

Approved: 3-5-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 4:30 p.m. on February 22a, 1996 in Room 529-S of the Capitol.

All members were present except:

Senator Martin, Excused
Senator Wisdom, Excused

Committee staff present:

Dennis Hodgins, Legislative Research Department
Ardan Ensley, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Edward R. Moses, Kansas Aggregate Producers Association
David L. Pope, Chief Engineer-Director, Division of Water Resources
William Bider, Director, Division of Waste Management
Senator Stan Clark

Others attending: See attached list

SB 621--concerning sand and gravel pits; relating to evaporation of water from such pits

Edward R. Moses, Kansas Aggregate Producers Association, presented testimony in opposition to **SB 621** stating that this bill would upset policy established by the 1995 legislature regarding the removal of sand and gravel and its relationship to the Kansas Water Appropriations Act (KSA 82A-701) (Attachment 1).

At issue is evaporation caused by the sand and gravel industry is not considered a beneficial use of water. Evaporation cannot be controlled and does not meet the definition within the Kansas water law.

Mr. Moses stated that following the writing of his testimony intense negotiations had been instigated and were still being developed. Under conditions being discussed with the Chief Engineer was the establishment of a workable grandfather clause which would bring operators underneath the law. The Division of Water Resources would grant appropriation rights allowing a 20 year period for operations. They will be regulated under the law concerning consumption. Several factors remain to be reconciled but progress has been made.

David Pope told the committee that negotiations have progressed a great deal, that it is a difficult situation for everyone concerned and stated he also characterized the parties as being very close to a compromise.

Members commented that this issue was of concern to the Governor's water quality program, also that the issue needs to be settled as soon as possible due to the amount of work coming to the Senate from the House. Concern was expressed that this bill could be lost in the event it cannot be settled prior to deadlines.

SB 531--relating to hazardous waste; concerning hazardous waste management; concerning fees paid by off-site hazardous waste treatment and disposal facilities

Bill Bider, Director, Division of Waste Management, told the committee that due to the multitude of changes in the original bill he had returned to the original bill and was providing a bill balloon encompassing changes to which the parties had agreed (Attachment 2). Mr. Bider explained the new fee language to the committee, much of which would be established through rules and regulations. He also said discussion had covered the necessity of a round table technical meeting with all the interested parties concerning the needed rules and regulations noting these changes are a compromise to reach a decision suitable to all parties.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 4:00 p.m. on February 22a, 1996.

A member questioned the use of the word "single". Mr. Bider stated this word was already in the law so it was retained. He expressed the opinion that "single" could be deleted on page 7.

A member questioned how the fees would change with Mr. Bider stating there would be no change until such time as new rules and regulations were adopted. Prior to establishing those the interested parties need to meet for a technical meeting to work out fees which will provide needed funds for the department. The main object is for fees to be similar when burning similar materials.

Mr. Moses stated they have agreed to a BTU based fee.

Senator Emert moved to strike "single" preceding "facilities" from the balloon and the bill be passed favorable for passage as amended. Senator Lee seconded the motion and the motion carried.

SB 686--relating to the accidental release or discharge of materials detrimental to the quality of the waters and soil of the state; concerning the liability of landowners for correction or remedial action

Senator Stan Clark presented a balloon for **SB-686 (Attachment 3)**. Senator Clark told members the bill balloon was basically as discussed in the 8:00 a.m. meeting of the committee with one change made, changing "of" to "to".

Senator Lee, with a second from Senator Emert. moved the amendments. The motion carried.

Senator Lee moved to pass the bill favorably as amended. Senator Tillotson seconded the motion and the motion carried.

The meeting adjourned at 4:55 p.m.

The next meeting is scheduled for February 23, 1996.

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

by the
Kansas Aggregate Producers Association

Before the

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Regarding SB #621 - Evaporation Issues
February 21, 1996

Mr. Chairman and members of the committee. My name is Woody Moses and I appear before this committee today on behalf of the Kansas Aggregate Producers Association and more specifically the sand and gravel producers of the State of Kansas regarding Senate Bill No. 621. SB 621 seeks to upset the policy established by the 1995 legislature regarding the removal of sand and gravel and its relationship to the Kansas Water Appropriations Act (KSA 82A-701). Last year's legislature, endorsed by the governor, made an appropriate decision to alter the regulatory scheme by which sand and gravel operations are conducted and their need to secure a water right. SB 621 would repeal this policy and place the sand and gravel operators once again under the strict requirements of Kansas Water Law. To reapply the strict provisions of the Kansas Water Appropriation Act to the sand and gravel industry is inappropriate and adverse to state policy.

