

Approved: Carl Dean Holmes 3-15-95  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on February 20, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Kline - Excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Harold Spiker - KS Department of Health and Environment  
Tom Day - KS Corporation Commission  
Lori A. Fink - KS Corporation Commission  
Larry Holloway - KS Corporation Commission  
Clark Duffey - KS Petroleum Council  
Larry Knoche - KS Dept of Health and Environment  
William R. Bryson - KS Corporation Commission  
Donald P. Schnacke - KS Independent Oil and Gas Association  
David Bleakley - Eastern KS Oil and Gas Association

Others attending: See attached list

Chairperson Holmes opened the meeting making reference to information before them from the Citizens' Utility Ratepayer Board in response to a request in Committee hearing on **HB 2437** on February 16. (See Attachment #1.)

The Chair scheduled a meeting with the Vice Chair and Ranking Minority Committee Member upon adjournment of today's meeting. They will discuss those bills that have not yet been heard in Committee. He then opened the Committee to today's hearings.

**Hearing on HB 2475:**

**Harold Spiker.** (See Attachment #2.) Mr. Spiker informed the Committee that over the past two year the Central Interstate Low-Level Radioactive Waste Compact (CIC) Commissioner and Alternate from Kansas established a low-level radioactive waste advisory group. This informal group consists of representatives from several state agencies, the legislature and Kansas low-level radioactive waste generators. He said that KDHE intends to continue to maintain and utilize this advisory group, even if on an informal basis.

Mr. Striker said that KDHE has some concern regarding Section 1. (d) wherein compensation is provided for committee members who attend meetings of the committee. He believes that resources have not been included in the Governor's budget for FY 1996 for this compensation. Additionally, he recommended two amendments to **HB 2475** regarding the composition of the committee:

- Sections 1. (a) (4) and (5) be combined to read the chairman of the corporation commission or an employee designated by the chairman. This would allow the chairman to take advantage of appropriate experience and expertise among his or her staff.
- Section 1. (a) (9) (B) be amended to include "one member representing nuclear generation facilities in the state" since there is only one such facility in the state.

**Hearing on HB 2474:**

**Tom Day.** Mr. Day said that the proposed repeal of the statute in **HB 2474** promulgated in 1905 at a time

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when there were very few regulated entities. Those entities that were regulated were primarily common carriers (railroads). The statute was enacted prior to the Public Utilities Act of 1911, and repealing the statute will have no fiscal impact on other state agencies.

Mr. Day submitted a proposed amendment to the bill which would not repeal the entire statute, but amend the statute so the Commission would no longer provide free copies of classifications, rates, rules and regulations, or orders. He provided a balloon of his proposed amendment. (See Attachment #3.)

### Hearing on HB 2521:

**Lori A. Fink.** (See Attachment #4.) Ms. Fink reported that the Commission recommended **HB 2521**. She said the purpose of the amendment is to enable the Commission to shift the costs and attorneys' fees incurred for collection and compliance to the culpable and responsible party. As of February 17, 1995, outstanding penalties in the Conservation Division totaled approximately \$315,434. This amount also includes some penalties which are being appealed or are otherwise being collected.

Ms. Fink stated that the collection of penalties assessed, as well as the enforcement of remedial action, is essential to the Commission in fulfilling its regulatory purpose. Upon entering into an agreement with the Department of Administration's Legal Division to pursue the outstanding penalties, the provision is the Commission will pay the Department 40% of collected accounts under \$1,000; 30% for accounts between \$1,000 and \$5,000, inclusive; and 25% for accounts over \$5,000. In addition, individuals or businesses with outstanding penalties are referred to the Set-off Program.

The costs for problems left by operators in the state exceed the funds available to the Commission. She said it is important the assessment of attorneys' fees, costs and interest should be borne by the responsible party for violation of the statutes - not the State of Kansas or the industry which contributes to the fee fund.

### Hearing on HB 2522:

**Larry Holloway.** (See Attachment #5.) The changes in the statutes in **HB 2522** were initially recommended by the Kansas Corporation Commission. Mr. Holloway said the intention of the changes is to allow the limited KCC utility staff resources to focus their expertise on major emerging utility regulatory concerns. Also, they have the benefit of increasing regulatory efficiency by decreasing the number of agencies involved in approval processes. He reported legislative staff has identified similar changes in four related statutes.

The KCC contacted the interested agencies regarding the proposed changes and there was no objection to the reassignment of responsibilities.

### Hearing on HB 2452:

**Clark Duffy.** (See Attachment #6.) Following some background information, Mr. Duffy reported in an effort to address this issue, the Kansas Petroleum Council formed a task force over a year ago. The task force included representatives from the Council's member companies; the independent producer associations; and the Kansas Corporation Commission. Their general recommendations are reflected in **HB 2067**, which was introduced at the request of the Kansas Petroleum Council. That bill would transfer responsibility for abandoned sites to the Commission (as is provided in **HB 2452**). Additionally, **HB 2067** would tax the petroleum industry to generate additional money to clean up orphaned oil and gas contamination sites and abandoned wells, and establish energy awareness programs.

Although **HB 2452** would not address all of the issues identified by the Council's task force, Mr. Duffy said it does appear to be an appropriate first step. He said it seems that transfer of authority to the Commission would improve the current situation, citing the following reasons:

- 1) The Commission already has jurisdiction for active sites, so this transfer would result in clear jurisdiction for remediation of all oil and gas sites in Kansas.
- 2) The Commission already has the expertise to clean up oil and gas sites.
- 3) The Commission has the information to research sites and identify potential responsible parties to pay for clean up of sites where practical.
- 4) These sites will not be in "competition" with other sites for clean up priority at the Commission.

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- 5) The Commission can begin the process of site assessment and then determine whether additional funds will be necessary to clean up the sites.

Mr. Duffy concluded that **HB 2452** is an appropriate first step in working toward resolution of these issues in a fair and equitable manner to all concerned.

**Larry Knoche.** (See Attachment #7.) Although KDHE is in general agreement with this bill, they are concerned that it does not sufficiently define the term "oil and gas activities." He proposed a definition of "oil and gas activities" from the 1986 amended statute (and set forth in **HB 2452**) is "Those activities involved in the exploration for and gathering of oil and gas and the drilling; production; lease storage; treatment; abandonment; and post abandonment of oil and gas well, except refining, treatment, or storing of oil or gas after transportation of the same." Mr. Knoche proposed that this definition be moved to the front of **HB 2452**. He said he does not think it is the intent of this bill to create dual permitting and regulatory programs in air, water, solid and hazardous waste programs. In line with the present philosophy of both state and federal government becoming more efficient, Mr. Knoche suggested the addition of the definition of "oil and gas activities" as proposed should resolve the issue.

Another area of consideration would be to clarify the jurisdiction and authority section, clearly acknowledging both the KCC and KDHE program authorities. Mr. Knoche offered the availability of the Department to the Committee, KCC and other interested in the passage of this bill.

**William Bryson.** (See Attachment #8.) Mr. Bryson reported that the Commission's position as a proponent or opponent of the transfer of responsibility depends upon whether adequate funding is provided to carry out the additional responsibility. The language in Section 7 which relates to the proration of funding gas earmarked through appropriation to KDHE for addressing abandoned contamination sites may not be applicable unless KDHE has actually estimated the costs to remediate the sites subject to transfer by **HB 2452**. He recalled funding difficulties arose last year in the Conservation Fee Fund. The Commission's projections indicate that even by maintaining vacant positions and the reduced expenditure level brought about by the lack of funds, in FY 1997 expenditures will again exceed revenue. The Commission is concerned that without funding to match the responsibility for the additional sites from KDHE's inventory and for any abandoned oil and gas sites that might be discovered in the future, KCC's success in addressing the contamination of those sites in a time line acceptable to the legislature or the public will not occur.

Mr. Bryson said the language in the statute to expand contamination site investigations is necessary and supported by the KCC.

Finally, he proposed a statutory change to clarify agency roles. If this measure proceeds, he recommends that the Committee consider deleting the words "natural gas" on Page 3, line 39 and on Page 5, line 15.

**Donald P. Schnacke.** (See Attachment #9.) In opposing **HB 2452**, Mr. Schnacke said it is solely on the basis that there is no money attached to the bill for the cost of handling the clean up, restoration and remediation of the properties involved. He said KIOGA's approach to this issue is reflected in **SB 37** and **HB 2067**. He explained both bills would transfer the properties from the KDHE to the KCC, but would set up a funding mechanism to address the restoration and clean up of the KDHE sites, and many other sites the KCC has on their current list (and future lists).

Mr. Schnacke reported they have had discussions with key legislators in both Houses to seek non-industry funds to support the KCC Conservation Fee Fund and the KCC environmental restoration and plugging effort. He said their inquiries into this possibility has received very good reaction and support. He added it is their opinion that the time has arrived for some non-industry financial participation.

Mr. Schnacke suggested to the Committee to hold taking action on **HB 2452** to ascertain first if KIOGA'S proposal will materialize.

**David Bleakley.** (See Attachment #10.) In testimony against **HB 2452**, Mr. Bleakley reported that the Eastern Kansas Oil and Gas Association feels that the oil and gas properties now under control of the KDHE should remain there, unless and until appropriate and continuing funds are transferred with such properties to the KCC.

In explaining their position, he said EKOGA feels that transferring of these properties without funds to the KCC will:

1. Cause an increase in the number of cleanup sites under the KCC jurisdiction which will require them to look at fee increases to the oil and gas industry to cover the additional cleanup work.

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2. Relieve KDHE of the financial responsibility to cleanup these oil and gas properties. If left with the KDHE, they will have to address and pay for the work with their Department funds at some time.
3. Without the appropriate funds, these properties will remain with KDHE in their current state indefinitely.

