Approved: March 18, 1997
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Joann Flower at 9:00 a.m. on March 11, 1997, in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:
Karl Mueldener, Director, Bureau of Water, Kansas Department of Health & Environment
Lewjene Schneider, Kansas Livestock Association
Richard F. Hayse, Mike Hawkins Company
Mike Jensen, Executive Vice President, Kansas Pork Producers Council
William Henry, Executive Vice President, Kansas Society of Professional Engineers
Charles Stryker, Chairman, Kansas State Board of Technical Professions
George Barbee, Executive Director, Kansas Consulting Engineers

Others attending: See attached list

Hearing on SB 120 - Regulation of feedlot sewage discharges; swine weighing 55 pounds or less.

Chairperson Flower opened the hearing on **SB 120**. Raney Gilliland, Legislative Research Department, provided background information on the bill. He explained that swine weighing less than 55 pounds was not addressed in 1994 when "animal units" were defined in the water pollution control statutes. He said the second change in regard to swine weighing less than 55 pounds clarifies that federal permit requirements don't recognize swine weighing less than 55 pounds. He explained that Subsection (k) is permissive language, not mandatory, concerning plans and specifications of confined feeding facilities prepared by a professional engineer or qualified consultant and soil permeability tests performed by a professional engineer or qualified soil scientist.

Karl Mueldener, Director, Bureau of Water, Kansas Department of Health & Environment, appeared in support of **SB 120** to close the loophole whereby large swine facilities with nursery units of small pigs are classified as containing zero animal units for regulatory purposes. He indicated that, other than extremely large facilities, there would be little impact on the majority of the permitted swine operations in the state. He said new Subsection (k) introduces a new issue regarding design of an animal feeding facility that would affect licensure under the State Board of Technical Professions. The new subsection is permissive and places the burden on KDHE to approve the qualified consultants for conducting both the design and testing work. Mr. Mueldener told the committee that KDHE recommends that waste facilities be designed by a professional engineer, duly licensed under the State Board of Technical Professions. (Attachment 1)

Lewjene Schneider testified on behalf of Rich McKee and the Kansas Livestock Association in support of **SB 120** to add the definition of swine weighing less than 55 pounds as equivalent to 0.1 animal unit. KLA supports the language in Subsection (k) which allows the livestock operator the freedom to hire the best person available to help him submit a waste control plan to KDHE. She said that KLA also supports the proposed amendment by the Kansas Pork Producers Council that would essentially level the playing field with regard to separation distance requirements and perhaps help prevent future problems. (Attachment 2)

Richard F. Hayse testified in support of **SB 120** on behalf of the Mike Hawkins Company, a private consulting firm based in Syracuse, Kansas, which specializes in the design of livestock containment facilities. He said that new Subsection (k) merely codifies existing KDHE practice and removes the ambiguity over whether only a professional engineer may do this work by allowing the Department to accept plans and specifications prepared by a consultant which the Department finds to be qualified to perform the services. (Attachment 3)

Mike Jensen, Executive Vice President, Kansas Pork Producers Council, appeared as a qualified opponent to **SB 120**. He pointed out that irregardless of the number of animal units, these facilities still must comply with all pollution prevention requirement of both KDHE and EPA. He said the only impact will be with regard to separation distances and permit fees. He said the Council has no problem in supporting legislation changing this designation, but asked the committee to consider a proposed amendment to the bill. He explained that this amendment would establish a "reverse setback" for any permitted livestock operation. He said Council members believe it is only fair to prevent "in reverse" encroachments into their own setback areas. (Attachment 4)

William Henry, Executive Vice President, Kansas Society of Professional Engineers, testified in opposition to the language in Subsection (k) of **SB 120**. He said that according to the state's licensure act for professional engineers, there are established definitions of what must be in plans and specifications to protect the public's health, safety, and welfare. The Kansas Society of Professional Engineers oppose the addition of the language "or qualified consultants" on page 4, line 42, and "or qualified soil scientists" on page 5, line 2. Instead of the word "may" on page 4, line 41, and on page 5, line 1, the Society would prefer "shall." (Attachment 5)

Charles Stryker, Chairman, Kansas State Board of Technical Professions, stated that the Board is neutral on **SB 120**, but opposes Subsection (k) as it is written. He said the Board's primary function is the statutory authority to protect the health, safety, and welfare of the general public by regulating the professions of engineering, architecture, land surveying, and landscape architecture. He said the use of professional engineers for the implementation, certification, and verification for improvements for feeding facilities is the normal requirement in other states. Mr. Stryker said the Board would be willing to consider taking on the responsibility of developing a separate certification for the "qualified consultant" within the authority of the Board, if this would help streamline the demands that the state desires -- to keep the approval process of the animal facilities in the hands of KDHE and keep the approval of the professionals in the hands of a licensing board. (Attachment 6)

George Barbee, Executive Director, Kansas Consulting Engineers, testified in opposition to **SB 120** in its current form. He said that Section 1 of this bill clearly addresses the intent of the statute to prevent surface and subsurface water pollution and soil pollution detrimental to the public health. The education, experience, and judgment to accomplish that statutory mandate is engineering. He said that to do these things without being a licensed professional engineer would be a violation of the licensure statutes. He said the Kansas Consulting Engineers support the changes offered by the Kansas Society of Professional Engineers to avoid unnecessary conflicting statutes. (Attachment 7)

The hearing on **SB 120** will be continued at a later date.