We renew our argument that evaporation caused by the sand and gravel industry is not a beneficial use of water as envisioned in KSA 82a-701 et. seq. First a sand and gravel operator does not receive or derive a benefit from the water appurtenant to his/her operation. Water is actually a nuisance. Consequently, the sand and gravel operator has little or no interest in retaining water in the lakes developed as a result of operations. If it were physically possible our members would prefer this water to be used somewhere else. However, while we receive no beneficial use, it appears sand & gravel pits provide a benefit to users near sand & gravel lakes through storage and recharge. Although, we agree

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that creation of storage does not lead to any "new" water it does create a system whereby existing water can be retained either in a safe yield area or throughout the state longer than would have been previously possible. Many states, such as California, Arizona, and Colorado promote the use of sand & gravel lakes for storage. Further, we are unaware of any instance where a sand & gravel pit has ever created an impairment of water availability to other water users in the area.

KSA 82a-701 requires that a diversion of water, through the construction of a diversion works, be at a specific quantity, at a specific rate of diversion and occur "from a definite water supply". In a sand & gravel operation none of these conditions exist. Evaporation is not bringing water under control (through a meter or valve) and putting it to a specific use as required by current law . Evaporation actually occurs at a highly variable rate over both space and time. Consequently, evaporation should be covered under some other form regulation as opposed to the requirement to secure a water right.

Many of the arguments you will hear before you today center around the question of providing for equity among various water users. But, what about equity among users of sand & gravel products across this state. For example, 85 to 88% of all the water diverted annually in Kansas is for the irrigation of crops and stock watering. While we do not take issue with these very vital economic activities we also believe that sand and gravel is necessary to support these activities(i.e.: well packing and farm to market roads) plus supply 100% of the sand and gravel used by this state for a diversion of less than 2/10 of 1%. We feel that this is a highly beneficial trade off especially since this minute use of water allows districts without natural sand supply such as those represented by Senator Martin and Senator Walker to receive a reasonable supply of sand at a reasonable price.

