

Approved: 3-11-97  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Steve Lloyd at 3:30 p.m. on February 20, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department  
Hank Avila, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Rep. Andrew Howell, State Representative  
Rep. Laura McClure, State Representative  
Jere White, Executive Director, KS Corn Growers Association  
Chris McKenzie, Executive Director, League of Municipalities  
Richard Nienstedt, City Manager, City of Fort Scott, KS  
John A. Metzler, Chief Engineer, Johnson County Wastewater  
Rick Shain, City Administrator, Medicine Lodge, KS  
Douglas Wareham, KS Grain and Feed Association  
Bill Fuller, KS Farm Bureau  
Marty Vanier, KS Agricultural Alliance  
Lewjene Schneider, Director of Research and Legal Affairs, KS  
Livestock Association  
Edward R. Moses, KS Aggregate Producer's Association  
Edie Snethen, Director, Public Works, City of Topeka  
Ed Sramek, Wastewater Plant Operator, Independence, KS  
Jim Bradley, Director of Utilities, City of Ottawa, KS  
Tim Shanahan, City Administrator, Hiawatha, KS  
Secretary James J. O'Connell, KDHE  
Charles Benjamin, Legislative Coordinator, KS Natural  
Resource Council and KS Chapter of Sierra Club  
Cynthia Abbott, KS Audubon Council  
Eric Rundquist, KS Herpetological Society

Others attending: See attached list

Chairman Steve Lloyd called the meeting to order at 3:30 p.m. He opened **HB 2226** for discussion and possible final action:

**HB 2226:** **An act concerning solid waste management; amending K.S.A. 65-3401, 65-3405, 65-3414, and 65-3415e and K.S.A. 1996 Supp. 65-3402, 65-3407, 65-3415, 65-3415a, 65-3415b and 65-3415f and repealing the existing sections; also repealing K.S.A. 65-3415c and 65-3422.**

Rep. Joann Freeborn, Chairperson of subcommittee on **HB 2226**, provided a balloon and gave the subcommittee report. (See Attachment 1)

Rep. Joann Freeborn made a motion to adopt the balloon, Rep. Tom Sloan seconded. Motion passed. Discussion on the ballooned bill followed.

Rep. Tom Sloan made a motion to pass the bill as amended, Rep. Don Myers seconded. Motion passed.

The Chairman opened public hearing on **HB 2368:**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on February 20, 1997.

**HB 2368: An act providing for the temporary suspension of certain surface water quality standards; creating the special commission on water quality standards and specifying the membership and functions thereof.**

Mary Torrence, Revisor of Statutes, explained the bill.

The Chairman welcomed Rep. Andrew Howell to the committee. Rep. Howell spoke in support of the bill. (See Attachment 2) The bill is introduced today as a response to a number of problems that the City of Fort Scott was experiencing in its discussions with the Department of Health and Environment with respect to its permitting process on a waste treatment plant that is barely 10 years old.

The Chairman recognized Rep. Laura McClure. She introduced information provided by the United States Environmental Protection Agency. (See Attachment 3)

The Chairman welcomed Jere White, KS Corn Growers Association. He presented testimony in support of the bill, (See Attachment 4) and feels it proposes essentially two things. It temporarily sets aside certain standards for a specified interim period while it establishes a Kansas Surface Water Quality Commission to investigate and evaluate the current surface water quality laws in Kansas.

The Chairman welcomed Chris McKenzie, League of Municipalities. He provided testimony on behalf of the over 500 member cities of the League in support of the bill. (See Attachment 5) Also testimony from the City of Larned in regard Surface Water Quality Standards and the City of Winfield in regard Ammonia Standards for Wastewater Treatment Plants. (See Attachment 6)

The Chairman welcomed Richard Nienstedt, City Manager, City of Fort Scott. He provided testimony on behalf of the Fort Scott Commission in support of the bill. (See Attachment 7) He feels in this bill, Rep. Howell has offered a method for affected and interested parties to study the proposed 1994 Kansas water quality standards in a cooperative manner.

The Chairman welcomed John Metzler, Chief Engineer for Johnson County Wastewater, to the committee. He provided testimony in support of the bill. (See Attachment 8) His two primary concerns are the criteria, or maximum pollutant level, allowed in streams for ammonia and the special aquatic life use designation, which makes the treatment requirements for cities and industries twice as stringent as they otherwise would be on streams where this use designation applies.