The meeting adjourned at 10:00 a.m. The next meeting is scheduled for March 12, 1997.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: 3/11/97

NAME	REPRESENTING
Donald Carlson	Ks. Dept. of Health & Environment
Karl Mueldener	
Rich Hayse	Mike Hawkins Co.
Lee Jene Schneider	KS Livestock Assoc.
Charles Benjamin	KNRC / KS Sierra Club
Kevin Eads	Intern
Marty Vanier	KS Ag Alliance
George Barbee	Ks Consulting Engrs.
CHARLES A. STRYKER	KS. STATE BOARD of TECHNICAL PROFESSIONS
BILL HENRY	Ks. Society of Prof. Engineers
Jim Allen	Seaboard
Mike Beaver	Ks Pork Council
Rick Porter	Board of Tech Prof

State of Kansas

Bill Graves Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Agriculture Committee

by

The Kansas Department of Health and Environment

Senate Bill 120

Current statutes have a loophole whereby nursery facilities for swine rearing can be of significant size and have an environmental impact but escape state statutes and regulations. KDHE does not believe this was the intent of the Legislature when consideration of SB 800 took place in 1994. The loophole involves K.S.A. 1995 Supp. 65-171d which revolves around "small" pigs (pigs weighing less than 55 pounds) and the statute's definition of "animal unit," the definition of "animal unit capacity," registration requirements, and separation distance provisions between the livestock facilities and habitable structures (homes or residences).

The recent influx of large swine operations in Kansas has created a situation where nursery units containing 9600 head of "small pigs" were developed and the facilities have a design animal unit capacity under statute of zero animal units. This exempts them from both mandatory registration based on size and separation distance requirements.

The proposed legislation would amend K.S.A. 1995 Supp. 65-171d(c)(3) which defines the term "animal unit" to close the loophole whereby large swine facilities with "small pigs" are classified as containing zero animal units for regulatory purposes. These large facilities generate a significant amount of wastewater and need to be regulated for water pollution control regardless of the fact the water is generated from swine weighing less than 55 pounds. The proposed bill would require the registration of these facilities and would subject them to the established separation distance requirements. Currently, facilities with design capacities of less than 300 animal units are exempt from any registration or separation distance requirements. The need for a permit or pollution controls remains unchanged per the provisions of SB 800. The design of the pollution controls, both pre and post SB 800, have accounted for the waste production of the "small pigs." The proposed 0.1 conversion factor for swine weighing less than 55 pounds is based on comparative waste production by small pigs.

About six (6) swine facilities operated by Seaboard would statutorily fall under the revised language. To Seaboard's credit, the facilities were intentionally built as if the loophole did not exist, that is the facilities meet or exceed KDHE's requirements

House Agriculture Committee
March 11, 1997
Attachment 1

Office of the Secretary, 900 SW Jackson, Suite 620
Topeka, KS 66612-1290

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related to separation distances. It is possible that future facilities by other corporations or operations might fall under this same loophole and the owner might feel compelled to meet KDHE's standards.

The proposed bill without new section (K) would not impact other state agencies. The proposed bill without new section (K) would not create any fiscal impacts on KDHE. We estimate there are six Seaboard facilities that would be fiscally impacted by an increase in their annual permit fees. Fees for four facilities would increase from $25/year to $100/year. One annual permit fee would increase from $100/year to $200/year with the remaining facility's fee increasing from $200/year to $400/year. Total increase in annual permit fees for the six Seaboard operations would be $600/year which would be directed to the State General Fund. KDHE's database does not contain data on the number of swine weighing less than 55 pounds at each facility. We believe there will be little or no fiscal impact on the majority of the permitted swine operations.

New section (K) introduces a whole new issue regarding design of an animal feeding facilities. This provision would affect licensure under the Board of Technical Professions. KDHE is apparently expected to set up a new program of "approving" qualified consultants. The most expedient way for KDHE to do this is by requiring through rules and regulations, designs and testing be performed by a professional engineer.

New section (K) is permissive in stating plans "may" be prepared by either a professional engineer or a qualified consultant approved by KDHE. The amendment also authorizes soil permeability tests or seepage tests for wastewater retention structure to be conducted by either a professional engineer or qualified consultant approved by KDHE. As written, the bill will address any CAFO, regardless of size. The bill does not mandate either a professional engineer or qualified consultant may be utilized in the design or testing work.

This amendment places the burden on KDHE to approve the "qualified consultant" for conducting both the design and testing work. Outside consultants have raised the issue of individuals offering services for and practicing engineering as it relates to the design of pollution controls for CAFOs. This issue has been brought to the attention of the Kansas Board of Technical Professions which licenses and regulates professional engineering in Kansas. KDHE prefers all waste treatment systems be designed under the supervision of a professional engineer. This is especially important for the larger facilities common today. This bill appears to attempt to specifically exclude livestock waste controls from the same provisions imposed on large cities and industrial facilities, to use professional engineers in design. KDHE recommends that waste facilities be designed by a professional engineer, duly licensed under the State Board of Technical Professions.

Testimony presented by: Karl Mueldener
Director, Bureau of Water
Division of Environment
March 11, 1997

KANSAS LIVESTOCK ASSOCIATION

Since 1894

Testimony

presented by

Rich McKee
Executive Secretary, Feedlot Division

regarding

Senate Bill 120

before the

House Agriculture Committee

March 11, 1997

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 7,300 members on legislative and regulatory issues. KLA members are involved in all segments of the livestock industry including cow-calf, feedlot, seedstock, swine, dairy and sheep. In 1996 cash receipts from agriculture products totaled over $7.5 billion, with sixty percent of that coming from the sale of livestock. Cattle represent the largest share of cash receipts, representing ninety percent of the livestock and poultry marketings.

House Agriculture Committee
March 11, 1997
Attachment 2

6031 SW 37th Street Topeka, KS 66614-5129 (913) 273-5115 Fax (913) 273-3399 E-MAIL: kla@kla.org

Chairperson Flower and members of the House Agriculture Committee, thank you for the opportunity to testify today. My name is Rich McKee and I am representing the Kansas Livestock Association.

We urge you to give favorable consideration of Senate Bill 120. This bill clarifies current practice with regard to the planning of livestock waste facilities and adds the definition of swine weighing less than 55 pounds as equivalent to 0.1 animal units.

As a matter of background, for many years, livestock operators with more than 300 animal units (a.u.) in a confined facility have been required to obtain a permit from the Kansas Department of Health and Environment (KDHE). A confined livestock feeding facility is defined as any lot, pen, pool or pond that is used for the confined feeding of animals or fowl for food, fur or pleasure, which is not normally used for raising crops and in which no vegetation intended for animal food is growing. Please know the registration threshold of 300 a.u. is more than three times as stringent as the federal threshold of 1,000 head. In addition, every state surrounding Kansas and most every other state, including Texas and California, does not require facilities less than 1,000 head to be registered.

