Access.

The City and Coleman shall provide each other with reasonable access to the other's property for purposes related to the implementation of this Agreement, the KDHE/City Agreement, and the KDHE/Coleman Agreement. This mutual right of access shall also include access rights which the other party has obtained for purposes relating to the evaluation and/or remediation of the Gilbert & Mosely Site. Access under this paragraph shall be by written request to the Party from whom access is being requested, which written request shall include, but is not limited to, an identification of the property on which access is being requested, the date or time period during which access is being requested, the reason or reasons why access is being requested, and a complete description of the activities to be performed on the property. The Party to whom the request is made shall respond in writing. Oral requests for access, and

responses thereto, are sufficient under circumstances where the making of a written request and response is not reasonable or practicable. Consent of the Party to whom the request for access is directed is required before a Party may go upon the property of the other. The Parties may withhold consent to a request for access, however, only for good cause.

10. Dispute Resolution.

(a) If the City or Coleman disagree, in whole or in part, with any action taken or decision made under this Agreement, the Party disagreeing or objecting to the action or decision shall, as soon as possible and no later than fifteen (15) days after obtaining knowledge of the action or decision, notify the other Party in writing of its disagreement or disapproval. The Parties shall then have an additional thirty (30) days to attempt to informally resolve the dispute. To the extent reasonably possible, the action or decision at issue will not be further implemented pending the Parties' attempt to informally resolve the dispute. If an agreement is reached, the resolution shall be reduced to writing, signed by each Party and shall be deemed incorporated into this Agreement.

(b) If the Parties fail to reach agreement, then the Parties agree to resolve the dispute as follows: Each of the following shall select a representative to sit on a committee to select a Dispute Resolution Officer (DRO):

1. City
2. Coleman
3. President of The Wichita State University

The committee shall inform the Parties of their selection. If the committee is unable to make a unanimous selection then any two concurring members of the committee shall select the DRO. The DRO shall be an officer or senior manager of a national environmental consultant firm and shall be personally qualified in the area of environmental engineering and of nationally recognized stature and expertise. The DRO and his or her firm shall be disinterested, shall not be a resident of Sedgwick County, Kansas and shall not have, or have had, any contractual or consulting relationship with either Party, or involvement with the Gilbert & Mosely Site. Each party shall submit a brief written statement of their position (not to exceed 20 pages) and attachments, and shall arrange to have the written statements and attachments delivered to the DRO within 15 days of selection. At the discretion of the DRO, an informal meeting may be arranged for the Parties to respond to questions by the DRO. The DRO may request additional information or schedule additional proceedings as determined by the DRO to be appropriate. The DRO shall provide a written decision on any disputed matter within 30 days of the selection of the DRO. The Parties agree to share equally the costs of the DRO.

(c) For purposes of any judicial review of the decision of the DRO, this paragraph shall be considered as an agreement to arbitrate and the written decision of the DRO shall be considered an arbitration award as those terms are used in the Kansas Uniform Arbitration Act. In that regard, the Parties agree to be bound by the decision of the DRO provided, however,

that a Party may apply to confirm, vacate, modify, or correct the decision of the DRO in accordance with the provision of K.S.A. 5-411 through and including K.S.A. 5-418 of the Kansas Uniform Arbitration Act. It is agreed that the Party seeking to vacate, modify or correct the decision of the DRO pursuant to the procedures described herein shall be responsible for the other Party's reasonable costs and attorney's fees incurred in connection with such proceedings unless the Party shall prevail on its application, in whole or in part.

(d) The provisions of this Paragraph 10 shall be applicable to any dispute or disagreement arising under or as a result of implementation of this Agreement.

11. Contribution Proceedings Against Other Potentially Responsible Parties.

The City and Coleman agree to cooperate in the identification of potentially responsible parties who may have created, contributed to, or may otherwise be responsible for the environmental contamination addressed herein and addressed in the KDHE/City Agreement. The City and Coleman agree to utilize best efforts to assure that any potentially responsible parties are identified in the reports to be furnished to KDHE. The City shall utilize its best efforts to obtain full contribution from all responsible parties and shall keep Coleman fully apprised of all actions being taken to obtain contribution, consistent with maintenance of attorney-client privilege. If Coleman is not satisfied with the City's efforts to obtain contribution from any responsible party, then Coleman may pursue the contribution claim

at its own expense. The City shall cooperate fully in any such action. If Coleman obtains contribution, and after exclusion of Coleman's cost associated with the recovery of the contribution, the remaining amount shall be distributed in accordance with paragraph 2(g) herein.