The Chairman welcomed Rick Shain, City Administrator of Medicine Lodge, KS. He presented testimony in support of the bill. (See Attachment 9) He feels the fiscal impact of having to build a new mechanical plant just to meet a change in ammonia criteria would be devastating to individuals and businesses in his community.

The Chairman welcomed Douglas Wareham, KS Grain and Feed Association and KS Fertilizer and Chemical Association to the committee. He provided testimony on their behalf in support of the bill. (See Attachment 10) They believe this bill uses the common sense approach of "looking before you leap" and ask for its passage.

The Chairman welcomed Bill Fuller, KS Farm Bureau. He provided testimony on behalf of the farm and ranch members of the 105 county Farm Bureaus in Kansas. (See Attachment 11) The more than 435 Voting Delegates at the 78th annual meeting of KS Farm Bureau adopted a "Environmental Standards" resolution that relates to the issues outlined in the bill.

Written testimony was distributed from Kerri Ebert, Executive Secretary, Kansas Dairy Association (See Attachment 12).

The Chairman welcomed Marty Vanier, KS Agricultural Alliance, to the committee. (no written testimony) She spoke briefly to the committee in support of the bill.

The Chairman welcomed Lewjene Schneider, Director of Research and Legal Affairs, KS Livestock Association. She provided testimony in support of the bill. (See Attachment 13) On behalf the KS Livestock Association she urges the committee to give favorable consideration to the bill and believes it is important to be stewards of the land and water.

The Chairman welcomed Edward R. Moses, KS Aggregate Producers' Association. He provided testimony



## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on February 20, 1997.

in support of the bill. (See Attachment 14) His purpose for appearing is to discuss how the current water quality standards have impacted the industry and to discuss the "Outstanding Natural Resource Water" designation.

The Chairman welcomed Edie Snethen, Director of Public Works for the City of Topeka. She provided testimony in support of the bill. (See Attachment 15) The City of Topeka supports the temporary suspension of the ammonia criteria and the special aquatic life use designation until such time as these issues can be reviewed by an appointed commission and resolved.

The Chairman welcomed Ed Sramek, waste water plant operator, City of Independence, KS. He presented testimony in support of the bill. (See Attachment 16) The basis of his support is the impact that the 1994 Water Quality Standards and KDHE's interpretation of these standards, have on the cities in the state.

The Chairman welcomed Jim Bradley, Director of Utilities, City of Ottawa, KS. He provided testimony in support of the bill. (See Attachment 17) The city of Ottawa supports the establishment of the proposed "special commission on water quality standards" to attain the goals of improvement to surface water quality within a cost effective framework.

The Chairman welcomed Tim Shanahan, City Administrator, Hiawatha, KS. (no written testimony) He spoke in support of the bill on behalf of the city of Hiawatha and urged the committee of its passage.

The Chairman thanked the proponents for appearing and welcomed Secretary James J. O'Connell, KDHE to the committee. Secretary O'Connell appeared before the committee in a neutral position. (See Attachment 18) The Department is very supportive of an open public examination and discussion of the surface water quality standards, designated uses and identified waters in need of extraordinary protection.

Written testimony was distributed from Dr. Kate Shaw, Kansas Chapter of the American Fisheries Society, in opposition to the bill. (See Attachment 19)

The Chairman welcomed Charles Benjamin, Legislative Coordinator, KS Chapter of Sierra Club, KS Natural Resource Council. He provided testimony in opposition to the bill. (See Attachment 20) He feels although this bill purports to be concerned with "the technical and scientific basis of the surface water quality standards", it seems to be a blatant attempt by certain special interest to replace science based standards with standards that favor their interests over the interests of the citizens of Kansas.

The Chairman welcomed Cynthia Abbott, KS Audubon Council. She provided testimony in opposition to the bill. (See Attachment 21) The KS Audubon Council believes that excellent water quality is an important goal to work for throughout our state. Hiding our heads in the sand and lowering the standards is not going to improve the quality of the water and feels this bill is counter productive to the goal of clean water in Kansas.

The Chairman welcomed Eric Rundquist, co-founder, KS Herpetological Society. He provided testimony in opposition to the bill. (See Attachment 22) He believes suspending current state regulations on water quality could have a significant impact on aquatic reptile and amphibian communities and could have a significant impact on the health of the people of the state.