We think you should also know the waste control permit is not the only permit confined livestock facilities must obtain. A stockwatering permit, obtained from the Division of Water Resources, and a feedlot license from the Animal Health Department is also required of confined livestock facilities with over 1,000 head. In addition, there are numerous other permits required including chemigation license, a boiler permit, fuel storage tanks, scale certification and commercial drivers license just to name a few.

As part of the KDHE permitting process, livestock operators must submit a waste control plan. The KDHE staff reviews the plan before the permit is placed on public notice. The permit is not approved until or unless the plan meets the minimum standards. New section (k) of the bill clarifies who is allowed to submit the livestock waste control plan. This language allows the livestock operator the freedom to hire the best person available to help him submit the waste control plan.

We also are supportive of the amendment offered by the Kansas Pork Producers Council. This amendment essentially levels the playing field with regard to separation distance requirements and perhaps would help prevent future problems.

We respectfully request favorable passage of Senate Bill 120.

WHAT IS KLA?

The Kansas Livestock Association (KLA) is a trade association representing its 7,300 members on legislative and regulatory issues in Topeka and Washington D.C. Our members consist of various segments of the livestock industry including cow-calf producers, cattle feeders, dairies, bankers, transportation groups and others who recognize the importance of the livestock industry to Kansas. With the interests of all livestock producers represented by one organization, KLA is able to effectively represent the $4.7 billion industry with a respected and unified voice. With over a century of service, KLA continually strives to enhance the economic and environmental aspects of the industry.

2-3

WHY SHOULD LIVESTOCK PRODUCERS CARE ABOUT THE ENVIRONMENT?

Kansas livestock producers are committed to environmental stewardship and to the responsible use and care of natural resources. Good business demands that they work to preserve and improve natural resources and the productivity of the land. Livestock producers have chosen a way of life that allows them to be close to the land. They have a respect for the environment and the skills needed to manage resources which are fostered by daily contact with natural resources. From water and soil conservation to wildlife resources, livestock producers make a commitment to the environment that benefits the entire nation.

KANSAS LIVESTOCK ASSOCIATION

Kansas Livestock Association
6031 S.W. 37th Street
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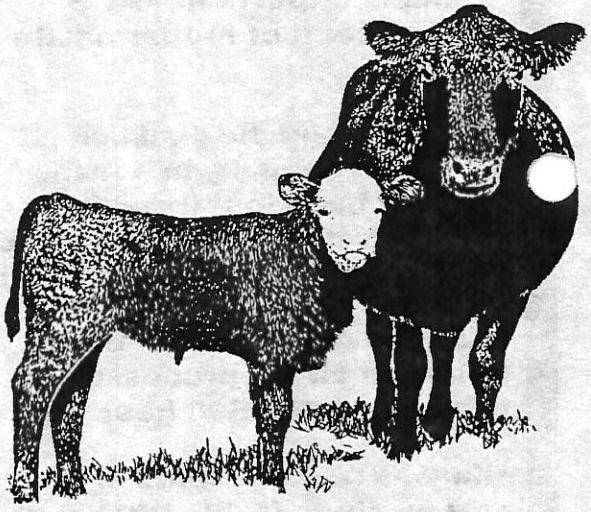
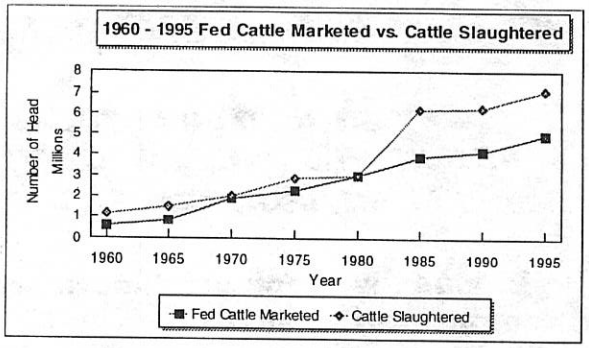
KANSAS LIVESTOCK ASSOCIATION



KANSAS LIVESTOCK INDUSTRY

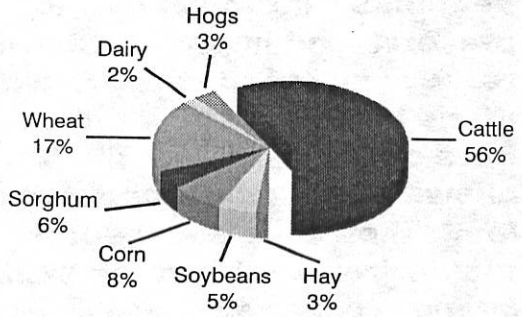
HOW LARGE IS THE STATE'S BEEF INDUSTRY?

- Cash receipts of livestock total nearly $4.69 billion
- Kansas ranks second in fed cattle marketed (5.1 million head)
- Kansas imports nearly 3 million head of feeder cattle per year
- If you placed the 5 million cattle fed annually in Kansas feedlots head to tail the line would stretch from New York to California and back to St. Louis
- Kansas ranks first in the nation in cattle processed by packers (7,112,500 head)
- Kansas ranks seventh in beef cow numbers (1,507,000 head)
- Kansas ranks second in the value of live animals and meat exported at $731 million
- Kansas cattle consume 72% of the corn produced in Kansas, 16% of the soybeans, and 60% of the hay
- Thousands of jobs are created by Kansas ranchers, feedyards, and businesses affiliated with the cattle industry
- Kansas exports $323 million worth of hides and skins to foreign countries



KANSAS CASH RECEIPTS

Total $7,521,311,000



- Cattle on feed in Kansas consume over 31,250 tons of feed every day and 228,125,000 bushels of grain annually
- Every $1.00 in cash receipts from cattle generates another $5.00 in economic activity in Kansas
- Cattle consume approximately $250 per head in feed, medical supplies, etc. for an estimated sum of $935,000,000 annually
- At any one time, Kansas has the capacity to feed over 2.5 million cattle
- To fill processing needs, Kansas packing plants require 19,500 head of cattle every day of the year
- It takes 487 trucks per day to haul the cattle to the plants
- Producing $150 million in milk sales, Kansas dairies also contribute to the state's beef industry, supplying 70,000 feeder calves/cows annually. The five largest Kansas dairies consume 250 tons of feed per day, providing competitive market outlets for area grain and hay producers.