Mr. Bleakley urged the Committee to vote against this measure, reasoning that the EKOGA deems it unfair to transfer the financial burden of these properties without the funds to the KCC.

Upon completion of its business, the meeting adjourned at 4:50 p.m.

The next meeting is scheduled for February 21, 1995.

# ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: February 20, 1995

NAME	REPRESENTING
LORI FINK	KCC
Larry Holloway	KCC
Doug Smith	Sw Ks Loyalty Owners Assn.
PHILIP HURLEY	PATRICK J. HURLEY & CO.
Jack Graves	Opn USA
Bill Bryson	KCC
Joe Gorbard	K Gov. Serv
David Bleakley	SKOGA
Harold Spiker	KDHE
J.C. Long	UtiliCorp United
BRUCE GRAHAM	KEPCO
Ken Peterson	KPC
Don Schwacke	KIOGA
Larry Knoche	KDHE
Bill Craven	KNRC / Sigma
Margaret Larsen	ARCO / Vaster
Paul Ruffly	ISPC
Black Alexander	KCC
TOM DAY	KCC

James Ludwig  
Michelle Peterson  
GEORGE AUSTIN  
Christy Bailey  
Alan Holne

Western Resources  
Ks Governmental Consulting  
Div. of WATER RES.  
Senate Staff  
Division of Budget



# Citizens' Utility Ratepayer Board

FINNEY	GOVERNOR
STACY OLLAR, JR.	CHAIRPERSON
RANDAL K. LODER	VICE-CHAIRPERSON
LINDA WEIR-ENEGREN	MEMBER
DONNA J. KIDD	MEMBER
SUE JOHNSON GILES	MEMBER
ALAN W. DECKER	CONSUMER COUNSEL

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## CITIZENS' UTILITY RATEPAYER BOARD MEETING

July 10, 1992

### MINUTES<sup>1</sup>

The Citizens' Utility Ratepayer Board held its Fourth Annual Board meeting at the Kansas Corporation Commission's, 1500 S.W. Arrowhead Rd., First Floor Hearing Room, Topeka, Kansas, at 10:30 a.m. on Friday, July 10, 1992. Dr. Stacy Ollar, Jr. presided over the meeting. Members participating in the meeting were: Mr. Randal K. Loder, Vice Chairperson; Ms. Linda Weir-Enegren, Member; Ms. Donna J. Kidd, Member; Ms. Sue Johnson Giles, Member; and Mr. John Sutter, Member. CURB staff members present were Mr. Alan Decker, Consumer Counsel; Ms. Gerrie Lippert, CURB Secretary; and Ms. Beth Runnebaum, Office Specialist. (Ms. Weir-Enegren arrived at 10:55 a.m.)

Dr. Ollar called the meeting to order and called role at 10:40 a.m.

Dr. Ollar introduced Mr. John Sutter, a retired Representative of Wyandotte County, Kansas City, Kansas, as the new Board Member to replace Dr. Ollar in the 3rd Congressional district. Dr. Ollar resigned his position due to his recent move to Topeka.

A motion was made to amend the current agenda to have CURB Member Remarks at 2:20 p.m. and the election of CURB officers at 2:40 p.m. (Loder - Kidd)

The motion was voted on and passed 4-0. Ms. Weir-Enegren was not available for the vote.

<sup>1</sup>Regarding motions, the first name appearing in parentheses is the individual making the motion and the second name is the individual seconding.

*2/20/95  
 Energy & Natural Resources  
 Attachment #1*

A motion was made to approve the May 14 and 26, 1992 Board meeting minutes. (Loder - Johnson Giles)

The motion was voted on and passed 4-0. Ms. Weir-Enegren was not available for the vote.

A motion was made to approve the Office Procedures Manual for the Citizens' Utility Ratepayer Board as printed. (Johnson Giles - Loder)

The motion was voted on and passed 4-0. Ms. Weir-Enegren was not available for the vote.

#### Case Summaries

Mr. Decker indicated that the Board would need to make decisions on three separate cases during the meeting.

#### Integrated Resource Planning (IRP) - Docket No. 180,056-U

Mr. Decker briefed the Board on the status of this docket. The first IRP Workshop was held on June 17, 1992. Mr. Decker stated that the workshop had originally been scheduled to last for three days, but only took one day. Mr. Decker, indicated that CURB submitted a proposed rule to all parties prior to the first workshop. Mr. Decker also indicated that to prepare for the next workshop and to summarize the first workshop, CURB is preparing comments indicating where and how CURB's proposed rule addresses the issues discussed or to be discussed at each of the workshops. The next workshop is scheduled for July 23 and 24, 1992.

#### Peoples Natural Gas Company - Docket No. 180,416-U

Mr. Decker indicated we are still in the discovery process of this case and that the Commission's procedural schedule requires that our testimony be filed on August 7.

Mr. Decker also indicated that Peoples objected to several of our data

requests, stating that the requests are irrelevant, voluminous, or seek highly sensitive and confidential information. Mr. Decker stated that he has discussed the objections with Peoples' attorney and we are preparing to file a Motion to Compel if Peoples will not provide the information needed for this case.

Ms. Weir-Enegren arrived at 10:55 a.m.

**Dial Calling Card & Operator Assistance - Docket No. 92-SWBT-328-TAR**

In briefing the Board on this docket, Mr. Decker stated that Southwestern Bell Telephone Company (SWBT), requested an increase in charges for IntraLATA Dial Calling Card and Operator Assistance charges by between 25 to 71 percent. CURB filed a Petition for Reconsideration and a Motion to Stay the Effectiveness of the Rates. Mr. Decker informed the Board that, at an Administrative Meeting, the Commission granted CURB's Petition for Reconsideration, but denied its Motion to Stay the Effectiveness of Rates. Mr. Decker also stated that the Board needs to make a decision whether CURB should file a Petition for Reconsideration on the Motion to Stay the Effectiveness of the Rates.

Ms. Kidd stated she felt CURB should file the Petition for Reconsideration.

Ms. Karen Pierce of Southwestern Bell Telephone stated the increase does not affect directory assistance calls or toll calls with operator assistance. Ms. Pierce also stated there is a discount available on operator assistance calls for certain groups. Customers do not have to be blind or hearing impaired to receive the discount. Ms. Pierce indicated customers are allowed three free calls per month for number information and after the three calls per month, the charge is approximately \$.60 each.



A motion was made to direct the Consumer Counsel to file the Petition for Reconsideration on the Motion to Stay the Effectiveness of the Rates. (Loder - Johnson Giles)

The motion was voted on and passed on a 5-0 vote.

Arkansas Louisiana Gas Company (ARKLA) - Docket No. 181,200-U

Mr. Decker informed the Board that Chesapeake Regulatory Consultants, Inc. has completed its initial review of Arkla's filing and that the discovery process has begun.

IntraLATA Competition - Docket No. 181,097-U

Mr. Decker stated to the Board that a decision needed to be made whether or not CURB should hire a consultant for this docket.

Mr. Decker indicated that the parties supporting IntraLATA competition filed their testimony on June 8, 1992. The opponents of IntraLATA competition must file their testimony on July 20, 1992. Mr. Decker also indicated that CURB, if it files testimony, must have it filed by September 2.

Mr. Decker indicated that this case involves the question of whether companies other than Southwestern Bell should be allowed to provide toll service within the 913 and 316 area codes. Mr. Decker stated that currently it is primarily SWBT that provides this service and other long distance providers want to provide this service. He further indicated that those supporting increased competition argue that competition will cause the rates for this service to decrease.

A motion was made to direct Mr. Decker to file a Petition to Intervene in Docket No. 181,097-U. (Loder - Sutter)

The motion was voted on and passed on a vote of 5-0.

Mr. Decker stated that we would begin the process of selecting a consultant for Docket No. 181,097-U.

**United Cities Gas Company - Docket No. 181,940-U**

Mr. Decker stated that we have begun the discovery process and that Berkshire Consulting Group is CURB's consultant.

Dr. Ollar inquired if the public hearings have been set and Mr. Decker stated the schedule has not been set as of this date.

**Generic 911 - Docket No. 181,307-U**

Mr. Decker stated that oral arguments were scheduled for this docket, but were postponed after some information and assumptions were found to be inaccurate. The oral arguments were delayed and perhaps a settlement is being worked on.

**Take-or-Pay - Docket No. 181,835-U**

The Commission originally ordered the distribution of natural gas companies to approve and not pass through the take-or-pay obligations they were incurring from the natural gas pipelines. The Commission issued this docket to see what should be done with those take-or-pay obligations in the way whether they should be passed to the retail customers or not and if so how. Comments were originally scheduled to be filed on July 2 and Peoples filed a motion for that time to be extended and Comments are now due on July 17. Mr. Decker indicated that CURB anticipates filing comments on the 17th. In those Comments, CURB will argue that not all costs should be passed on to residential and small commercial ratepayers. Mr. Decker indicated that Staff has made recommendations on how the take-or-pay costs should be passed through and CURB has some disagreement with Staff's recommendations.

City of Winfield - Docket No. 179,166-U

Mr. Decker stated that the rate case hearing was held on, June 29. The Commission will make a decision on this case on Monday, July 13, at the Administrative Meeting. One of the considerations in this case is that the City had asked for a total increase of \$23,000, the first rate increase in 6 years, and that the increase on a percentage basis is approximately 3.35%. Mr. Decker indicated that this case was difficult from a practical standpoint because there weren't a lot of dollars involved, the percentage increase was not large. Thus, he indicated, the Commission is somewhat concerned about all the expenses associated with prosecuting a case for such a small increase. Mr. Decker also stated that during CURB's closing arguments, we reminded the Commission that regardless of the size of the increase all ratepayers have a due process right to be heard about whether the increase should be granted or not. Mr. Decker stated he wanted to make the Board aware of the Commission's concern about the size of the increase and the expenses involved in prosecuting a small case.