Due to the lack of time, the Chairman announced that the meeting will continue tomorrow, February 21, on adjournment of the House, for discussion and questioning.

The meeting adjourned at 5:50 p.m.

The meeting continued at 12:15, February 21, 1997, in Room 519-S, for discussion and questioning. Those appearing before the committee were: Charles Benjamin, Legislative Coordinator, KS Natural Resource Council and KS Chapter of Sierra Club; Jere White, Executive Director, KS Corn Growers Association; Ron Hammerschmidt, Director, Division of Environment, KDHE; Secretary James J. O'Connell, KDHE; Karl Mueldener, Director, Bureau of Water; Steve Adams, Environmental Services, Wildlife and Parks; and Chris McKenzie, Executive Director, League of Municipalities. Jere White distributed a Position Paper from William J. Denton, Lathrop and Gage, Kansas City, Missouri. (See Attachment 23) and information on Atrozin, (See Attachment 24) for the committee to review.

The Chairman thanked everyone for appearing and the committee for their attention. He announced that Monday, February 24, the committee may possibly work the Wichita stormwater runoff bill.

The meeting adjourned at 1:45 p.m.

The next meeting is scheduled for February 24, 1997

# HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 2-20-97

NAME	REPRESENTING
JOE DICK	KCK BP4
JOYCE COKER	JOHNSON COUNTY COURT
Eric Rundquist	Ks. Herpetological Society
Edward Moses	Ks. Aggregate Prod. Assn
Mike Jensen	Ks Park Council
Doug Wareham	KGFA + KFCA
Chiquita Cornelius	Ks. B.I.R.P.
Ed Sramek	City of Independence KS
HARRY W. DANSON	RANCHER Barker Co. Ks.
Ted Alexander	Ks Grazing and Coalition for Burke Co Ranch
Jerry Martini	City of Medicine Lodge
Shirley Swartz	City of MA + KFCA
Rick Shain	CITY OF Medicine Lodge
Jim Bradley	City of Ottawa
Jeannine Harmon	Ks State Bd. of Technical Prof.
Steve Adams	KDWP
Pisa Meeker	KS Gov. Consulting
Bill Henry	Ks Society of Prof. Engineers
Tim Shanche	City of Manhattan







HOUSE BILL No. 2226

Subcommittee Report, 02/19/97

By Committee on Environment

2-5

9 AN ACT concerning solid waste management; amending K.S.A. 65-3401,  
10 65-3405, 65-3414 and 65-3415e and K.S.A. 1996 Supp. 65-3402, 65-  
11 3407, 65-3415, 65-3415a, 65-3415b and 65-3415f and repealing the  
12 existing sections; also repealing K.S.A. 65-3415c and 65-3422.  
13

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

15 Section 1. K.S.A. 65-3401 is hereby amended to read as follows: 65-  
16 3401. It is hereby declared that protection of the health and welfare of  
17 the citizens of Kansas requires the safe and sanitary disposal of solid  
18 wastes. The legislature finds that the lack of adequate state regulations  
19 and control of solid waste and solid waste management systems has re-  
20 sulted in undesirable and inadequate solid waste management practices  
21 that are detrimental to the health of the citizens of the state; degrade the  
22 quality of the environment; and cause economic loss. For these reasons  
23 it is the policy of the state to:

24 (a) Establish and maintain a cooperative state and local program of  
25 planning and technical and financial assistance for comprehensive solid  
26 waste management.

27 (b) Utilize the capabilities of private enterprise as well as the services  
28 of public agencies to accomplish the desired objectives of an effective  
29 solid waste management program.

30 (c) Require a permit for the operation of solid waste processing and  
31 disposal systems.

32 (d) Achieve and maintain status for the Kansas department of health  
33 and environment as an approved state agency for the purpose of admin-  
34 istering federal municipal solid waste management laws and regulations.