CATTLE INDUSTRY BEEFS UP KANSAS ECONOMY

The Kansas beef industry creates a major boost to the state's economy. The industry generates $4.21 billion in gross cash receipts. This represents 56% of all agricultural marketings and 89.7% of the livestock and poultry marketings. Even though these figures are a considerable amount they do not begin to represent the economic activity created by the industry. With the meat packing industry included, it is estimated that the beef industry creates 129,700 jobs and generates $4.29 billion of personal income.

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Testimony Before House Agriculture Committee In Support Of SB120
On Behalf of Mike Hawkins Company

March 11, 1997

Mike Hawkins Company is a private consulting firm based in Syracuse, Kansas, which specializes in the design of livestock containment facilities. The principal of the company, Mike Hawkins, has been doing such work for many years to the apparent satisfaction of his clients and the state agencies which oversee these projects.

Mr. Hawkins has developed many critical data bases to assist in the design of animal projects and is well known as an expert in the field, although he is not a professional engineer. Recently one of his competitors has been attempting to force him to abandon this field upon the premise that only engineers are allowed to do such design work.

The Department of Health and Environment takes the position that state statutes regarding livestock waste facilities are silent as to whether a professional engineer must prepare plans for such projects. KDHE recommends to livestock producers that they obtain the services of a qualified consultant in planning and designing waste management systems. The Department currently accepts waste management plans from feedlot owners and operators, professional engineering firms, the Natural Resources Conservation Commission, KSU Cooperative Extension, construction contractors, and Mike Hawkins Company.

The principal governing statute in this area is KSA 65-171D, which is the subject of the amendments contained in Senate Bill 120. Proposed new Subsection (k) of the statute, found at the bottom of page 4 of the bill as amended by the Senate Committee of the Whole, merely codifies existing KDHE practice. However, it removes the ambiguity over whether only a professional engineer may do this work by allowing the Department to accept plans and specifications prepared by a consultant which the Department finds to be qualified to perform the services.

On behalf of Mike Hawkins Company we respectively request your support for Subsection (k) of this bill.

--Richard F. Hayse

House Agriculture Committee
March 11, 1997
Attachment 3

KANSAS PORK PRODUCE COUNCIL
KPPC
Serving Since 1956

Testimony to
House Agriculture Committee
on Senate Bill 120

Madam Chair and members of the committee, I am Mike Jensen.
I serve as Executive Vice President of the Kansas Pork Producers Council.
Our organization represents the majority of pork production operations across Kansas.

I am here today as a qualified opponent of SB 120. A small amount of historical background might be of benefit. The "Animal Unit" designation was incorporated into statute by SB 800 in 1994. The numbers assigned to the different species are the same numbers that the EPA uses for their NPDES permit process (with the exception of under 700-pound beef cattle being counted as 0.5). When EPA originally developed these numbers, swine were raised primarily in farrow-to-finish (birth to market) operations. The pigs were not weaned until approximately 40 pounds at eight weeks of age. Today, many operations are utilizing multiple-site production. Sows are housed at gestation/breeding/farrowing complexes. These facilities produce 10-pound pigs which are moved to a separate site "hot nursery" until about 50 pounds, and finally to a third site for finishing to 260 pounds.

SB 120 addresses the apparent dilemma of any number of pigs at one site, effectively counting as 0, for the purpose of number of animal units. It is important to point out that irregardless of the number of animal units, these units **still must** comply with all pollution prevention requirements of both the KDHE and EPA. The **only** impact of raising from 0 to .1 will be in regards to separation distances and permit fees. Essentially, this is a public relations reaction to a perceived public relations problem. This bill does nothing in regards to any perceived environmental threat. However, if the public feels "threatened" by these small pigs, we have no problem in supporting legislation changing their designation.

We would respectfully ask the committee to add an amendment to this bill (see attached). In concept, this amendment would establish a "reverse setback" for any permitted livestock operation. Society has effectively imposed what activities our producers may do on their own land by the actions of individuals who might not even be contiguous landowners. Our operators believe it is only fair, to prevent "in reverse" encroachments into their own setback areas. We would propose that this amendment also encompass livestock operations as well as homes. Our operators would also have the right to grant a waiver themselves to a potential homebuilder or livestock operation if they so chose.