12. Contribution Protection.

The City acknowledges and agrees that Coleman is entitled to such protection from contribution claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and any applicable state law, with respect to any claim for contribution related to activities to be undertaken with respect to the Gilbert & Mosely Site pursuant to this Agreement and pursuant to the Agreements attached hereto as Exhibits.

13. Covenant Not to Sue.

In consideration of the payments that will be made by Coleman pursuant to this Agreement, the City covenants not to sue or take any administrative action against Coleman under any federal, state, local or common law, or regulation or ordinance seeking that Coleman undertake any requirement or pay any damages or monies related to or arising out to the Gilbert & Mosely site or the Coleman Downtown Site other than those actions required to be undertaken or monies required to be paid as required herein.

14. Releases Not to Sue Third Parties.

The City intends to grant releases to certain present and future owners, operators, and lenders with respect to real property located within the Gilbert & Mosely Site. The Parties acknowledge that both the City and Coleman have rights of

contribution under CERCLA, 42 U.S.C. § 9613(f) for response costs incurred under this Agreement against other potentially responsible parties who have released hazardous substances during a time of ownership or operation and that the Parties do not intend by this Agreement or otherwise to release such Parties. The City agrees that it will use best efforts not to grant such releases to persons or entities who have had an interest in any such real property during a time in which a release or disposal of hazardous substances or petroleum products has occurred/^{thereon}and that it will take reasonable steps to identify such persons or entities before issuing releases. The best efforts of the City shall mean a review of information on hand including information provided by Coleman or its consultants at the time a request for release is made and an opportunity for Coleman to comment on the request.

15. Amendments.

This Agreement may be amended by mutual agreement of the City and Coleman. Such amendment shall be in writing, shall have as its effective date the date on which it is signed by both Parties, and shall be incorporated into this Agreement. Nothing herein shall limit either Party's ability to take any actions outside the scope of this Agreement.

16. Termination.

This Agreement shall terminate only in the event of failing of funding or other event under paragraph 83 and 85 of Exhibit A or upon receipt of written notification from KDHE that the City has completed all actions required to be undertaken by

the City with respect to the Gilbert & Mosely Site satisfactorily in accordance with the City/KDHE Agreement, and written verification to Coleman by the City that all costs due and owing under this Agreement have been satisfied. Upon termination for whatever reason or cause, Coleman shall have no further obligations to the City under this Agreement but shall retain all benefits of this Agreement inuring prior to the date of termination including, but not limited to, any contribution protection and/or covenant not to sue protection to which it is entitled.

17. Sources of Funds.

The Parties hereto recognize and agree that the City is subject to and must operate its financial affairs in compliance with the cash basis law (K.S.A. 10-1101, et seq.) and the budget law (K.S.A. 79-2925, et seq.) and that the City is making no commitment under this Agreement that could be construed to be a violation of either law. The Parties agree that the sole source of funds that the City is obligated to expend under the terms of this Agreement are as follows:

- a. Bonds issued pursuant to authority of K.S.A. 12-1774 for capital improvements;
- b. Tax increment funds derived from the creation of a tax increment finance district that includes this Gilbert & Mosely Site area;
- c. Contributions obtained or recovered from anyone not released from liability by the provisions of paragraph 61 of the KDHE/City Agreement.

The agreements of the Parties set forth in this paragraph shall in no way and under no circumstances have the effect of increasing or altering Coleman's responsibilities and obligations under this Agreement.

18. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas. Wherever in this Agreement it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

19. Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the City and Coleman and their respective successors and assigns.

20. Severability.

If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby, provided, however, that in the event the other valid provisions cannot be separately enforced without frustrating the overall intent of the Parties with respect to this Agreement, the Parties agree to negotiate appropriate amendments to

the Agreement. If such amendments cannot be negotiated, then the entire Agreement shall terminate in accordance with paragraph 16 above.

21. Execution in Counterparts.

This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

22. Non-Discrimination.

Coleman agrees that it will observe the provisions of the Wichita Ordinance Against Discrimination and will not discriminate against any person in its activities under the contract because of race, color, sex, religion, national origin, ancestry, marital status, age, or physical handicap, except where age or physical handicap are bona fide occupational qualifications.