35 (e) Encourage the wise use of resources through development of strat-  
36 egies that reduce, reuse and recycle materials while taking into consid-  
37 ~~eration full cost accounting and life cycle analysis.~~

New Deletion

38 Sec. 2. K.S.A. 1996 Supp. 65-3402 is hereby amended to read as  
39 follows: 65-3402. As used in this act, unless the context otherwise re-  
40 quires:

41 (a) "Solid waste" means garbage, refuse and other discarded mate-  
42 rials including, but not limited to, solid, semisolid, sludges, liquid and  
43 contained gaseous waste materials resulting from industrial, commercial,

House Environment  
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Attachment 1

1 agricultural and domestic activities. Solid waste does not include hazard-  
2 ous wastes as defined by subsection (f) of K.S.A. 65-3430, and amend-  
3 ments thereto, recyclables or the waste of domestic animals as described  
4 by subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

5 (b) "Solid waste management system" means the entire process of  
6 storage, collection, transportation, processing, and disposal of solid wastes  
7 by any person engaging in such process as a business, or by any state  
8 agency, city, authority, county or any combination thereof.

9 (c) "Solid waste processing facility" means incinerator, ~~compost plant~~  
10 ~~composting facility~~, ~~household hazardous waste facility~~, ~~waste-to-energy~~  
11 ~~facility~~, transfer station, reclamation facility or any other location where  
12 solid wastes are consolidated, temporarily stored, salvaged or otherwise  
13 processed prior to being transported to a final disposal site. This term  
14 does not include a scrap material recycling and processing facility.

15 (d) "Solid waste disposal area" means any area used for the disposal  
16 of solid waste from more than one residential premises, or one or more  
17 commercial, industrial, manufacturing or municipal operations.

18 (e) "Person" means individual, partnership, firm, trust, company, as-  
19 sociation, corporation, individual or individuals having controlling or ma-  
20 jority interest in a corporation, institution, political subdivision, state  
21 agency or federal department or agency.

22 (f) "Waters of the state" means all streams and springs, and all bodies  
23 of surface or groundwater, whether natural or artificial, within the bound-  
24 aries of the state.

25 (g) "Secretary" means the secretary of health and environment.

26 (h) "Department" means the Kansas department of health and en-  
27 vironment.

28 (i) "Disposal" means the discharge, deposit, injection, dumping, spill-  
29 ing, leaking or placing of any solid waste into or on any land or water so  
30 that such solid waste or any constituent thereof may enter the environ-  
31 ment or be emitted into the air or discharged into any water.

32 (j) "Open dumping" means the disposal of solid waste at any solid  
33 waste disposal area or facility which is not permitted by the secretary  
34 under the authority of K.S.A. 65-3407, and amendments thereto, or the  
35 disposal of solid waste contrary to rules and regulations adopted pursuant  
36 to K.S.A. 65-3406, and amendments thereto.

37 (k) "Generator" means any person who produces or brings into ex-  
38 istence solid waste.

39 (l) "Monitoring" means all procedures used to (1) systematically in-  
40 spect and collect data on the operational parameters of a facility, an area  
41 or a transporter, or (2) to systematically collect and analyze data on the  
42 quality of the air, groundwater, surface water or soils on or in the vicinity  
43 of a ~~solid waste processing facility~~ or solid waste disposal ~~facility~~ or area.

1 (m) "Closure" means the permanent cessation of active disposal op-  
2 erations, abandonment of the disposal area, revocation of the permit or  
3 filling with waste of all areas and volume specified in the permit and  
4 preparing the area for the long-term care.

5 (n) "Postclosure" means that period of time subsequent to closure of  
6 a solid waste disposal area when actions at the site must be performed.

7 (o) "Reclamation facility" means any location at which material con-  
8 taining a component defined as a hazardous substance pursuant to K.S.A.  
9 65-3452a and amendments thereto *or as an industrial waste pursuant to*  
10 *this section* is processed.

11 (p) "Designated city" means a city or group of cities which, through  
12 interlocal agreement with the county in which they are located, is dele-  
13 gated the responsibility for preparation, adoption or implementation of  
14 the county solid waste plan.

15 (q) "Nonhazardous special waste" means any solid waste designated  
16 by the secretary as requiring extraordinary handling in a solid waste dis-  
17 posal area.