Mr. Sutter stated he didn't feel it was a very large increase.

Mr. Decker stated that in this municipality the Commission does not regulate the rates for customers that are inside the city and out to a three mile radius of the city. He further stated that there are approximately 900 customers where rates would be affected in this case. Mr. Decker also indicated that he told the Commissioners that this increase was not simply for one year, but every subsequent year until another rate change was approved. Thus, the \$23,000 increase, over five years, could be approximately \$140,000.

Western Resources Electric Supply Line Application - EL Docket No.  
El28276

Mr. Decker stated that Western Resources, had filed an application to upgrade a 69 kv transmission line to 115 kv. The transmission line is located through an essentially residential neighborhood with a school and park along its path. The Pickney Neighborhood Association ("the Association") is concerned what the upgrade will do to property values and to the health of those located near the line.

Regarding the health effects, the Association is concerned about the proposed line's electric and magnetic fields. (EMF) Mr. Decker stated he met with members of the Association and attended a couple of meetings they have had with Western Resources. In those meetings, Western Resources provided the Association with some information regarding possible routing and construction alternatives.

Mr. Decker stated that Electric Line application has been before the Commission for some time now and that there is a possibility the application will be acted upon in a very short time. Therefore, to stop the clock on the Electric Line application and have the other concerns about the electric lines considered, it will be necessary for the Association to file a complaint. Mr. Decker indicated that the Association has asked that CURB represent them in any complaint filed with the Commission.

Under the Electric Line Application the Commission can only consider whether the line meets the standards of the National Electric Safety Code. The Association members feel that other considerations should be included in with the construction approving the line construction. The Association

feels that the health effects and whether they will be treated equally in relation to other ratepayers with regard to other lines which were constructed should also be considered.

Mr. Decker indicated he has prepared a "draft" complaint for the Board to review for their opinion and decision whether CURB shall file a formal complaint.

Mr. Sutter asked the question whether the lines will be constructed overhead or will they be put underground.

Mr. Decker stated that the current plans call for overhead construction, which is what is currently in place. The existing voltage is 69 kv and the EL application proposes to increase the voltage to 115 kv.

Mr. Sutter stated the higher voltage should be a concern for health reasons and maybe the line should be constructed underground. Mr. Sutter stated he realizes that that would cost more.

Mr. Decker stated that the cost is a major factor, and that the Board has to be aware that the increased cost would be forwarded to other ratepayers not directly effected by this particular line. Mr. Decker also stated that burying the lines does not eliminate the magnetic field effects and could make it worse, because with underground installation the magnetic fields are closer than with overhead construction.

A motion was made to file the formal complaint with Commission and attempt to suspend the EL application process as drafted. (Sutter - Kidd)

Mr. Loder stated he was troubled with this motion. Mr. Loder feels the Association doesn't want the lines in their back yard, but wants the convenience of being able to use electricity.

Mr. Decker stated the Citizens are still in negotiations with Western

Resources and there is a possibility there may be an agreement without the complaint being filed. Mr. Decker indicated that the Association believes they have a viable alternative route. And they agree that the alternative route is initially more expensive. However, the Association believes that the alternative route cost will ultimately be less when future health and litigation costs are considered. Further, Mr. Decker stated that the Association feels that it is not simply moving the line to someone else's backyard because their alternative moves the line out of everyone's backyard.

The motion was put to a vote and the vote was as follows:

Mr. Loder voted nea; Mr. Sutter voted yea; Ms. Johnson Giles voted nea; Ms. Kidd voted yea; and Ms. Weir-Enegren voted yea.

Dr. Ollar asked if there was a need for executive session; none of the Board members asked for an executive session.

#### Public Remarks

Dr. Ollar invited the public to make any comments and asked if they had any questions.

Ms. Carol Jones made a few comments concerning the neighborhood association's request to have CURB represent it in a complaint with the Commission regarding the transmission line in Lawrence, Kansas.

Dr. Ollar moved that the meeting recess for lunch and reconvene at 1:30 p.m.

The Board reconvened at 1:40 p.m.

Dr. Ollar acknowledged several distinguished guests in the audience and also introduced the Board Members to the public.

## Remarks

Dr. Ollar introduced Mr. Decker to the audience at which time Mr. Decker gave his remarks.

Dr. Ollar introduced Mr. Jack Alexander, KCC Commissioner, to Board Members and guests, and Commissioner Alexander presented remarks.

## Awards

Following remarks by Mr. Alexander, Dr. Ollar presented CURB awards to Ms. Beth Runnebaum, for her outstanding service to CURB; Ms. Linda Lagergren, for her volunteer work on behalf of consumers; and Representative Ken Grotewiel for his support of CURB.

## Officer Election

Following the presentation of awards, nominations were made for CURB Officers.

Ms. Weir-Enegren made a motion nominating Mr. Loder to a one-year term as CURB Chairperson. Mr. Sutter seconded the motion and the motion passed on a vote of 4 to 0.

Ms. Johnson Giles made a motion nominating Ms. Kidd to a one-year term as CURB Vice-Chairperson. Mr. Loder seconded the motion and the motion passed on a vote of 4 to 0.

## Board Remarks

Ms. Kidd, Ms. Weir-Enegren, Mr. Sutter, and Mr. Loder all gave brief remarks to guests. Mr. Loder also presented Dr. Ollar with an award for his outstanding service to CURB.

The meeting adjourned at 2:45 p.m. and a reception followed in the CURB conference room.

**CASES THAT CURB HAS APPEALED BEFORE  
THE KANSAS COURT OF APPEALS, THE KANSAS SUPREME COURT  
AND THE UNITED STATES SUPREME COURT**

**KANSAS GAS & ELECTRIC COMPANY (KG&E)**

(KCC Docket No. 142,098 & 164,211)

Court of Appeals No. 90-64976-A

Third Judicial District Court, Shawnee County, Kansas No. 89-CV-326

Supreme Court of the United States No. 90-984

The KCC adopted most of CURB's recommendations in this docket and ordered a rate reduction and a reduction in the residential customer service charge. KG&E appealed to the Kansas Court of Appeals, which upheld the KCC's action. CURB successfully defended an \$8.6 million KG&E rate reduction before the Kansas Supreme Court and before the United States Supreme Court.

**SOUTHWESTERN BELL TELEPHONE - FAS 106**

(KCC Docket No. 183,522-U)

On October 27, 1993, CURB filed its appeal of the Commission's decision in the Court of Appeals and the Shawnee County District Court.

On December 21, 1993, the Court of Appeals issued its order denying jurisdiction of CURB's Petition for Judicial Review. Because of the broad scope of the Court's Order, CURB decided (with Board approval) to cease its appeal of the Commission's order in this docket.

**GREELEY GAS COMPANY**

(KCC Docket No. 170,588-U)

CURB appealed and obtained a reversal from the Kansas Court of Appeals of a KCC ruling that allowed Greeley to recover dues to out-of-state country and social clubs from its Kansas ratepayers. See Greeley Gas Co. v. Kansas Corporation Commission, 15 K.A. 2d 285 (1991). Although the sum involved was only a few thousand dollars, the precedent CURB achieved was very important.



**CHASE COUNTY GAS SERVICE COMPANY**

(KCC Docket No. 173,084-U)

CURB filed with the Supreme Court of Kansas a request denying Chase County Gas Service Company a Petition for Judicial Review. The petition by Chase County was denied. Chase County was seeking Judicial Review of an Order by the KCC granting \$52,247 of a requested \$188,533 rate increase.

**UNITED CITIES GAS COMPANY**

(KCC 181,940-U)

United Cities filed with the Court of Appeals appealing the Commission's decision in this case. On July 2, 1993, the Kansas Court of Appeals issued an opinion affirming the Commission's decision in the United Cities rate case. In this case the Commission authorized a \$915,000 increase, of the \$6.3 million increase requested. The Commission decision was affirmed on all grounds.

**INTEGRATED SERVICES INC.**

(KCC Docket No. 187, 699-U)

Integrated Services Inc. filed a Petition for Judicial Review in Marion County then dismissed. Integrated Services Inc then filed in Shawnee County, again asking that the Petition be dismissed.



# Citizens' Utility Ratepayer Board

N FINNEY	GOVERNOR
HANDAL K. LODER	CHAIRPERSON
DONNA J. KIDD	VICE-CHAIRPERSON
LINDA WEIR-ENEGREN	MEMBER
SUE JOHNSON GILES	MEMBER
JOHN SUTTER	MEMBER
ALAN W. DECKER	CONSUMER COUNSEL

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## CITIZENS' UTILITY RATEPAYER BOARD MEETING

### CONFERENCE CALL MEETING

February 12, 1993

### Minutes<sup>1</sup>

A tele-conference call meeting of the Citizens' Utility Ratepayer Board was held at 1:30 p.m. on Friday, February 12, 1993. A speaker for public listening was available in the CURB conference room, 1500 S.W. Arrowhead Road, Topeka, Kansas.

Board members participating in the tele-conference call were: Mr. Randal K. Loder, Chairperson; Ms. Donna J. Kidd, Vice-Chairperson; and Mr. John Sutter, Member.

Alan Decker, Consumer Counsel; Beth Runnebaum, Office Specialist; Gerrie Lippert, Secretary; Mr. Frank Thacher, American Association of Retired Persons; Mr. Richard Rohlfs, Western Resources; and Ms. Karen Pierce, Southwestern Bell Telephone also attended the meeting.