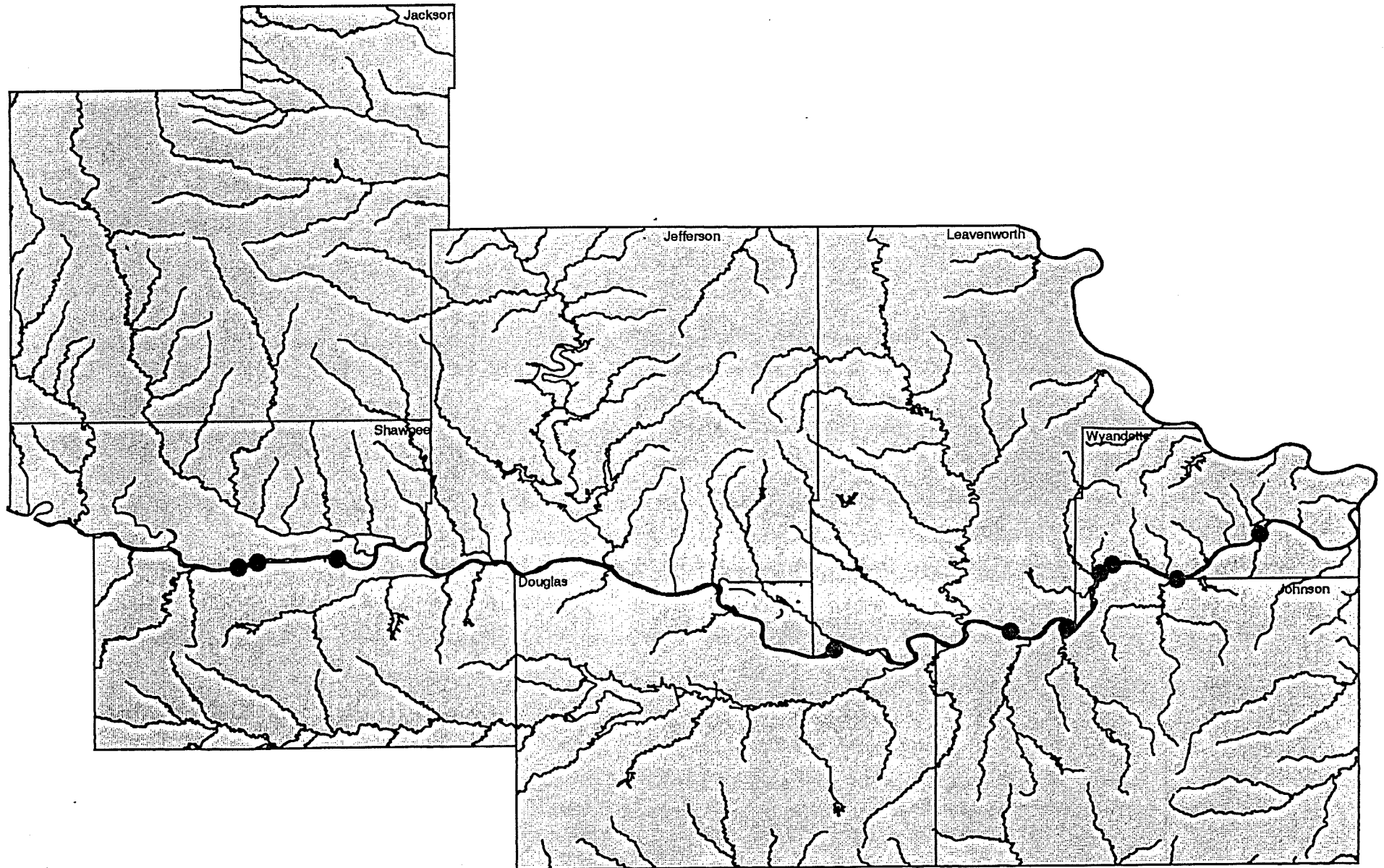
Statewide there is a much larger policy debate regarding the availability of sand and gravel. SB No. 617, currently in the Senate Federal and State Affairs Committee, would place a moratorium on new sand & gravel dredging on the Kansas River. If this bill were successful it would result in the denial of two million tons to the market in Northeast Kansas. If Senate Bill No. 621 is successful this could lead to an additional 2-3 million tons of reduced supply on the Arkansas River. As you can readily observe from the maps attached the major sources of sand in Kansas, over 95%, are either from the Arkansas River or from the Kansas River. Putting tight restrictions on the sand industry will either lead to severe shortages and/or higher prices.

As you all know, members of this legislature are constantly asked to reconsider issues previously debated with little or no intervening time. SB 621 is a measure in this category. We think that at this point in time the legislature should allow more time to consider the effects of current policy just established last year. Especially as no environmental damage to the aquifer has been observed. Where are the impairments? Where has an irrigator ever been deprived of usage because of a sand & gravel operation? Sand has been mined since the times of the Egyptian

pyramids; this is not a new technology with future impacts yet to be discovered. Based upon this simple facts it is easy to determine, despite what others may tell you, sand and gravel lakes do not have a detrimental effect upon the operation of an aquifer. As a matter of fact it has still not been conclusively proven by anyone that sand and gravel pits create a net diversion of water. This is still a matter of debate, conjecture and speculation. Until these facts have been conclusively presented in a logical and clear manner we urge this committee to reject SB 621 as drafted.

In closing I would like to advise the committee that we have never advocated that sand & gravel operations and their interaction with the aquifer not be regulated. The need to develop a safe and rational sand and gravel policy for this state is paramount. Especially when one must consider the ramifications of the proposed dredging moratorium on the Kansas River. The State of Kansas needs a reasonable supply of sand delivered to the market at a reasonable price.