18 (r) "Recyclables" means any ~~scrap materials that can be used as a~~  
19 ~~replacement for virgin material in manufacturing; including but not lim-~~  
20 ~~ited to ferrous metals; scrap paper products; scrap plastics and nonferrous~~  
21 ~~metals. Nonferrous metals shall be defined by rule and regulation mate-~~  
22 ~~rials that will be used or reused, or prepared for use or reuse, as an~~  
23 ~~ingredient in an industrial process to make a product, or as an effective~~  
24 ~~substitute for a commercial product. "Recyclables" includes, but is not~~  
25 ~~limited to, paper, glass, plastic and metal, but does not include yard waste.~~

26 (s) "Scrap material processing industry" means any person who ac-  
27 cepts, processes and markets recyclables.

28 (t) "Scrap material recycling and processing facility" means a fixed  
29 location that utilizes machinery and equipment for processing only re-  
30 cyclables.

31 (u) "Construction and demolition waste" means solid waste resulting  
32 from the construction, remodeling, repair and demolition of structures,  
33 roads, sidewalks and utilities; untreated wood and untreated sawdust from  
34 any source; solid waste consisting of motor vehicle window glass; and solid  
35 waste consisting of vegetation from land clearing and grubbing, utility  
36 maintenance, and seasonal or storm-related cleanup. Such wastes include,  
37 but are not limited to, bricks, concrete and other masonry materials, roof-  
38 ing materials, soil, rock, wood, wood products, wall ~~covering~~ plaster, dry-  
39 wall, plumbing fixtures, electrical wiring, electrical components contain-  
40 ing no hazardous materials ~~and nonasbestos insulation. It shall not include~~  
41 ~~asbestos waste, garbage, cardboard,~~ furniture, appliances, electrical  
42 equipment containing hazardous materials, tires, drums and containers  
43 even though such wastes resulted from construction and demolition ac-

or floor coverings

, nonasbestos insulation and construction related packaging.  
"Construction and demolition waste" shall not include waste  
material containing friable asbestos, garbage

1-3

1 tivities. Clean rubble that is mixed with other construction and demolition  
2 waste during demolition or transportation shall be considered to be con-  
3 struction and demolition waste.

4 (v) "Construction and demolition landfill" means a permitted solid  
5 waste disposal area used exclusively for the disposal on land of construc-  
6 tion and demolition wastes. This term shall not include a site that is used  
7 exclusively for the disposal of clean rubble.

8 (w) "Clean rubble" means inert uncontaminated construction and  
9 demolition waste which includes concrete and concrete products, rein-  
10 forcing steel, asphalt pavement, brick, soil or rock.

11 (x) "Industrial waste" means all solid waste resulting from manufac-  
12 turing, commercial and industrial processes which is not suitable for dis-  
13 charge to a sanitary sewer or treatment in a community sewage treatment  
14 plant. Industrial waste includes, but is not limited to, mining wastes from  
15 extraction, ~~beneficiation~~ and processing of ores and minerals unless those  
16 minerals are returned to the mine site; fly ash, bottom ash, slag and flue  
17 gas emission wastes generated primarily from the combustion of coal or  
18 other fossil fuels; cement kiln waste oil and sludges; waste oil filters; and  
19 fluorescent lamps. ~~Not all industrial wastes are suitable for disposal in~~  
20 ~~landfills.~~

21 (y) "Composting facility" means any facility that composts wastes and  
22 has a composting area larger than one-half acre.

23 Sec. 3. K.S.A. 65-3405 is hereby amended to read as follows: 65-  
24 3405. (a) Each county of this state, or a designated city, shall submit to  
25 the secretary a workable plan for the management of solid waste in such  
26 county. The plan developed by each county or designated city shall be  
27 adopted by the governing body of such county or designated city if so  
28 authorized. Two or more counties, by interlocal agreement entered into  
29 pursuant to K.S.A. 12-2901 et seq., and amendments thereto, may de-  
30 velop and adopt a regional plan in lieu of separate county plans. The  
31 secretary shall not require the submission of county or regional plans  
32 earlier than one year following completion and distribution of the state-  
33 wide solid waste management plan provided for in subsection (a)(5) of  
34 K.S.A. 65-3406, and amendments thereto. County and regional plans shall  
35 be amended from time to time as changing conditions occur by filing  
36 revisions with the secretary.