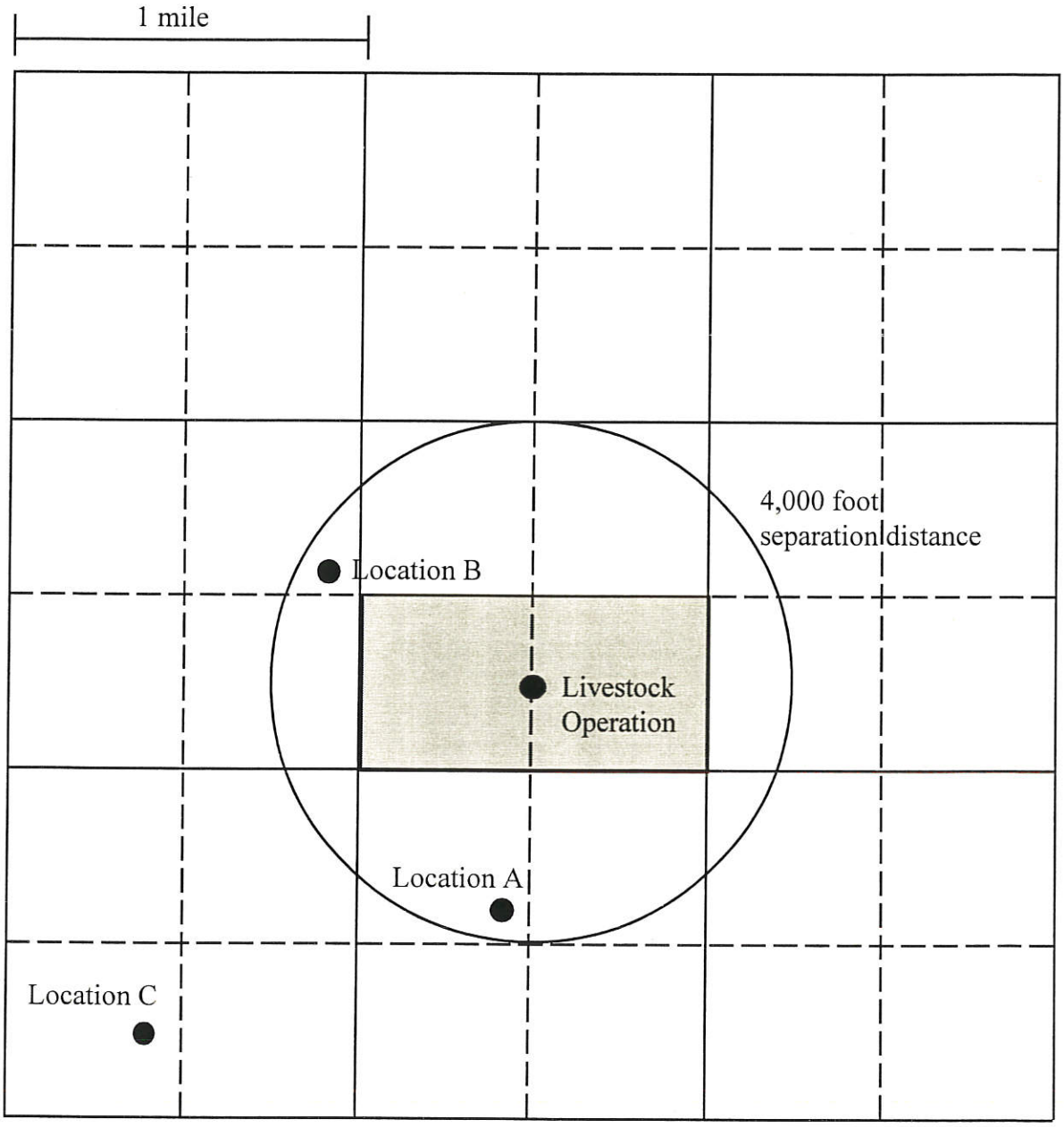
As one of my board members summed up the issue, "Public policy has pushed our industry into operating in a island atmosphere. It's time we had some protection for our island." Public policy has increasingly been imposing restrictions on what our producers may do on their own property. Quite frankly, this is a fairness issue. We would only like the same respect (laws) that govern our activities to, in turn, protect the ability of our producers to pursue agricultural activites that meet or exceed all governmental standards.

House Agriculture Committee
March 11, 1997
Attachment 4

2601 Farm Bureau Road • Manhattan, Kansas 66502 • 913/776-0442 • FAX 913/776-9897

Separation Distance example:

The Livestock Operation's owner has 320 acres around his operation. Location A is a home which preceeded the livestock operation. The owner of the livestock operation would need to secure a waiver from this person before building. Location B is a potential homesite. This landowner would need to secure a waiver from the livestock operation's owner after the operation secures its operating permit from KDHE.



Kansas Pork Industry Facts

Kansas recently rose to the number 8 state in hog and pig inventory

- In the last year, Kansas producers marketed:

2,103,833 market hogs
123,959 feeder pigs
26,953 seedstock
2,254,745 total

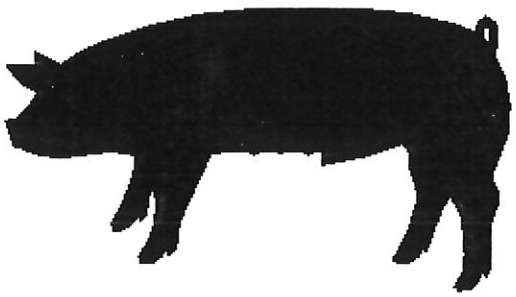
- 1995 gross market value was $291,138,681.47

- Kansas' sow inventory rose 27% in the last year to 190,000 head or 2.85% of the U.S total.

- Kansas swine consume over 24 million bushels of grain, primarily Kansas-grown dryland milo.

- Approximately 500 Kansas operations:
  - market 77.5% of our swine
  - have the equivalent of a 50-sow operation
  - average above $10,000 net income annually from swine

Symbol II



Symbol II is the pork industry's "perfect pig".
This hog will be marketed at 156 days of age weighing 260 pounds.
It will yield a 195-pound carcass.

* The Kansas swine industry annually spends about:

$170 million for feed grains
$6 million for veterinary care
$7 million for utilities (gas, propane & electric)
$7 million for trucking costs (hog marketing only, no grain)
$6 million in interest
$27 million in construction
$15 million in supplies

Geographically, the northcentral and northeast part of the state have the most hog operations. Washington county has the most hogs in the state with Nemaha in second and Clay in third. There are also some large operations in the southwest corner of the state.

Numbers as of January 1, 1997

KANSAS PORK PRODUCERS COUNCIL
KPPC
Serving Since 1956

Kansas Pork Producers Council
2601 Farm Bureau Road
Manhattan, KS 66502
(913) 776-0442
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(2) "Confined feeding facility" means any lot, pen, pool or pond: (A) Which is used for the confined feeding of animals or fowl for food, fur or pleasure purposes; (B) which is not normally used for raising crops; and (C) in which no vegetation intended for animal food is growing.