Location of Kansas River Dredges - 1995

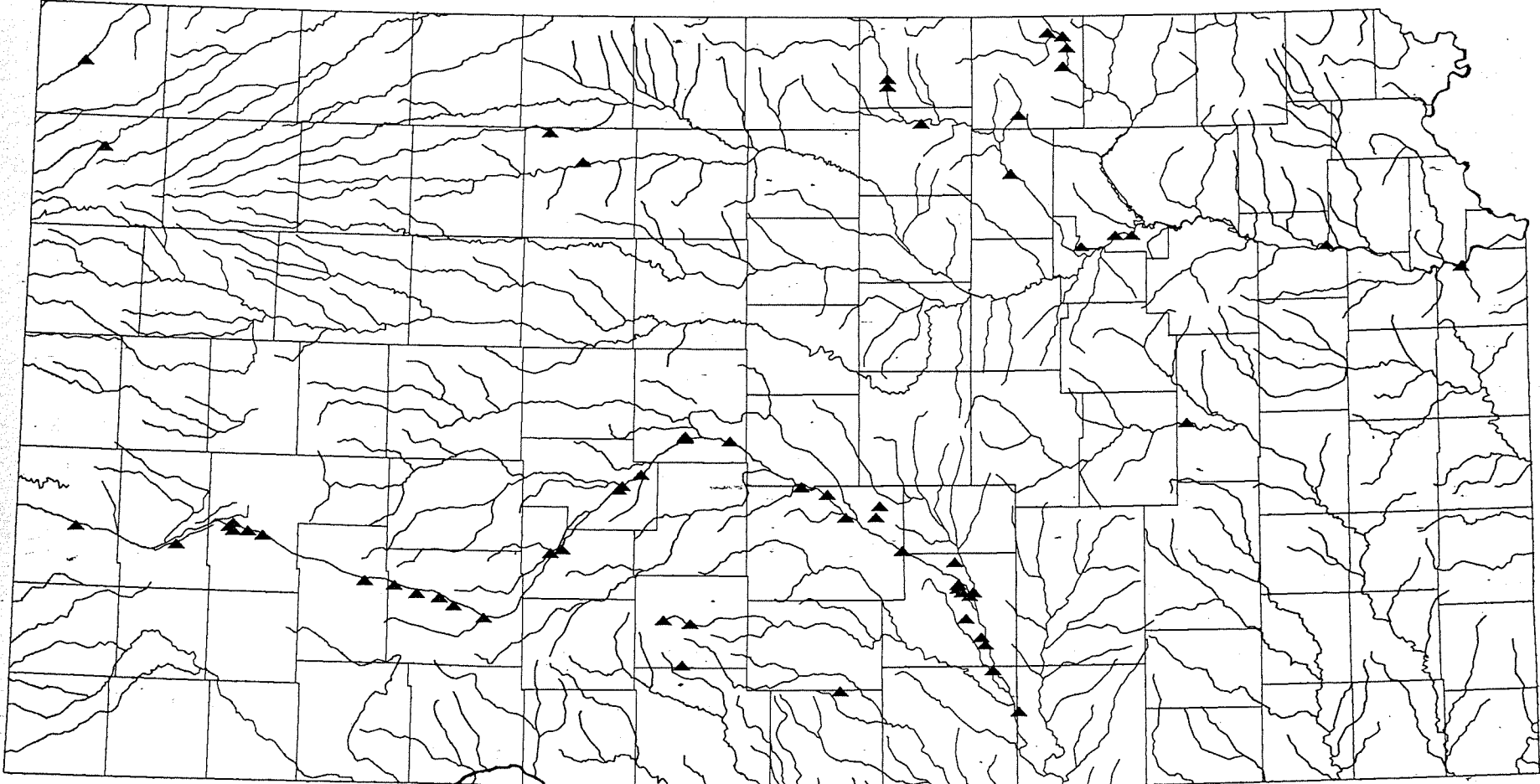


- County Boundaries
- Hydrology
- River Dredge Locations

Map Produced by the State of Kansas Data Access and Support Center
Kansas Geological Survey



Pit Dredge Locations in Kansas - 1995



- County Boundaries
- Hydrology
- Pit Dredge Locations

Map Produced by the State of Kansas Data Access and Support Center
Kansas Geological Survey

Map not drawn to scale

WHAT IS A BENEFICIAL USE OF WATER?

It would appear from 1976 interim committee notes and sections of 82a-701 et. seq. the following questions should be asked in the determination of a beneficial use.