37 (b) There shall be established in each county or group of counties  
38 cooperating in a regional plan a solid waste management committee. A  
39 county by interlocal agreement may designate a city as the solid waste  
40 management planning authority for the county. Subject to the require-  
41 ments of this section, the membership of the committee, the terms of  
42 committee members, the organization of the committee and selection of  
43 its officers shall be determined by the county or counties by interlocal

or is not beneficially used in a manner which meets the definition of  
recyclables

beneficiation

dust;

New Deletion

(z) "HHW facility" means a facility established for the purpose  
of collecting, accumulating, and managing household hazardous  
waste and may also include small quantity generator waste, and/or  
agricultural pesticide waste. Household hazardous wastes are  
consumer products that when discarded exhibit hazardous  
characteristics.

(aa) "Waste-to-energy facility" means a facility which processes  
solid waste to produce energy or fuel.

(bb) "Transfer station" means any facility where solid wastes are  
transferred from one (1) vehicle to another or where solid wastes are  
stored and consolidated before being transported elsewhere, but shall  
not include collection boxes provided for public use as a part of a  
county-operated solid waste management system when these boxes  
are not equipped with compaction mechanisms or have columns  
smaller than twenty (20) cubic yards.

(cc) "Municipal solid waste landfill (MSWLF)" means a solid  
waste disposal area in which residential waste is placed for disposal.  
A MSWLF also may receive other nonhazardous wastes, including  
commercial solid waste, sludge, and industrial solid waste.

(dd) "Construction related packaging" means  
small quantities of packaging wastes that are  
generated in the construction, remodeling or repair  
of structures and related appurtenances.  
"Construction related packaging" does not include  
packaging wastes that are generated at retail  
establishments selling construction materials,  
chemical containers generated from any source or  
packaging wastes generated during maintenance of  
existing structures.

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1 agreement entered into pursuant to K.S.A. 12-2901 et seq., and amend-  
 2 ments thereto. The membership of the committee shall not exceed 30  
 3 members and shall include: (1) Representatives of incorporated cities  
 4 located in the county or counties, equal in number to five members rep-  
 5 resenting any cities of the first class, three members representing any  
 6 cities of the second class and one member representing any cities of the  
 7 third class; (2) one representative of unincorporated areas of the county  
 8 or counties; (3) representatives of the general public, citizen organiza-  
 9 tions, private industry, any private solid waste management industry op-  
 10 erating in the county or counties and any private recycling or scrap ma-  
 11 terial processing industry operating in the county or counties; (4) the  
 12 recycling coordinator, if any, of the county or counties; and (5) any other  
 13 persons deemed appropriate by the county or counties or designated city  
 14 or cities including, but not limited to, county commissioners, county en-  
 15 gineers, county health officers and county planners. Members of the com-  
 16 mittee shall be appointed by the board of county commissioners or gov-  
 17 erning body of the designated city, or by agreement of the boards of  
 18 county commissioners or governing bodies of the designated cities co-  
 19 operating in the plan. Members appointed to represent cities shall be  
 20 nominated by the mayor of the city represented, or by agreement of all  
 21 mayors of the cities represented if more than one city of the class is  
 22 located in the county or counties. If the nominee is not appointed or  
 23 rejected within 30 days after nomination, the nominee shall be deemed  
 24 appointed.

25 (c) The solid waste management committee shall: (1) Be responsible  
 26 for the preparation of the solid waste management plan of the county or  
 27 group of counties participating in the committee; (2) review the plan at  
 28 least annually and submit to the secretary or the secretary's designee any  
 29 recommendations for revision of the plan; and; (3) at least every five years  
 30 hold a public hearing on the plan and future goals of solid waste man-  
 31 agement in the county or group of counties; and (4) notify the secretary  
 32 that the committee has completed the review.

33 (d) Each county or group of counties is required to adopt and imple-  
 34 ment a solid waste management plan pursuant to this section and is re-  
 35 sponsible for continued and ongoing planning for systematic solid waste  
 36 management within the boundaries of such county or group of counties.  
 37 Each county or group of counties shall demonstrate that its planning  
 38 process includes regular communication with other counties or groups of  
 39 counties and reflects consideration of planning and solid waste manage-  
 40 ment practices that are ongoing in the state. The solid waste management  
 41 plan of each county or group of counties or designated city or cities shall  
 42 provide for a solid waste management system plan to serve the residents  
 43 of all townships and cities all generators of solid waste within the county

or public hearing

1 or group of counties.