(3) "Animal unit" means a unit of measurement calculated by adding the following numbers: The number of beef cattle weighing more than 700 pounds multiplied by 1.0; plus the number of cattle weighing less than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing more than 55 pounds multiplied by 0.4; *plus the number of swine weighing 55 pounds or less multiplied by 0.1;* plus the number of sheep or lambs multiplied by 0.1; plus the number of horses multiplied by 2.0; plus the number of turkeys multiplied by 0.018; plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01; plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; plus the number of ducks multiplied by 0.2. However, each head of cattle will be counted as one full animal unit *and each head of swine weighing* ~~*more than 55 pounds will be counted as 0.4*~~ *animal unit* for the purpose of determining the need for a federal permit.

55 pounds or less will be counted as 0.0

(4) "Animal unit capacity" means the maximum number of animal units which a confined feeding facility is designed to accommodate at any one time.

(5) "Habitable structure" means any of the following structures which is occupied or maintained in a condition which may be occupied: A dwelling, church, school, adult care home, medical care facility, child care facility, library, community center, public building, office building or licensed food service or lodging establishment.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that the soil or waters of the state are not being protected from pollution resulting from underground storage reservoirs of hydrocarbons and liquid petroleum gas or that storage

(1) 1320 feet for facilities with an animal unit capacity of 300 to 999; and

(2) 4000 feet for facilities with an animal unit capacity of 1,000 or more.

~~(i) The separation distance requirements of subsection (h) shall not apply if such person newly constructing or newly expanding a confined feeding facility obtains a written agreement from all owners of habitable structures which are within the separation distance stating such owners are aware of such construction or expansion and have no objections to such construction or expansion. The written agreement shall be filed in the register of deeds office of the county in which the habitable structure is located. The secretary may reduce separation distance requirements if: (1) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (2) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances.~~

(j) The separation distances required pursuant to subsection (h) shall not apply to:

(1) Confined feeding facilities which are permitted or certified by the secretary on the effective date of this act;

(2) confined feeding facilities which exist on the effective date of this act and register with the secretary before July 1, 1996; or

(3) expansion of a confined feeding facility, including any expansion for which an application is pending on the effective date of this act, if: (A) In the case of a facility with an animal unit capacity of 1,000 or more prior to the effective date of this act, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (B) in the case of a facility with an animal unit capacity of less than 1,000 prior to the effective date of this act and, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion the animal unit capacity of the facility after expansion does not exceed 2,000.

Sec. 2. K.S.A. 1996 Supp. 65-171d is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

(i)(1) The separation distance requirements of subsection (h) shall not apply to new construction of a confined feeding facility if the facility obtains a written agreement from all owners of habitable structures that are within the separation distance stating such owners are aware of and have no objections to the construction.

(2) The separation distance requirements of subsection (h) shall not apply to expansion of an existing confined feeding facility if the facility obtains a written agreement from all owners of habitable structures that were in existence at the time that the facility was constructed and are within the separation distance stating such owners are aware of and have no objections to the expansion.

(3) No habitable structure, and no confined feeding facility that is required to be registered or obtain a permit pursuant to this section, shall be newly constructed or located within the applicable separation distance from an existing confined feeding facility unless the person proposing to so construct or locate the structure or facility first obtains a written agreement from the facility stating that the facility is aware of and has no objections to the construction or location of the structure.

(4) All written agreements required by subsections (i)(1), (2), and (3) shall be filed in the register of deeds office of the county in which the habitable structure is located.

(5) The secretary may reduce separation distance requirements if: (A) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (B) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances.

4-5

TESTIMONY HOUSE AGRICULTURE COMMITTEE
Tuesday, March 11, 1997
RE: SB 120 - Regulation of Feed Lot Sewage Discharges

Madam Chair, Members of the Committee, I am Bill Henry, the Executive Vice President for the Kansas Society of Professional Engineers. The Kansas Society of Professional Engineers is a professional association composed of more than nine hundred (900) licensed professional engineers across the state who serve as consultants, practice engineering for governmental entities, industry, work in construction and teach engineering at our three schools of engineering in the Regents system.

The Kansas Society of Professional Engineers supports the concept found in SB 120, but it has a specific objections to the language found in new **sub-section (K) on page 4, lines 37 through 42.**

According to the state's licensure act for professional engineers - K.S.A. 74-7003 (i) - there are established definitions of what must be in plans and specifications to protect the public's health, safety and welfare.

Further, the statute requires that these plans and specifications submitted must be completed by a professional engineer.

Clearly, under the statutory definition of the practice of a professional engineer, this is the individual who is qualified to prepare such plans. The Kansas Society of Professional Engineers opposes the addition of the language in **line 40 "or qualified consultants."**

The Kansas Society of Professional Engineers also opposes the additional language in **line 42 that allows for soil permeability or seepage tests to be performed by a "qualified soil scientist."**

There is no statutory definition of a qualified soil scientist in our state licensing laws. As a result anyone could be a soil scientist.

Currently, a professional engineer may hire a geologist to do permeability studies, but the engineer is responsible for the application of the data gathered by those studies. If the committee would eliminate the language in **line 39 "or qualified consultant"** and the language in **line 42 "qualified soil scientist"** our problems with the bill as drafted would be eliminated.

I would be happy to reply to questions from the Committee on the Engineering Society position.

Respectfully submitted,
William Henry, Executive Vice President
Kansas Society of Professional Engineers

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KANSAS STATE BOARD OF TECHNICAL PROFESSIONS

(913) 296-3053

Suite 507, Landon State Office Building 900 S.W. Jackson Street Topeka, Kansas 66612-1257

STATEMENT TO THE
AGRICULTURE COMMITTEE
by the
KANSAS STATE BOARD OF TECHNICAL PROFESSIONS
9:00 a.m., March 11, 1997 - Room 423-S

RE: Senate Bill 120 - Regulation of feedlot sewage discharges; swine weighing 55 pounds or less

The Board of Technical Professions appreciates the opportunity to testify here before the Committee. I am Charles Stryker, Chairman of the Board, and with me is Rich Porter, Public Member of the Board.