	Types of Diversions			Sand & Gravel Pit
	Irrigation	Reservoir	Canals	
Is water brought under control?	By well	By Floodgate	By Headgates	None
Are diversions works constructed?	Pump	Dam	Headgates, Ditches & Valves	None
Can the Chief Engineer order the diversion stopped?	Yes	Yes	Yes	No
Is the diversion specific?	Yes	Yes	Yes	No
Is the diversion measurable?	Yes	Yes	Yes	No

ECONOMIC IMPACT OF THE KANSAS AGGREGATE INDUSTRY

by:
David Cantrell

In trying to determine the impact of our industry on the economy of Kansas I uncovered an interesting fact. Although Kansas is known as the WHEAT STATE and does indeed lead the nation in wheat production it also produces large amounts of corn, sorghum, and soybeans, aggregates do play a large part in the overall scheme of things.

In 1993 Kansas produced 388,500,000 bushels of wheat, 216,000,000 bushels of corn, 176,400,000 bushels of sorghum and 51,800,000 bushels of soybeans, (these figures came from the Kansas State Bureau of Statistics). These are all impressive number and do indeed give you an idea of farming impact on the states economy. We generally refer to our aggregate usage in tons so I broke the crop totals down into tons (realizing that wheat, corn, etc. have a lower specific gravity) to see how we compare. This is when it got interesting, Wheat translated to 11,655,000 tons, Corn 6,480,000 tons, Sorghum 5,292,000 tons and Soybeans 1,544,000 tons. Again these are very impressive numbers. Using U.S. Bureau of Mine Statistics we find that crushed Stone produced 18,600,000 tons which is 38% more than wheat and considerably more than the other grains. When Sand and Gravel production is thrown into the equation at 13,100,000 tons we get a total of 31,700,000 tons of aggregate produced which is more than the crops mentioned combined (24,981,000). While we will always be regarded as a farm state with a farm based economy, mining plays a huge part in the states well-being.

One other note of interest is that in the United States mining and construction are at the top of the average hourly earnings scale for manufacturing jobs at \$14.51 and \$14.11 per hour respectively. While some people may not want us next door we are vital to the economy of any area that we are operating in.

Sources:

Kansas State Board of Agriculture
U.S. Bureau of Mines
Federal Reserve, 10th District

SENATE BILL No. 686

By Committee on Energy and Natural Resources

2-14

9 AN ACT relating to the accidental release or discharge of materials det-
10 rimental to the quality of the waters and soil of the state; concerning
11 the liability of landowners for correction or remedial action therefor.

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

14 Section 1. It shall be the duty of the owner of any land upon which
15 there has occurred an accidental release or discharge of materials detri-
16 mental to the quality of the waters or soil of the state to comply with all
17 existing rules and regulations and requirements of the secretary of health
18 and environment designed to ensure the prompt correction of any such
19 release or discharge for the protection of the public health and environ-
20 ment.

21 Sec. 2. Any owner or subsequent purchaser of land, upon which
22 there has occurred an accidental release or discharge of materials detri-
23 mental to the quality of the waters or soil of the state, which occurred
24 ~~through no fault or by reason of any neglect on the part~~ of the owner of
25 the property ~~at the times of such release or discharge~~, shall not be liable
26 for any costs of subsequent remedial action required as a result of changes
27 in standards adopted after the time of such accident, if such owner or
28 purchaser can demonstrate that the ~~parties responsible for the correction~~
29 ~~of the release utilized the best available demonstrated technology in the~~
30 ~~correction or remedial process and~~ the secretary of health and environ-
31 ment has certified that the action taken has met all requirements and
32 ~~standards prescribed by~~ rules and regulations of the secretary, ~~which were~~
33 in effect at the time of the accidental release or discharge.

34 Sec. 3. The secretary of health and environment is hereby authorized
35 to adopt rules and regulations necessary for the administration of the
36 provisions of this act.

37 Sec. 4. This act shall take effect and be in force from and after its
38 publication in the statute book.

or owner-permitted occupant

or person responsible for such release, which
release or discharge occurred through no fault
on the part of such owner, or owner-permitted
occupant

without any contribution to the contamination
and without any causal connection to the
release or discharge by any action

or the owner-permitted occupant

approved the corrective action and

or conditions of administrative orders or
agreements

The provisions of this section shall apply to
both releases and discharges and remedial
actions taken prior to the effective date of
this act and releases and discharges and
remedial actions taken hereafter.