The meeting was called to order at 1:30 p.m by Mr. Randal Loder.

A motion was made to approve the January 14, 1993 minutes (Kidd - Sutter). The motion passed unanimously.

### BUDGET UPDATE

Mr. Loder asked Ms. Runnebaum to brief the Board on the status of the Fiscal Year 1994 budget.

Ms. Runnebaum stated that CURB is waiting on the Senate Appropriations committee to meet and discuss the sub-committee recommendation. The sub-committee supported the Governor's recommended budget, except the sub-committee recommended that the additional position be an economist rather than an attorney.

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<sup>1</sup>Regarding motions, the first name appearing in parentheses is the individual making the motion and the second name is the individual seconding.

## KPS

Mr. Decker informed the Board that Kansas Public Service Company (KPS), had filed an application seeking an accounting order related to site reclamation costs for a manufactured gas plant.

The city of Lawrence and the state of Kansas have planned to put a roadway through the site of an old manufactured gas plant site, and some site clean-up costs must be incurred before the roadway can be built. KPS is seeking the Commission's approval for certain accounting treatment for those costs.

Mr. Decker asked the Board if they wanted to intervene in this case. Mr. Loder asked Mr. Decker what specific type of environmental clean-up is to be done. Mr. Decker stated that there may be certain chemicals or other toxic materials on the site which may need to be cleaned-up.

Ms. Kidd stated she would like to stay focused on one item at this point.

Mr. Loder asked Mr. Decker to prepare and send a summary of application to the Board members.

## UNITY COALITION

Mr. Loder asked for Mr. Decker's comments on the information from the Unity Coalition Grass Roots Project. Mr. Decker stated they wanted to know if someone on the Board or someone associated with the office would be willing to participate in meetings regarding telecommunication legislation.

Mr. Loder asked Mr. Decker to research the legislation and the Unity Coalition Grass Roots Project and provide that information to the Board.

## CABLE TELEVISION BILL

The Board requested that Mr. Decker prepare a summary of this bill to provide the Board with more information regarding what it would entail if CURB became involved in cable regulation.

## OTHER MATTERS

Mr. Loder asked if there were any other items to discuss before going to Executive Session.

## RELOCATION OF FACILITIES TARIFF

Mr. Decker indicated that he wanted to bring to the Board's attention a tariff submitted by Kansas Power and Light for the Commission's approval. The tariff is titled: The Relocation of Facilities Tariff. Mr. Decker stated that this tariff provides for recovery of incremental costs from ratepayers within a political subdivision when a governmental subdivision requires a company to construct, remove, or relocate transmission and distribution facilities when a company would have not done so otherwise.

## EXECUTIVE SESSION

A motion was made at 1:55 p.m. to go into executive session for 15 minutes to discuss attorney-client matters regarding the Pinckney Neighborhood Association. (Kidd - Sutter). The motion passed unanimously.

## RECONVENE

At 2:12 p.m. Mr. Loder called for the Citizens' Utility Ratepayer Board to reconvene in open session at 2:12 p.m.

Motion was made that the Board instruct the Consumer Counsel to proceed with the appeal for the Pinckney Neighborhood Association Complaint (Kidd - Sutter). The motion passed unanimously.

Mr. Loder stated that he would be out of the country from February 15 to February 23. During that period of time Mr. Loder passed all of the Chairperson's duties to Ms. Kidd.

At 2:16 p.m., a motion was made to adjourn (Kidd - Sutter). That motion passed unanimously, and the meeting was adjourned.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

House Bill 2475

On behalf of the Kansas Department of Health and Environment (KDHE), I am pleased to provide these brief comments in support of H.B. 2475.

Over the past two years, the Central Interstate Low-Level Radioactive Waste Compact (CIC) Commissioner and Alternate from Kansas established a low-level radioactive waste advisory group. This committee was informally organized and consisted of representatives from several state agencies, the legislature and Kansas low-level radioactive waste generators. This committee has provided very helpful input and support for our participation in the CIC. KDHE intends to continue to maintain and utilize this advisory group even if on an informal basis. H.B. 2475 would formally recognize this group under state law.

KDHE is somewhat concerned over the provisions of Section 1.(d). This section provides compensation for committee members who attend meetings of the committee. To date, participation on this advisory committee has been strictly voluntary and without any compensation other than the opportunity to participate in the state efforts to provide for future low-level radioactive waste disposal. H.B. 2475 does not specify the state agency responsible for providing these funds; however, KDHE does not believe that resources have been included in the Governor's FY 1996 budget to pay the compensation provided for by Section 1.(d). In addition, we would recommend the following amendments to the bill regarding the composition of the committee:

- Sections 1.(a)(4) and (5) be combined to read the chairman of the corporation commission or an employee designated by the chairman. This would allow the chairman to take advantage of appropriate experience and expertise among his or her staff.
- Section 1.(a)(9)(B) be amended to include "one member representing nuclear generation facilities in the state" since there is only one such facility in the state.

Testimony on HB 2475  
Page Two

Thank you for allowing me to appear today.

Testimony presented by: Harold Spiker  
Chief, Environmental Radiation &  
Emergency Preparedness  
Bureau of Air and Radiation  
February 20, 1995

Testimony Of  
Kansas Corporation Commission

before the  
House Energy and Natural Resources Committee  
February 20, 1995

HOUSE BILL 2474

House Bill 2474 repeals K.S.A. 66-151 "Free copies of rates, regulations and orders; certified copy as evidence." This statute, promulgated in 1905, was placed into law while there were very few regulated entities, and those entities which were regulated were mainly common carriers (railroads). KSA 66-151 was enacted prior to the Public Utilities Act of 1911. Repealing KSA 66-151 will have no fiscal impact on other state agencies. The fiscal ramifications to the Corporation Commission will be an increase in revenues to offset actual copy costs for requested material. Since the Commission has not seen a need to keep records of those requested copies covered under KSA 66-151, estimated revenue, which would be generated by the repeal of this statute, would be difficult to ascertain. Best-guess estimates would range between \$2,500 and \$5,000. Many factors could increase those numbers, including rate case filings and cases on appeal.

The bill, as written, has potentially more ramifications than originally intended. The Commission would ask the Committee to consider an amendment, which would not repeal the entire statute, merely amend the statute so the Commission would no longer provide free copies of classification, rates, rules, regulations, or orders. A balloon of the bill is attached.

Thank you for your favorable consideration of House Bill 2474 with requested amendments.

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Energy & Natural Resources  
Attachment #3

## HOUSE BILL No. 2474

By Committee on Energy and Natural Resources

2-14

9 AN ACT ~~repealing~~ K.S.A. 66-151, relating to certified copies of certain  
10 state corporation commission documents.

11

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

13 Section 1. K.S.A. 66-151 is hereby repealed.

14 Sec. 2. This act shall take effect and be in force from and after its  
15 publication in the statute book.

### — AMENDING

Upon application of any person, the commission shall furnish, ~~free,~~ certified copies of any classification, rates, rules, regulations, or orders at costs determined pursuant to commission policies and procedures; and such certified copies, or printed copies published by authority of the corporation commission, shall be admissible in evidence in any suit, and sufficient to establish the fact that in any charge, rate, rule, order or classification therein contained, and which may be in issue in the trial, is the official act of the corporation commission; and such determinations and orders of the commission shall be prima facie evidence, in any action in which they are offered, of the reasonableness and justness of the classifications, rates and charges involved therein and of all other matters therein found and determined; and after the lapse of thirty days from the time such determination and orders shall be made, no suit then pending to set the same aside, and they remaining in full force and effect, such determinations and orders shall be held to be conclusive as to the matters involved therein. A substantial compliance with the requirements of this act shall be sufficient to give effect to all determinations and orders made and established by the commission.

**History:** L. 1905, ch. 340, § 11; March 21; R.S. 1923, 66-151.



TESTIMONY IN SUPPORT OF HB 2521

SUBMITTED BY

LORI A. FINK  
ACTING GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
FEBRUARY 20, 1995

The Commission recommended and supports HB 2521 which amends K.S.A. 55-162 and 55-164. Chapter 55 includes the regulatory provisions for oil and gas production. The proposed amendments to both statutes provide that, in addition to any remedial action (K.S.A. 55-162) or penalty (K.S.A. 55-164), the Commission has authority to assess the responsible party any costs and reasonable attorney fees incurred by the Commission in its attempt to either enforce an order or collect the penalties assessed. The amendments also provide for the ability to collect interest on any unpaid amount.

The purpose of this amendment is to enable the Commission to shift the costs and attorneys' fees incurred for collection and compliance, which are currently paid by the Commission, to the culpable and responsible party. As of February 17, 1995, outstanding penalties in the Conservation Division totaled approximately \$315,434. This amount also includes some penalties which are being appealed or are otherwise being collected. It was never the intention of the Commission not to pursue collection of these penalties. However, the oil industry in particular is struggling and perhaps the incentive and ability on the part of some operators to comply, correct deficiencies and/or pay penalties are lessened.

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The collection of penalties assessed as well as the enforcement of remedial action is essential to the Commission in fulfilling its regulatory purpose. On October 12, 1994, the Commission entered into a collection agreement with the Department of Administration's Legal Division to aggressively pursue these outstanding penalties. The agreement provides that the Commission will pay Department of Administration 40% of the amount collected on accounts under \$1000; 30% of the amount collected on accounts between \$1000 and \$5000, inclusive; and 25% of the amount collected on accounts over \$5000. In addition, individuals or businesses with outstanding penalties are referred to the Setoff Program.