2 (e) Every plan shall:

3 (1) Delineate areas within the jurisdiction of the political subdivision  
4 or subdivisions where waste management systems are in existence and  
5 areas where the solid waste management systems are planned to be avail-  
6 able within a 10-year period.

7 (2) Reasonably Conform to the rules and regulations, standards and  
8 procedures adopted by the secretary for implementation of this act.

9 (3) Provide for the orderly extension of solid waste management sys-  
10 tems in a manner consistent with the needs and plans of the whole area,  
11 and in a manner which will not contribute to pollution of the waters or  
12 air of the state, nor constitute a public nuisance and shall otherwise pro-  
13 vide for the safe and sanitary disposal of solid waste.

14 (4) Take into consideration Conform with existing comprehensive  
15 plans, population trend projections, engineering and economics so as to  
16 delineate with practicable precision those portions of the area which may  
17 reasonably be expected to be served by a solid waste management system  
18 within the next 10 years.

19 (5) Take into consideration existing acts and regulations affecting the  
20 development, use and protection of air, water or land resources.

21 (6) Establish a time schedule and revenue schedule for the devel-  
22 opment, construction and operation of the planned solid waste manage-  
23 ment systems, together with the estimated cost thereof.

24 (7) Describe the elements of the plan which will require public ed-  
25 ucation and include a plan for delivering such education.

26 (8) Include such other reasonable information as the secretary re-  
27 quires.

28 (9) Establish a schedule for the reduction of waste volumes taking in  
29 consideration the following: (A) Source reduction; (B) reuse, recycling,  
30 composting; and (C) land disposal.

31 (10) Take into consideration the development of specific manage-  
32 ment programs for certain wastes, including but not limited to lead acid  
33 batteries, household hazardous wastes, small quantities of hazardous  
34 waste, white goods containing chlorofluorocarbons, pesticides and pesti-  
35 cide containers, motor oil and yard waste.

36 ~~(11) Each county or group of counties shall demonstrate that the~~  
37 ~~planning process includes regular communication with other counties or~~  
38 ~~groups of counties and reflects consideration of planning and solid waste~~  
39 ~~management practices that are ongoing in the state.~~

\_\_\_\_\_ New Deletion

40 (f) The plan and any revision of the plan shall be reviewed by appro-  
41 priate official planning agencies within the area covered by the plan for  
42 consistency with programs of comprehensive planning for the area. All  
43 such reviews shall be transmitted to the secretary with the proposed plan

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1 or revision.

2 (g) The secretary is hereby authorized to approve or disapprove plans  
3 for solid waste management systems, or revisions of such plans, submitted  
4 in accordance with this act. If a plan or revision is disapproved, the sec-  
5 retary shall furnish any and all reasons for such disapproval, and the  
6 county or group of counties whose plan or revision is disapproved may  
7 request a hearing before the secretary in accordance with K.S.A. 65-3412,  
8 and amendments thereto.

9 (h) The secretary is authorized to provide technical assistance to  
10 counties or designated cities in coordinating plans for solid waste man-  
11 agement systems required by this act, including revisions of such plans.

12 (i) The secretary may recommend that two or more counties adopt,  
13 submit and implement a regional plan rather than separate county plans.

14 (j) The secretary may institute appropriate action to compel submis-  
15 sion of plans or plan revisions in accordance with this act and the rules  
16 and regulations, standards and procedures of the secretary.

17 (k) Upon approval of the secretary of a solid waste management plan,  
18 the county or designated city is authorized and directed to implement the  
19 provisions contained in the plan.

20 (l) A county cooperating in a regional solid waste management plan  
21 may withdraw from such plan only:

22 (1) Upon approval by the secretary of new or revised solid waste  
23 management plans for all counties cooperating in the old plan; and

24 (2) In accordance with the terms of the interlocal agreement adopting  
25 the old plan or upon revision or termination of such agreement to permit  
26 withdrawal; and

27 (2) upon a determination by the secretary that the existing regional  
28 solid waste management plan will not be significantly affected by the  
29 withdrawal.

30 Sec. 4. K.S.A. 1996 Supp. 65-3407 is hereby amended to read as  
31 follows: 65-3407. (a) ~~It shall be unlawful for any person to~~ ~~no person shall~~  
32 construct, alter or operate a solid waste processing facility or a solid waste  
33 disposal area of a solid waste management system, except for clean rubble  
34 disposal sites, without first obtaining a permit ~~or other approval~~ from the  
35 secretary.