The Board of Technical Professions is neutral on the bill that has been proposed, except as it relates to the requirement for the use of a professional engineer in the implementation of new construction or new expansion of confined feeding facilities. The Board is not testifying today as to the adequacy of the specific quantification elements of the proposed legislation, or the threshold levels that it provides for. The Board is testifying because we are concerned with the amendment stated in Section K, beginning on page four, line 39 of the bill. We did not have an opportunity to testify at the Senate, concerning the amendment.

The Board's primary function is our statutory authority to protect the health, safety, and welfare of the general public by regulating the professions of engineering, architecture, land surveying, and landscape architecture. We currently license approximately 12,000 professionals, and the Board has had its beginning statutorily in 1932 with the licensing of engineers. However, the Board became a combined Board for all the above professions in 1976. We have included a description of the Board's current activities, which provides for enforcement actions for not only its licensees, but also those that practice the professions that are not licensed.

The Board has not taken any actions on complaints with respect to the current requirements and implementation concerning confined feeding facilities in the state of Kansas. Our only involvement to date has been a complaint filed against an unlicensed individual, and that case began in the Spring of 1996 and is currently being investigated. I am personally not aware of any other issues before the Board in my nearly ten years as a Board member.

Our licensees are currently required to subject themselves to a rigorous process prior to licensure being granted, including graduation from an accredited four year engineering institution, eight years of progressive experience, two separate examinations spaced by experience

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and we currently have continuing education requirements being implemented to continue professional practice.

Our licensees generally develop implementation plans that conform to regulated requirements or industry practice requirements. These implementation plans may take the form of reports, certifications, plans and specifications, construction documents, construction certificates and the verification that improvements have conformed to the required threshold levels. We require that a licensee provide a seal and a signature on any original document described above. This seal assures that the licensee is taking full responsibility for the improvements proposed, that they have fully investigated the impact for the improvements concerning the protection of the public and that recognized standards have been met. In the case of the issue before you, the technical and experience background of an engineer should include agricultural engineering, soil structures, structural engineering, reservoir impoundments, hydrology, groundwater, cost analysis and public policy and regulatory requirements knowledge and experience.

The Board is aware that the confined feeding facility issue has become a front-burner issue, not only in Kansas, but also throughout the United States. We have been advised of concerns about ground water protection from confined animal facilities.

I have just returned from a four day meeting for Chairpersons of similar boards in the United States and by informal discussion at that meeting, the issues you are debating today are being discussed in many other states. Some of the states are faced with significant environmental damage due to lack of vigilance in the implementation of the public review process for improvements. The use of professional engineers for the implementation, certification and verification for improvements for feeding facilities appears to be the normal requirement in the other states.

The Board understands that the current process of review has been cursory at best and that field verification of facilities has not universally been applied. Currently, the approval of these facilities is under the responsibility of the Department of Health and Environment and we would believe the responsibility for damage, in the event of failure of the facilities should rest with the individual certifying that the facility is in compliance. The Department could also require a third party to certify the improvements and that they comply with current standards and that the certifying party will supervise the installation of the improvements and upon completion, certify that the improvements have been completed properly and take financial responsibility in the event they are not.

The Board wants to be a help in these matters that affect the protection of the public and its resources. Although we may believe that an engineer may have the best position due to education, experience and examination requirements, it is also probable that an

engineer will require help from any number of speciality persons including animal specialists, soil scientists among others, in order to perform the task of certifying that the facilities are proper. It is likely that the boundary requirements stipulated in the proposed bill will also require an engineer or land surveyor to certify the location of the improvements.

Our Board will continue to expect the highest standards of its licensees. If an additional class of "qualified consultants" for these facilities is developed, along with a state directed certification program administered by the department is desired and the costs are justified, we can respect the demands for the program being developed, hopefully with the end result protecting the public. We believe that the qualified consultant should be held to the same standard as our licensees and that the financial as well personal responsibility for the facilities be required.

We would be willing to consider taking on the responsibility of developing a separate certification for the "qualified consultant" within the authority of our Board, if that will help streamline the demands that the state desires, to keep the approval process of the animal facilities in the hands of the Department of Health and Environment and keep the approval of the professionals in the hands of a licensing board.

WHAT IS THE BOARD OF TECHNICAL PROFESSIONS?

The primary function of the Board of Technical Professions is to carry out its statutory authority to protect the health, safety and welfare of the general public by regulating the professions of Engineering, Architecture, Land Surveying, and Landscape Architecture. A significant amount of the Board's efforts involve monitoring and regulating the practice of technical professions. The Board members review investigations and conduct formal disciplinary hearings. In addition, the Board processes applications for examination of candidates and licensure of qualified individuals and corporations in the technical professions. The total number of current licensees is 11,933. The present number of Intern Engineers is 12,079. The Board of Technical Professions was created by the 1976 Legislature to consolidate the former Kansas State Registration and Examining Board of Architects, State Board of Engineering Examiners, and the Kansas State Board of Registration and Examination of Landscape Architects. That Board had eight (8) members from the four (4) professions of engineering, architecture, land surveying and landscape architecture and one (1) public member. The 1992 Legislature increased the size of the Board from nine (9) to thirteen (13) members, and provided additional authority to enforce the Board of Technical Profession's Practice Act. The current membership of the Board consists of four (4) engineers, three (3) architects, two (2) land surveyors, one (1) landscape architect, and three (3) members from the general public. The board holds regular board meetings approximately 6 times a year. All of the board's work, as well as meetings, are conducted in a committee forum with the architects and landscape architects working together as a committee, and the engineers and land surveyors working as a committee to review issues specific to those professions. Then, all 13 members meet with staff and board counsel as a full board to discuss committee recommendations, board policy issues, and disciplinary matters.

KANSAS CONSULTING ENGINEERS

Statement to
House Agriculture Committee
Senate Bill 120
March 11, 1997

Madam Chair and members of the Committee, my name is George Barbee appearing today as executive director of the Kansas Consulting Engineers. You will find attached to my statement a list of consulting engineering firms that are members of KCE. This association is made up of private practice engineering firms offering design services to public and private sector clients for roads, highways, bridges, airports, water and sewage treatment plants, and distribution systems. These firms perform many other services, such as helping a client meet state air and quality standards and those special needs encountered by a confined feeding facility as described in Senate Bill 120.