The costs to correct the abandoned wells and other problems left by operators in the state more than exceed the fee funds available to the Commission to correct those problems. Any additional expenses associated with collection of fines and enforcement imposes a restriction on the Commission's ability to address environmental problems in a prompt and efficient manner. Most importantly, the assessment of attorneys' fees, costs and interest should be borne by the party responsible for the violation under either K.S.A. 55-162 and 55-164, not the State of Kansas or industry which contributes to the fee fund.

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

PRESENTATION OF THE  
KANSAS CORPORATION COMMISSION ON  
HB 2522

The commission supports this bill. The changes in agency responsibilities purposed by this bill in K.S.A. 12-636, 12-637, 12-638, 12-837, 12-838, 12-2707 and 12-2708 were identified and initially recommended by KCC staff. These changes were intended to allow the limited KCC utility staff resources to focus their expertise on major emerging utility regulatory concerns, such as integrated resource planning and electric and natural gas industry restructuring issues. The proposed changes have the added benefit of increasing regulatory efficiency by decreasing the number of agencies involved in approval processes, and assigning regulatory agencies that have better expertise to meet the intent of the statutes. Subsequently legislative staff has identified similar changes in K.S.A. 24-418, 68-1502, 68-1503. and 68-1504.

The statutes identified by the KCC staff required the commission to provide approval for waterworks, water supply and flood protection improvements proposed by cities or municipalities. Flood protection improvements were already required to be approved by the chief engineer of the department of water resources by other statutes. Similarly, the Kansas department of health and environment is currently required to license improvements to water supply and waterworks. KCC staff contacted these agencies when the proposed changes were first identified and they had no objections to the reassignment of these responsibilities.

While the need to improve agency efficiency in an attempt to better focus limited staff resources was the primary motivation behind the changes proposed by the commission, there are other logistic issues as well. The KCC review of flood protection improvements required by statute implies a level of review that could arguably require a licensed professional engineer (K.S.A. 74-7000). While there are two licensed professional engineers on the KCC utilities division staff, rules of professional engineering conduct (K.A.R. 66-6-4) specifically require professional engineers to certify assignments when qualified by "education and experience." None of the engineering staff in the commission's utility division has experience in the design of flood protection. It seems illogical

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for the commission to hire consultants to repeat the review of plans and specifications already completed by other agencies with more applicable expertise. In fact, the last flood protection improvement application was recommended for approval to the commission by KCC staff based on the engineering review already performed by the chief engineer of the department of water resources.

Commission review of the proposed changes proposed by the legislative staff to K.S.A. 24-418, 68-1502, 68-1503. and 68-1504 appear to make sense for the same reasons detailed above.



**HOUSE BILL 2452**  
**SENATE ENERGY AND NATURAL RESOURCES COMMITTEE**  
**CLARK DUFFY, KANSAS PETROLEUM COUNCIL**  
**FEBRUARY 20, 1995**

I am Clark Duffy, the Associate Director of the Kansas Petroleum Council. The Kansas Petroleum Council represents the major oil and gas companies and allied industries in all aspects of their operations in Kansas. I appreciate the opportunity to appear on HB2452, which would transfer responsibility for abandoned oil and gas contamination sites from the Kansas Department of Health and Environment to the Kansas Corporation Commission.

Some background information might be helpful to provide perspective on this legislation. At this time, the Federal Government is considering reauthorization of CERCLA (Superfund) and RCRA, the Resource Conservation and Recovery Act. Currently, these acts exclude petroleum exploration and production wastes from the law. While Superfund is well intended, it is generally considered to be a very onerous law. Should the production waste exemption be lost, the petroleum industry in Kansas would be devastated (please see attachment). The best way to ensure Kansas maintains these exemptions is for the state to have a strong regulatory program. While concerns about the loss of the production waste exemption may have eased because of recent changes in Washington, the need for a strong state regulatory program is still prudent.

The Interstate Oil and Gas Compact Commission/Environmental Protection Agency reviewed the Kansas oil and gas regulatory program in 1993. While this review was generally favorable toward the regulatory program, it said that the programs to clean up abandoned oil and gas sites will never successfully remediate the orphaned sites or plug abandoned wells in Kansas. In addition, the report said the jurisdiction between the Kansas Department of Health and Environment and Kansas Corporation Commission should be clarified (please see portion of report which is attached).

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attachment #6

In an effort to address this issue, the Kansas Petroleum Council formed a task force over a year ago. This task force included representatives from the Council's member companies, the independent producer associations, and the Kansas Corporation Commission. The general recommendations from that task force are reflected in House Bill 2067, which was introduced at the request of the Kansas Petroleum Council. The Kansas Petroleum Council bill, HB2067, would transfer responsibility for abandoned sites to the Kansas Corporation Commission as provided in House Bill 2452. In addition, HB2067 would tax the petroleum industry to generate additional money to clean up orphaned oil and gas contamination sites and abandoned wells and establish energy awareness programs.

Although HB2067 remains in the committee, the Senate Energy and Natural Resources Committee introduced Senate Bill 37, which is similar to the Kansas Petroleum Council bill, in an effort to resolve these issues. That bill faces an uncertain future in the Senate because there is not a consensus within the petroleum industry on the best way to address these issues. Although the differences within the industry are relatively minor, it has been difficult to forge an agreement because of the extremely difficult economic times for the petroleum industry in Kansas.

Although House Bill 2452 would not address all of the issues identified by the Kansas Petroleum Council's task force, it does appear to be an appropriate first step. It seems that transfer of this authority to the Kansas Corporation Commission would improve the current situation for the following reasons:

- 1) The Kansas Corporation Commission already has jurisdiction for active sites, so this transfer would result in clear jurisdiction for remediation of all oil and gas sites in Kansas.

- 2) The Kansas Corporation Commission already has the expertise to clean up oil and gas sites.
- 3) The Kansas Corporation Commission has the information to research sites and identify probable responsible parties to pay for clean up of sites where practical.
- 4) These sites will not be in "competition" with other sites for clean up priority at the Kansas Corporation Commission.
- 5) The Kansas Corporation Commission can begin the process of site assessment and then determine whether additional funds will be necessary to clean up these sites.

The Kansas Petroleum Council believes it is important to continue to work toward resolution of these issues in a fair and equitable manner to all concerned. House Bill 2452 appears to be an appropriate first step.

Thank you.

# KANSAS

## Impact of Regulating Petroleum Exploration Wastes Under RCRA's Non-Hazardous Waste Program

Proposals for additional federal regulation of oil and gas exploration and production wastes threaten the viability of petroleum production across the nation. Costs could skyrocket by tens of billions of dollars, forcing oil and gas wells in the United States to be shut in. In Kansas, the decline of a major state industry would cost jobs and tax revenue and harm the economy.

### Background

In 1989, Kansas had about 57,800 wells producing more than 154,000 barrels of oil and 1.6 billion cubic feet of natural gas per day. There were about 8,100 people employed in jobs relating to oil and gas extraction. The petroleum industry directly employed about 27,900 people in the state.

### Economic Impact

If production wastes are regulated as industrial wastes under the Resource Conservation and Recovery Act (RCRA), as proposed in legislation now before Congress, skyrocketing costs would force an end to oil production in the state of Kansas and cause gas production to decline drastically.

At a price level of \$20 per barrel of oil and \$2 per thousand cubic feet of gas, a new study warns that:

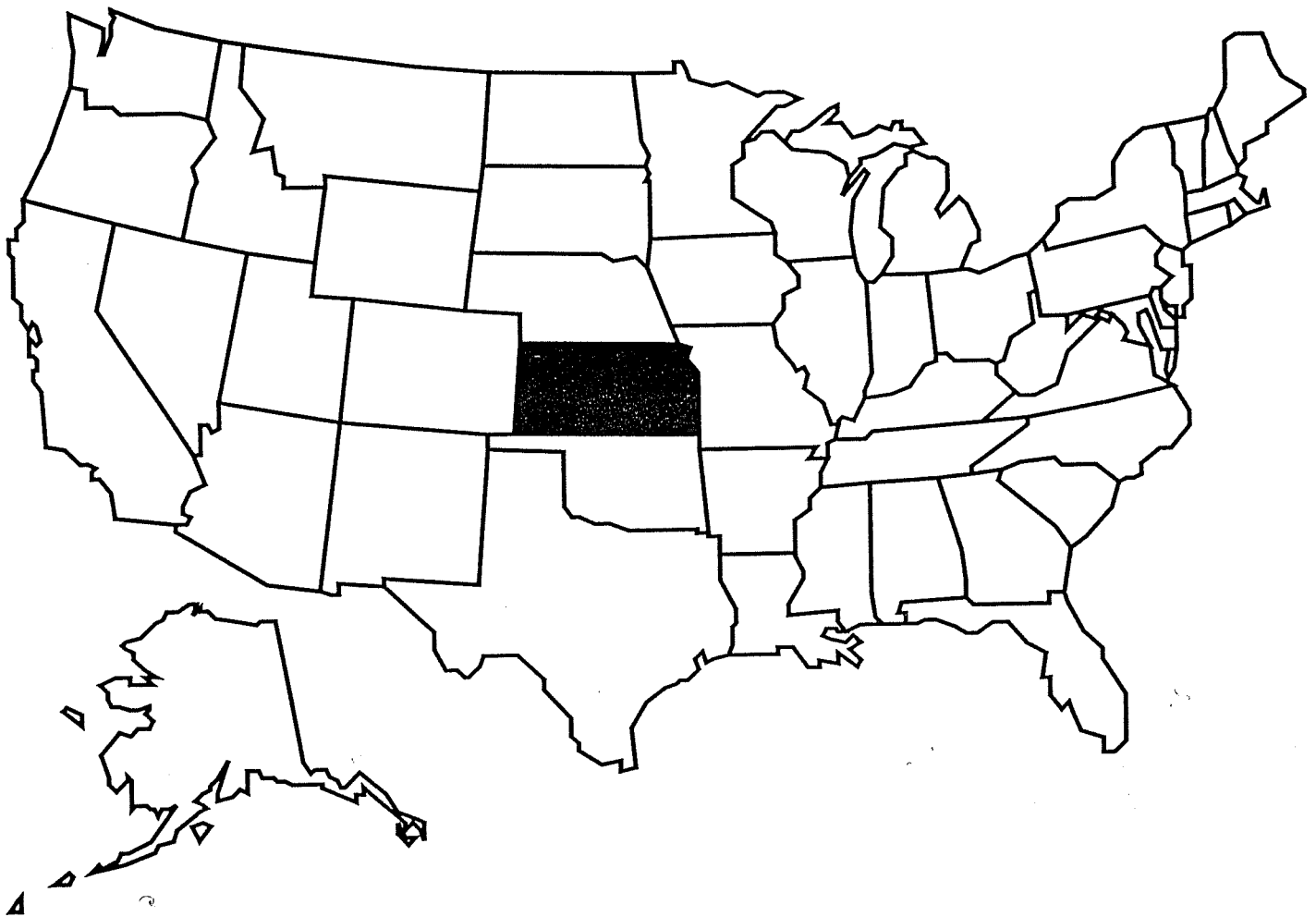
- All existing oil wells would be shut in;
- About 5,600 existing gas wells would be shut in, 43 percent of the state's total;
- Gas production would decline by 130 million cubic feet per day, an 8 percent decrease;
- About 3,600 workers in oil and natural gas extraction would lose their jobs;
- Kansas would lose \$86 million in ad valorem and severance tax revenues the first year; and
- Net revenues to royalty owners would be reduced by about \$180 million the first year.