23. Assignment.

Any assignment of this Agreement by either Party shall be made only with the written consent of the other Party, and such consent shall not be unreasonably withheld. Coleman may, without consent of the City, assign its rights and obligations under this Agreement to any person or entity acquiring all or substantially all of the assets of Coleman, provided that such acquiring person or entity agrees to assume all obligations and liabilities of Coleman hereunder.

24. Effective Date.

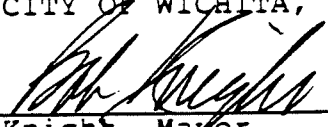
This Agreement shall be effective when executed by both Parties, and shall be governed by the law of the State of Kansas.

25. Authority to Execute Agreement.

Each undersigned representative of each party to the Agreement certifies that he or she is fully authorized by the party he or she represents to agree to the terms and conditions of this Agreement on behalf of that Party to execute this Agreement, and to legally bind that Party to all the terms and conditions of this Agreement.

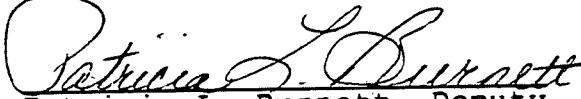
IN WITNESS WHEREOF, the parties have affixed their signatures below.

THE CITY OF WICHITA, KANSAS

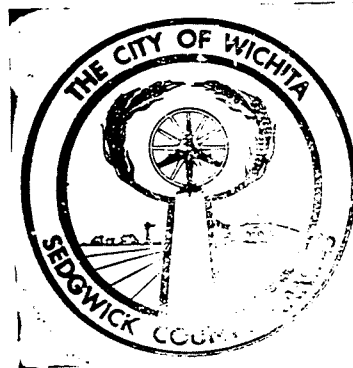


Bob Knight, Mayor

ATTEST:



Patricia L. Burnett, Deputy
City Clerk



Approved As to Form:



Thomas R. Powell, Director
of Law

THE COLEMAN COMPANY, INC.

By 

E X H I B I T A

City/KDHE Settlement Agreement

March 26, 1991

4/25/91 - 8:00
5/28

E X H I B I T B

Coleman/KDHE Consent Order

4/25/91 - 8:00
5-29

EXHIBIT C

To define the surface areas and estimate the cost described in paragraph 2.d(i) (a), (b), and (c) of this Agreement, the Parties' consultants proposed to utilize, as one of several techniques, a regional modeling study of the Gilbert and Mosely Site area. Generally, the objective of this type of modeling study is to back-calculate, using defined available data, source locations, release dates and the geographical extent of contamination from specific sources. The modeling study to be utilized by the Parties for the purposes of this Agreement shall be performed in accordance with the following general criteria:

1. Boundary conditions for the modeling area:
 - a. Arkansas River to the West and Southwest,
 - b. Dry Creek to the East and Southeast (WRI Report 88-4225),
 - c. Little Arkansas River to the Northwest,
 - d. Boundary as defined by WRI Report 88-4225 to the North.

2. Chemical data utilized shall first be examined with respect to current industry standards for monitoring well construction, nature of suspected contamination, sampling protocol, and analytical QA/QC.

3. Process to be considered in the modeling shall include:

4/25/91 - 8:00
5-30

- a. advection,
 - b. longitudinal dispersion,
 - c. transverse dispersion,
 - d. vertical dispersion,
 - e. degradation,
 - f. adsorption/desorption,
 - g. vaporization
4. All key computational codes and executable versions used will be available for review and/or execution.

By enumerating certain modeling criteria herein, the Parties' do not intend to preclude consideration of additional or different criteria as may, in the best professional judgment of their consultants, be appropriate as additional data and information becomes available.

In addition to modeling techniques, additional methods may be used to determine source location. These may include:

- **Determination of Chemical Characteristics:**

The chemical nature and concentrations of the data will be evaluated and compared to the chemicals used at known sources. Data at downgradient wells will also be compared to data at upgradient wells. In many cases, a particular chemical or ratio of chemicals or pattern of chemicals can be used to determine the probable source of the chemicals or the relation of upgradient/downgradient data. Both

4/25/91 - 8:00

5-31

statistical and nonstatistical techniques will be used.

- Collection of Field Data:

Field data collected through the RI/FS and field data submitted by Coleman and other entities will also be used to verify the results of and/or supplement the computer modeling.

4/25/91 - 8:00
5-32