I must admit that Senate Bill 120 did not get my attention until it was amended in the Senate Committee, without anyone contacting the engineers and without a hearing on the amendment. However, since it has been amended, we are concerned and opposed to Senate Bill 120 in its present form.

Section 1 of this bill clearly addresses the intent of K.S.A. 65-171d to prevent surface and subsurface water pollution and soil pollution detrimental to the public health through technologically based effluent limitations. The education, experience, and judgment to accomplish that statutory mandate is engineering. To do these things without being a licensed professional engineer would be a violation of the licensure statutes found in K.S.A. 74-7001.

The amendment allows for a "qualified consultant" to prepare plans and specifications. It would also allow for a "qualified soil scientist" to perform soil permeability tests. These tasks are engineering functions, and to protect the public health, safety, and welfare, the Legislature adopted criteria many years ago to provide for the licensure of professional engineers, established a Board of Technical Professions, and approved subsequent rules and regulations.

The Kansas Consulting Engineers supports the amendments offered by the Kansas Society of Professional Engineers to bring this bill into a form to provide for the protection of the public health, safety, and welfare. You are urged to adopt the suggested amendments to avoid unnecessary conflicting statutes.

Thank you for the opportunity to speak to this issue today, and I would be pleased to stand for questions should you have any.

GEORGE BARBEE, EXECUTIVE DIRECTOR • 700 SW JACKSON ST., STE 702 • TOPEKA, KS 66603-3758 • (913)357-1824 • FAX (913)357-6629

AFFILIATED WITH:
KANSAS SOCIETY OF PROFESSIONAL ENGINEERS • AMERICAN CONSULTING ENGINEERS COUNCIL • PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE • NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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KANSAS CONSULTING ENGINEERS MEMBER FIRMS

Allgeier, Martin & Associates, Inc.	Joplin, MO
BES Company, Inc.	Kansas City, MO
Bartlett & West Engineers, Inc.	Hiawatha, KS Topeka, KS
Baughman Company, P.A.	Wichita, KS
Black & Veatch	Overland Park, KS
Booker Associates, Inc. of Kansas	Wichita, KS
Bucher, Willis & Ratliff Corporation	Hays, KS Salina, KS Kansas City, MO
Burns & McDonnell Engineers	Kansas City, MO Overland Park, KS
George Butler Associates, Inc.	Kansas City, MO Lenexa, KS Wichita, KS O'Fallon, MO Saint Louis, MO Springfield, MO
Camp, Dresser & McKee, Inc.	Kansas City, MO Wichita, KS
Campbell, Barber, Lambeth & Associates, P.A.	Shawnee Mission, KS
Castle & Associates, Chartered	Wichita, KS
Certified Engineering Design	Wichita, KS
Cook, Flatt & Strobel, Engineers, PA	Kansas City, MO Topeka, KS
Delich, Roth & Goodwillie, P.A.	Kansas City, KS Kansas City, MO
Evans, Bierly, Hutchison & Associates, P.A.	Great Bend, KS Lawrence, KS
GeoSystems Engineering, Inc.	Lenexa, KS Topeka, KS
Geotechnical Services, Inc.	Kansas City, MO Salina, KS Wichita, KS
HDR Engineering, Inc.	Kansas City, MO Overland Park, KS
HNTB Corporation	Kansas City, MO Overland Park, KS
Haris Engineering, Inc.	Overland Park, KS
Kanamak Consulting	Garden City, KS
Kaw Valley Engineering, Inc.	Junction City, KS Lenexa, KS Riverside, MO
Kerr Conrad Graham Associates	Overland Park, KS
Kirkham Michael Consulting Engineers	Ellsworth, KS Louisburg, KS
Klein and Associates	Shawnee, KS
Kramer Engineering, P.A.	Topeka, KS

Larkin Group, Inc.	Kansas City, MO
Latimer Sommers & Associates, P.A.	Topeka, KS
Layne GeoSciences, Inc.	Mission Woods, KS
Lembeck Associates, Inc.	Overland Park, KS
McCully, Civil Engineer	Iola, KS
Mid-Kansas Engineering Consultants, Inc.	Wichita, KS
Morrow Engineering, Inc.	Wichita, KS
Municipal Engineers, P.A.	Wichita, KS
Palmerton & Parrish, Inc.	Springfield, MO
Payne & Brockway, P.A.	Olathe, KS
Peterson Freund Associates	Topeka, KS
Poe & Associates of Kansas, Inc.	Wichita, KS
Ponzer-Youngquist, P.A.	Olathe, KS
Professional Engineering Cons., P.A.	Lawrence, KS Topeka, KS Wichita, KS
Reiss & Goodness Engineers	Wichita, KS
Savoy, Ruggles & Bohm, P.A.	Wichita, KS
Schwab-Eaton, P.A.	Beloit, KS Chanute, KS Manhattan, KS
Shafer, Kline & Warren, P.A.	Iola, KS Overland Park, KS Topeka, KS Chillicothe, MO Kansas City, MO Macon, MO
Systems Management Consultants, Inc.	Overland Park, KS
Taliaferro and Browne, Inc.	Kansas City, KS
TapanAm Associates, Inc.	Leawood, KS
Taylor & Associates, Inc.	Garden City, KS
Terracon Companies, Inc.	Lenexa, KS Wichita, KS
TranSystems Corporation	Dodge City, KS Independence, KS Liberal, KS Kansas City, MO
Turner Consultants	Stilwell, KS
Van Doren-Hazard-Stallings, Inc.	Kansas City, MO Topeka, KS
White, Martin & Associates, Inc.	Topeka, KS
Wilson & Company Engineers	Lenexa, KS Salina, KS Wichita, KS
Woodward-Clyde Consultants	Overland Park, KS