These economic impact estimates were made by Gruy Engineering Corporation, for the American Petroleum Institute, after completing the most comprehensive economic analysis to date of the effects of solid waste regulation on the oil and gas industry. The study includes all onshore producing wells in the United States, using 1989 industry figures, the most recent full-year data available.



**IOGCC/EPA STATE REVIEW OF  
OIL & GAS EXPLORATION & PRODUCTION  
WASTE MANAGEMENT REGULATORY PROGRAMS**

# Kansas State Review



A PROJECT OF THE  
Interstate Oil & Gas Compact Commission

August 1993

## **B. Kansas Department of Health and Environment**

The KDHE is a cabinet level agency with the Secretary appointed by the Governor. The Department is divided into three major divisions: Environment; Health; and Laboratory Services. The solid and hazardous waste program of the KDHE has a statement of policy for the "protection of the health and welfare of the citizens of Kansas" in KSA 65-3401. With the exception of Wichita, the KDHE district offices are co-located with the Conservation Division district offices and this facilitates ease of inter-agency communication and cooperation.

The KDHE has primacy for the issuance of NPDES permits, and would be the agency to authorize discharge of production wastes even on lease sites, if this were a practice Kansas authorized. The agency also has authority for stormwater discharge permits and they are promulgating regulations.

The KDHE has authority to issue oil field brine roadspreading permits under KSA 28-47-1, et. seq. The agency also authorizes disposal of E&P wastes in municipal or private sanitary landfills under the Bureau of Waste Management rules and regulations. In general, the KDHE has statutory responsibility for the development and promulgation of state water quality standards for surface and groundwater.

KSA 74-623 provides the KDHE with the authorization for cleanup of pollution from oil and gas activities, exercised in cooperation with the KCC. The KCC and the KDHE have two Memoranda of Understanding (MOUs) outlining the division of responsibilities between these agencies. The KCC has jurisdiction for prevention and cleanup of pollution from oil and gas operations on active leases. The KDHE is responsible for cleanup on abandoned leases, except for the plugging of abandoned wells (such plugging is the responsibility of the KCC pursuant to KSA 1987 Supp. 55-179). The KDHE has exclusive authority to regulate the protection of Kansas soil and waters from pollution resulting from oil and gas activities not regulated by the KCC. The KDHE and the KCC share responsibility for oil and gas pollution cleanup in those situations where such pollution travels beyond the boundaries of an active lease. A procedural manual for site remediation and spill response has been jointly produced by the KDHE and the KCC and is used by both agencies in these cases.

E&P waste cleanup for abandoned sites where there is no responsible party is usually the responsibility of the KDHE. The source of funding for this cleanup, in the past, has been from the State Water Plan. It is positive that there is some investment of Kansas general fund dollars for this work. Cleanup for E&P waste pollution at abandoned leases is a low priority for the KDHE's limited funds. The KDHE admits that it is making slow progress in evaluating old sites and in site cleanup, and they are only now working on eight E&P waste sites. Only two of these have had any actual groundwater remediation work conducted. The KDHE's remediation of abandoned E&P waste sites is seldom based on criteria other than groundwater brine contamination and may be missing other groundwater pollution problems potentially caused by associated wastes.

**FINDING I.3.**

Jurisdiction between the KCC and the KDHE for environmental cleanup of abandoned sites is unclear.

**RECOMMENDATION I.3.**

The review team recommends that the KCC and the KDHE review existing agreements to determine if they are current and effective. IOGCC Guidance section 3.1.e. and 4.4.

**FINDING I.4.**

Minimal funding and prioritizing of E&P waste pollution remediation needs have significantly limited Kansas' ability to prevent and address pollution from abandoned E&P waste sites.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

House Bill 2452

KDHE is in general agreement with House Bill 2452, which will transfer the cleanup of pollution authority for the abandoned lease oil and gas activities from KDHE to the KCC. However, after reviewing House Bill 2452, we are concerned that this bill does not sufficiently define the term "oil and gas activities." A proposed definition of "oil and gas activities" from K.S.A. 74-623 as amended in 1986, and set forth in Section 6(a) of this bill, is "Those activities involved in the exploration for and gathering of oil and gas and the drilling, production, lease storage, treatment, abandonment, and postabandonment of oil and gas wells, except refining, treatment, or storing of oil or gas after transportation of the same." We propose this definition be moved to the front of the bill.

KDHE is of the opinion that common environmental remediation cleanup standards should be used through various industries to address pollution cleanup as well as a common rating system to rank sites for priority to receive funding for cleanup. The proposed House Bill 2452 refers to the pollution of useable water in K.S.A. 55-179, while K.S.A. 65-171d refers to "protection of the waters of the state." There should be one goal for the remediation of contamination which is protective of the environment.

We do not think it is the intent of HB 2452 to create dual permitting and regulatory programs in air, water, solid and hazardous waste programs. The duplication of programs would result in "big government" getting even bigger, and appears to be in direct conflict with the present philosophy of both state and federal government, of smaller and more efficient government. The addition of the definition of "oil and gas activities" proposed above should resolve this issue.

Although in general agreement with the concept of transferring authority to the KCC to the cleanup of pollution from oil and gas activities associated with abandoned leases, KDHE foresees an interpretation of the transfer of jurisdiction and authority to be much broader than the abandoned lease issue. The jurisdiction and authority section needs to be clarified to clearly acknowledge both the KCC and KDHE program authorities. We are available to work with the committee, the KCC and others interested in the passage of this bill.

Thank you for allowing me to speak today.

Testimony presented by: Larry Knoche, Director  
Bureau of Environmental Remediation  
February 20, 1995

House Energy and Natural Resources Committee  
February 20, 1995  
Presented by  
William R. Bryson, Director, Conservation Division  
Kansas Corporation Commission  
House Bill 2452

Mr. Chairman, Members of the Committee:

We appreciate the opportunity to appear on House Bill 2452. HB 2452 proposes transfer of remedial action responsibility for abandoned oil and gas sites to the KCC. Section 4 amends KSA 55-182 to include a new section (b) which extends the right of ingress and egress for agents of the Commission to lands where pollution from oil and gas activities exists and investigation or cleanup is necessary.

Perhaps a brief background of the issue would be helpful to those who were not on this Committee in 1986, when most of the Kansas Department of Health and Environment authority to regulated oil and gas was transferred to KCC through HB 3078. The KDHE retained joint jurisdiction with KCC over the cleanup of pollution resulting from oil and gas activities regulated by the Commission. KDHE retained sole authority to protect waters of the state from pollution resulting from activities not regulated by the Commission. In 1988, KCC and KDHE entered into a Memorandum of Agreement to define their respective roles regarding oil field pollution cleanup. The interagency working relationship has worked reasonably well and cooperatively, however the responsibility split has been confusing to the public, other water agencies and even with some staff of the two agencies as to how an abandoned oil and gas site should be defined.

The Commission's position as a proponent or opponent of the transfer of responsibility depends upon whether adequate funding is provided to carry out the additional responsibility. The language in Section 7 which relates to the proration of funding as may be earmarked through appropriation to KDHE for addressing abandoned contamination sites may not be applicable unless KDHE has actually estimated the costs to remediate the sites subject to transfer by HB 2452.

If legislative policy determines that the Commission should have the responsibility for cleanup of pollution where past oil or gas activity occurred, then funding to carry out that responsibility is essential. The Governor's budget recommendation includes \$1.5 million from the State Water Plan Fund for KDHE for contamination remediation. A portion of this funding should follow with the transfer of responsibility.