1 in the environmental permit fund during the preceding month as
 2 certified to the board by the director of accounts and reports; and (B) the
 3 average interest rate on repurchase agreements of less than 30 days' du-
 4 ration entered into by the pooled money investment board for that period
 5 of time. On or before the fifth day of the month following the month in
 6 which moneys are first credited to the environmental permit fund, and
 7 monthly thereafter on or before the fifth day of the month, the director
 8 of accounts and reports shall certify to the pooled money investment
 9 board the average daily balance of moneys in the environmental permit
 10 fund during the preceding month.

11 (4) All expenditures from the environmental permit fund shall be
 12 made in accordance with appropriation acts upon warrants of the director
 13 of accounts and reports issued pursuant to vouchers approved by the
 14 secretary for the purposes set forth in this subsection.

15 (x) (1) Adopt rules and regulations establishing a schedule of fees to
 16 be paid to the secretary by off-site hazardous waste treatment and disposal
 17 facilities. In establishing fees, the secretary shall give consideration to the
 18 degree of hazard, quantity of waste, costs of treatment or disposal, and
 19 estimated future receipts. Fees shall be in an amount not to exceed \$.01
 20 per pound of hazardous waste treated, ~~except that in no event shall the~~
 21 ~~fees established under this subsection for treatment of hazardous waste~~
 22 ~~exceed a total amount of \$200,000 per year for any single facility. Fees~~
 23 ~~shall be in an amount not to exceed \$.01 per pound of hazardous waste~~
 24 ~~burned by any facility which recycles and utilizes hazardous waste pri-~~
 25 ~~marily to recover useful energy or materials to be used in the manufacture~~
 26 ~~of a product, including but not limited to the burning of hazardous waste~~
 27 ~~in kilns to recover energy or materials for use in the commercial produc-~~
 28 ~~tion of cement, except that in no event shall the fees established under~~
 29 ~~this subsection for burning of hazardous waste by any such facility exceed~~
 30 ~~a total amount of \$50,000 per year for any single facility. The secretary~~
 31 ~~shall not set a different schedule of fees pursuant to this subsection for~~
 32 ~~facilities that burn hazardous waste unless and until the federal Environ-~~
 33 ~~mental Protection Agency adopts a clean fuels specification, and in that~~
 34 ~~event, the secretary may assess a lower fee for such wastes as the secretary~~
 35 ~~determines are in compliance with such clean fuels specification.~~ In all
 36 other cases, fees shall be in an amount not to exceed \$.05 per pound of
 37 hazardous waste disposed of except that in no event shall any fee be
 38 established under this exception prior to July 1, 1996, and which exceeds
 39 \$50,000 in any 12-month period for the treatment or disposal of hazard-
 40 ous waste at any facility if such facility: (A) Operates under a permit or
 41 permits granted by the secretary pursuant to K.S.A. 65-3430 *et seq.*, and
 42 amendments thereto; (B) treats or disposes of hazardous waste generated
 43 by such facility or a single generator located on property contiguous to

energy content,

or burned for energy or material recovery. In no event shall the fees established under this subsection exceed the following annual calendar year caps: \$60,000 for a single facility which burns hazardous waste for energy or material recovery only; \$200,000 for a single facility which burns hazardous waste for treatment or disposal only. Single facilities which burn hazardous waste for: (1) energy or material recovery; and (2) treatment or disposal shall be subject to a total facility cap of \$200,000 which includes a separate cap of \$60,000 for hazardous wastes which are burned for energy or material recovery. The secretary shall establish a differential fee schedule for hazardous wastes based upon waste characteristics which is consistently applied to all facilities which burn hazardous wastes.

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February 22a, 1996
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energy content,

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SENATE BILL No. 686

By Committee on Energy and Natural Resources

2-14

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17 and environment designed to ensure the prompt correction of any such
18 release or discharge for the protection of the public health and environ-
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21 Sec. 2. Any owner or subsequent purchaser of land, upon which
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or owner-permitted occupant

or person responsible for such release, which release or discharge occurred through no fault on the part of such owner, or owner-permitted occupant

without any contribution to the contamination and without any causal connection to the release or discharge by any action

or the owner-permitted occupant

approved the corrective action and

or conditions of administrative orders or agreements

The provisions of this section shall apply to both releases and discharges and remedial actions taken prior to the effective date of this act and releases and discharges and remedial actions taken hereafter.

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Attachment 3