As many of you know, funding difficulties arose last year in the Conservation Fee Fund. Our projections indicate that even by maintaining vacant positions and the reduced expenditure level brought about by the lack of funds that in FY 1997 expenditures will again exceed revenue. Even during this period, the public and those involved in the State Water Plan maintained the belief that KCC should continue to

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Attachment # 8

Testimony HB2452

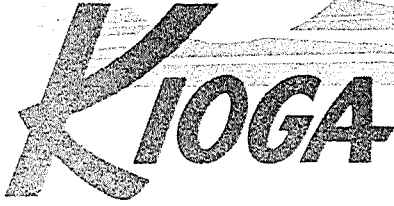
Page 2

plug abandoned wells and continue investigation or remediation at approximately 80 contamination sites which are currently on KCC's inventory list. Our concern is that without funding to match the responsibility for the additional sites from KDHE's inventory and for any abandoned oil and gas sites that might be discovered in the future, KCC's success in addressing the contamination of those sites in a time line acceptable to the legislature or the public will not occur.

The language in Section 4(b) which amends KSA 55-182 to extend ingress and egress to contamination site investigations is necessary and is supported by the KCC. The current authority of Commission staff to enter sites where oil field contamination exists but no wells are located, has been questioned by some of the parties where the Commission has obtained settlement agreements to cleanup pollution under Commission order.

Finally, I would like to direct your attention to a small suggested statutory change which would also clarify agency roles. The storage of natural gas in underground reservoirs and formations is a KCC responsibility, not KDHE. We recommend that if this measure proceeds, the Committee consider deleting the words "natural gas" on page 3, line 39 and on page 5, line 15.

Thank you for the opportunity to appear and voice our concerns on HB 2452.



# KANSAS INDEPENDENT OIL & GAS ASSOCIATION

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800 S.W. JACKSON • SUITE 1400 • TOPEKA, KANSAS 66612-1216  
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**DANIEL N. BIGGS**  
PRESIDENT

**DONALD P. SCHNACKE**  
EXECUTIVE VICE-PRESIDENT

## HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES FEBRUARY 20, 1995

*Testimony of Donald P. Schnacke, Executive Vice President  
Kansas Independent Oil & Gas Association*

**RE: HB 2452 - Transfer of Oil & Gas Properties from KDH&E to KCC**

- VICE-PRESIDENTS
- \* LEE BANKS
  - \* NED E. LOWRY
  - \* PAT RAYMOND
  - \* JACK RINE
  - \* CARL W. SEBITS
  - \* PAUL SIMPSON
  - \* CHARLES W. STEINCAMP

SECRETARY  
\* JERRY A. LANGREHR

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  - ALAN L. DeGOOD
  - SPENCER L. DEPEW
  - STEVE M. DILLARD
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  - STEPHEN W. DUNNE
  - CHARLES EVENSON
  - JOHN O. FARMER, III
  - EUGENE L. FERRIN
  - JOHN K. GARVEY
  - JACK GLAVES
  - PAUL M. GUNZELMAN
  - JAMES H. HESS
  - RICHARD A. HIEBSCH
  - ALAN R. HOFFMAN
  - JOHN D. KNIGHTLEY
  - BURKE KRUEGER
  - KEVIN McCOY
  - BROCK McPHERSON
  - MARTIN E. MILLER
  - TIM MILLER
  - LEWIS M. MULL
  - \* DAVID L. MURFIN
  - DAN MURTA
  - ELWYN H. NAGEL
  - \* DICK PEARCE
  - NICHOLAS K. POWELL
  - ROB RAMSEYER
  - GARY L. REED
  - MIKE REED
  - A. SCOTT RITCHIE, III
  - JAMES W. ROCKHOLD
  - DANIEL F. SCHIPPERS
  - DICK SCHREMMER
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  - BARNEY E. SULLIVAN
  - TIM SWANSON
  - RODNEY SWEETMAN
  - DOUGLAS W. THIMESCH
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  - KLEE R. WATCHOUS
  - THOMAS D. WHITE
  - CHARLES B. WILSON
  - FLOYD C. WILSON
  - BILL WOHLFORD
  - I. WAYNE WOOLSEY

- PAST PRESIDENTS
- J.B. HINKLE
  - JOHN H. KNIGHTLEY
  - \* V. RICHARD HOOVER
  - W.R. MURFIN
  - WARREN E. TOMLINSON
  - F.W. SHELTON, JR.
  - F.W. MALLONEE
  - RALFE D. REBER
  - RICHARD D. SMITH
  - ROGER McCOY
  - A. SCOTT RITCHIE
  - \* FRANK E. NOVY
  - J. PAUL JENNINGS
  - \* JAMES B. DEVLIN
- \* EXECUTIVE COMMITTEE

I am Don Schnacke, Executive Vice President of the Kansas Independent Oil and Gas Association.

At this point in the 1995 legislative session, we are opposing HB 2452 solely on the basis that there is no money attached to the bill for the cost of handling the clean up, restoration and remediation of the properties involved.

It was the 1982 session of the legislature that split off the environmental management of oil and gas properties. The active and producing leases were transferred to the KCC along with KDH&E staff, and the inactive oil and gas leases remained within KDH&E. Refineries and pipelines remained with KDH&E. If my memory is correct, the understanding was that KDH&E would use Kansas water plan money or the budget of the Division of Remediation to address the clean up, restoration and remediation of those properties that remained under KDH&E jurisdiction.

Not being close to KDH&E and their budgeting process, our observation has been that for years, and certainly during the past 12 years, the oil and gas properties within KDH&E have not received a high enough priority to warrant their active attention or the spending of any money.

And yet, to us in the industry, about once a year at least, we get blamed for soil and water contamination in articles like the enclosed exhibit. This story reflects the list of oil properties that has been in the control of KDH&E the 20 years I have represented KIOGA.

Our approach to this issue is reflected in SB 37 and HB 2067 introduced here in this committee. Both bills would transfer the properties from KDH&E to the KCC, but would set up a funding mechanism that would address the restoration and clean up of the KDH&E sites and many other sites the KCC has on their current list and lists yet to be developed.

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**House Committee on Energy & Natural Resources**

**February 20, 1995**

**RE: HB 2452**

**Page 2**

I feel there may be a perception that SB 37 is not moving in the Senate. It is. Two hearings were held. A subcommittee is about to report an amended bill. The industry has met and suggested improvements in the bill to the subcommittee. I expect SB 37 will move out of committee this week and go to the Senate floor for debate and action. If it passes, I would predict your committee will soon have SB 37 for your consideration.

Additionally, I should add that since the KCC Conservation Division had its difficulty last year running out of money, the possibility of borrowing money from the Dept. of Administration, a plan to furlough its employees, and the fact a legislative post audit criticized the agency for under funding its well plugging program, we in the industry have been looking for ways and means to assist in this dilemma.

Our Board of Directors four times has endorsed the concept of funding a restoration program through the assessment of the industry and the establishment of a comprehensive public education effort to improve the image of the Kansas oil and gas industry. That concept is contained in SB 37.

As to improving the financial base of the KCC Conservation Division and to assist in increased funding for its plugging and environmental effort, we have had discussions with key legislators in both the House and the Senate to seek, for the first time, non-industry funds to support the KCC Conservation Fee Fund and the KCC environmental restoration and plugging effort. The last assessment increase on the industry was nearly \$1 million, starting June, 1994, to support a budget of over \$5 million, where nearly 20% is dedicated to plugging and environmental activities. We think the time has arrived where some non-industry financial participation should be brought to this effort. So far, our inquiries have received a very good reaction and support. It remains to be seen if this develops this year. We hope so.

In conclusion, we think your committee should hold up taking action on HB 2452 to determine if what I have expressed to you will materialize. We think simply transferring these KDH&E properties to the KCC as HB 2452 would do, will result in another round of increases in the KCC Conservation Fee Fund which our industry would like to postpone as long as possible.

Thank you for your consideration.

Donald P. Schnacke

DPS:pp

Attch: *Wichita Eagle Article*



# TROUBLE RUNS DEEP

## Waterway cleanup lacks results

100%

How much of the 22,500 miles of rivers and streams in the state is too polluted for the following:

Supporting fish and aquatic life:  
90%

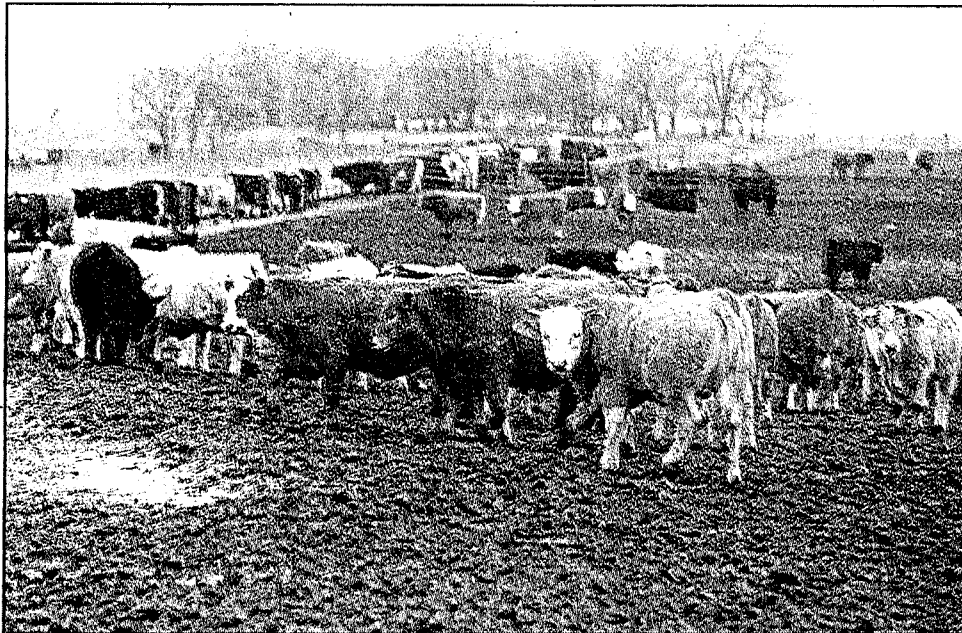
Swimming, water skiing, wading:  
70%

Drinking water supplies:  
60%

Irrigating crops:  
58%

Boating:  
46%

Livestock watering:  
3%



Brian Corn/The Wichita Eagle

Manure washing off feedlots is one of the main sources of pollution of Kansas' rivers. Cooperation from the feedlot industry is considered crucial to cleaning up the water.

By Jean Hays  
The Wichita Eagle

**K**ansas still has some of the most polluted rivers in the nation, a soon-to-be-released state report says, and little progress has been made in cleaning up the waterways in the past three years.

The majority of the state's rivers and streams are so laden with bacteria and manure that people who dare to wade, water ski or swim in 80 percent of them are risking their health.

Twenty percent of the rivers routinely have bacteria levels so high that they are unfit for boating. Nearly 46 percent are unfit for boating part of the time.

In addition, more than half of the 22,500 miles of rivers and streams in the state are too polluted to serve as

a source of water for thirsty towns, or for farmers wanting to irrigate their crops.

"We still have work ahead of us," said Charles Jones, director of environment for the Kansas Department of Health and Environment, noting that no significant improvements have been made in the past several years.

The water won't get any better until farmers and livestock operators change their practices, he said. City folks won't get off easy, either.

Wichita residents will soon be bombarded with pleas from the city of Wichita to cut their use of lawn chemicals and reminders not to pour used motor oil into the gutters, which drain into the Arkansas River, as part of a federal program to reduce urban pollution.

The state's rivers are no doubt cleaner now than they were in the 1960s, when the rivers served as sewers for both industry and cities. Pipes dumping toxic wastes into rivers from manufacturing plants were easy targets.

That pollution, for the most part, has been stopped.

Now attention is focusing on farmers, owners of small feedlots and city dwellers who have been largely untouched by water-quality rules.

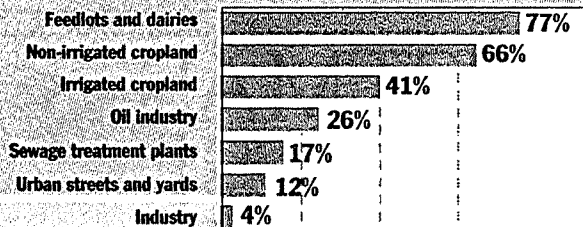
The overwhelming source of pollution in Kansas rivers today is bacteria and the manure that washes off of feedlots and dairy farms, according to the Department of Health and Environment.

Bacteria levels won't decrease until the state has an adequate program to regulate feedlots and more cooperation from the livestock industry, Jones said. The state may need to spend more money to help owners of small feedlots reduce pollution, he said.

The state already spends about \$700,000 a year planting filter strips and building lagoons at small feedlots to reduce pollution.

Brad Harrelson of the Kansas Livestock Association declined to comment on the report until he had

### Percentage of the state's rivers affected by identifiable sources of pollution



See **WATER**, Page 12A

Source: Kansas Department of Health and Environment

# WATER

From Page 1A

reviewed it.

What happens next is unknown.

Gov.-elect Bill Graves is committed to improving water quality, said Mike Matson, a spokesman for Graves. But Graves has made no statements on how he intends to accomplish that.

Feedlots alone cannot be blamed for the sorry state of Kansas' rivers. Sewage treatment plants, leaking septic tanks and fertilizer from lawns and farm fields also contribute to the high bacteria levels.

Brine from oil wells and natural salt deposits make some water too salty to be used for irrigation.

Pesticides and fertilizers threaten to destroy rivers and lakes that serve as drinking water supplies.

Those conclusions are part of the official report card that the Department of Health and Environment must submit every two years to the federal government to show progress — or lack of it — in cleaning up the nation's rivers. The report is used to shape policy at the national and state levels.

Kansas' report — now seven months overdue — won't be released for several more weeks. But part of the information is being given to members of the basin advisory committees and the Kansas Water Authority, the groups that advise the Kansas Legislature on what must be done to improve the state's water quality.

The results were based on several thousand water tests taken between 1990 and 1993 in 200 locations.

The study does not include small creeks and drainage ditches that run through Wichita and other towns. Those creeks, which are also likely to be polluted, may pose the greatest health risk because small streams are popular wading and splashing places for children.

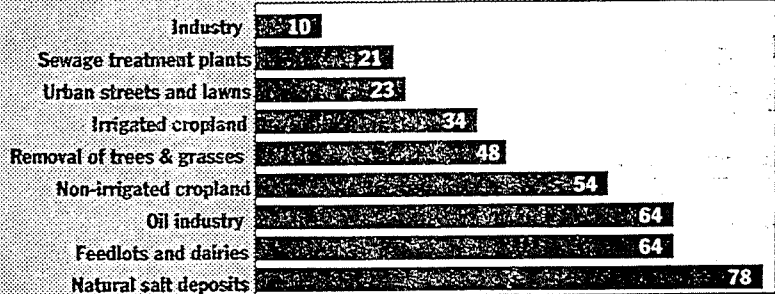
There is some good news.

While the state has made little headway overall during the past few years, the quality of rivers has improved dramatically from the 1960s and early 1970s, when rivers were literally dumping grounds for municipal sewage and industry's toxic waste.

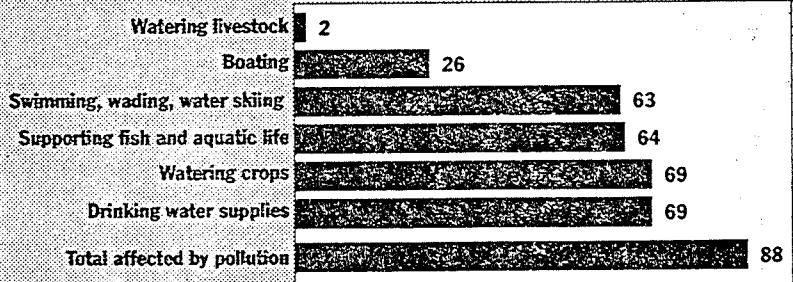
Today, only traces of toxic chemi-

## Kansas rivers affected by pollution

Percentage of the rivers in a 14-county area in south central Kansas, affected by individual sources of pollution:



Of the 3,278 miles tested in the lower Arkansas basin, the percentage of rivers and streams too polluted for:



\* exceeds 100 percent because most rivers are affected by more than one source of pollution.  
Source: Kansas Department of Health and Environment

The Wichita Eagle

## The news isn't all bad. The quality of rivers has improved dramatically from the 1960s and early 1970s.

cal can be found in the Arkansas River, said Jack Brown, the environmental health director for the Wichita-Sedgwick County Department of Community Health.

"We are not seeing a lot of industrial type of dumping," he said.

The Arkansas River is cleaner now than it has been for decades, thanks to millions of dollars the cities of Wichita and Hutchinson have spent rebuilding their sewage treatment plants to reduce the amount of bacteria.

Weekly samples of the Arkansas

River as it flows through downtown Wichita show it is safe for boating at least 80 percent of the time, according to Brown. The city began testing the water after high bacteria levels from a malfunctioning sewage treatment plant in Park City made the river unsafe for boating during the Wichita River Festival.

The main sources of pollution in the Arkansas River near Wichita are upstream feedlots and small, outdated sewage treatment plants.

Farm fields and city lawns also contribute.

Stopping pollution from so many small sources is going to be harder and more costly than stopping pollution that flowed out of industrial drainage pipes and large sewage treatment plants, said David Warren, who heads Wichita's water department and serves on the Kansas Water Authority.

"That is going to be a big bullet to bite," he said.

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
February 20, 1995  
RE: HB 2452 - TRANSFERRING KDHE OIL & GAS PROPERTIES TO KCC

Testimony of David Bleakley - President  
Eastern Kansas Oil and Gas Association  
&  
Director of Acquisitions & Land Management  
Colt Energy, Inc.

The Eastern Kansas Oil and Gas Association opposes HB 2452.

Our association represents and supports eastern Kansas oil and gas producers, service companies, royalty owners and associated businesses along with the overall welfare of the Kansas oil and gas industry in this state.

In testimony against HB 2452, EKOGA feels that the oil and gas properties now under the control of the Kansas Department of Health and Environment should remain there unless and until appropriate and continuing funds are transferred with such properties to the Kansas Corporation Commission.

We feel that transferring of these properties without funds to the KCC will:

- 1) Cause an increase in the number of cleanup sites under the KCC jurisdiction which will require them to look at fee increases to the oil & gas industry to cover the additional cleanup work
- 2) Relieve the KDHE of the financial responsibility to cleanup these oil and gas properties. If left with the KDHE, they will have to address and pay for this work with their department funds at some time
- 3) Without the appropriate funds, these properties will remain with the KDHE in their current state indefinitely

We feel that the KCC is the best qualified and appropriate Department in the State to handle and administer jurisdiction over these properties but it is unfair to transfer the financial burden of these properties without the funds to the KCC.

The industry has introduced SB 37 which deals with the transfer of these properties from the KDHE to KCC along with industry funding to help with the cleanup. We still feel, even with industry funding and participation in the cleanup of these properties as addressed in this bill, that the KDHE should still be required to transfer their funding along with the properties to make this an equitable transfer and benefit the people of this state.

Therefore, Mr. Chairman and members of this Committee, we urge you to vote against HB 2452 without the appropriate funding transfer along with the properties from the KDHE.

Thank you for your time.

David P. Bleakley

2/20/95  
Energy & Natural Resources  
Attachment #10