Except as otherwise provided by section 5, no

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36 (b) Every person desiring to obtain a permit to construct, alter or  
37 operate a solid waste storage, treatment or processing facility or disposal  
38 area shall make application for such a permit on forms provided for such  
39 purpose by the rules and regulations of the secretary and shall provide  
40 the secretary with such information as necessary to show that the facility  
41 or area will comply with the purpose of this act. Upon receipt of any  
42 application and payment of the application fee, the secretary, with advice  
43 and counsel from the local health authorities and the county commission,

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1 shall make an investigation of the proposed solid waste processing facility  
2 or disposal area and determine whether it complies with the provisions  
3 of this act and any rules and regulations and standards adopted there-  
4 under. The secretary also may consider the need for the facility or area  
5 in conjunction with the county or regional solid waste management plan.  
6 ~~When~~ If the investigation reveals that the facility or area ~~does conform~~  
7 conforms with the provisions of the act and the rules and regulations and  
8 standards adopted thereunder, the secretary shall approve the application  
9 and shall issue a permit for the operation of each solid waste processing  
10 or disposal facility or area set forth in the application. ~~In the event that~~  
11 If the facility or area fails to meet the rules and regulations and standards  
12 required by this act the secretary shall issue a report to the applicant  
13 stating the deficiencies in the application. The secretary may issue tem-  
14 porary permits conditioned upon corrections of construction methods be-  
15 ing completed and implemented.

16 (c) Before reviewing any application for permit, the secretary shall  
17 conduct a background investigation of the applicant. The secretary shall  
18 consider the financial, technical and management capabilities of the ap-  
19 plicant as conditions for issuance of a permit. The secretary may reject  
20 the application prior to conducting an investigation into the merits of the  
21 application if the secretary finds that:

22 (1) The applicant currently holds, or in the past has held, a permit  
23 under this section and while the applicant held a permit under this section  
24 the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and  
25 amendments thereto; or

26 (2) the applicant previously held a permit under this section and that  
27 permit was revoked by the secretary; or

28 (3) the applicant failed or continues to fail to comply with any of the  
29 provisions of the air, water or waste statutes, including rules and regula-  
30 tions issued thereunder, relating to environmental protection or to the  
31 protection of public health in this or any other state or the federal gov-  
32 ernment of the United States, or any condition of any permit or license  
33 issued by the secretary; or if the secretary finds that the applicant has  
34 shown a lack of ability or intention to comply with any provision of any  
35 law referred to in this subsection or any rule and regulation or order or  
36 permit issued pursuant to any such law as indicated by past or continuing  
37 violations; or

38 (4) the applicant is a corporation and any principal, shareholder, or  
39 other person capable of exercising total or partial control of such corpo-  
40 ration could be determined ineligible to receive a permit pursuant to  
41 subsection (c)(1), (2) or (3) above.

42 (d) Before reviewing any application for a permit, the secretary may  
43 request that the attorney general perform a comprehensive criminal back-



1 ground investigation of the applicant; or in the case of a corporate appli-  
2 cant, any principal, shareholder or other person capable of exercising total  
3 or partial control of the corporation. The secretary may reject the appli-  
4 cation prior to conducting an investigation into the merits of the appli-  
5 cation if the secretary finds that serious criminal violations have been  
6 committed by the applicant or a principal of the corporation.

7 (e) The fees for a solid waste processing or disposal permit shall be  
8 established by rules and regulations adopted by the secretary. The fee for  
9 the application and original permit shall not exceed \$5,000. The annual  
10 permit renewal fee shall not exceed \$2,000. No refund shall be made in  
11 case of revocation. In establishing fees for a construction and demolition  
12 landfill, the secretary shall adopt a differential fee schedule based upon  
13 the volume of construction and demolition waste to be disposed of at  
14 such landfill. All fees shall be deposited in the state treasury and credited  
15 to the solid waste management fund. A city, county, other political sub-  
16 division or state agency shall be exempt from payment of the fee but shall  
17 meet all other provisions of this act.

18 (f) Plans, designs and relevant data for the construction of solid waste  
19 processing facilities and disposal sites shall be prepared by a professional  
20 engineer licensed to practice in Kansas and shall be submitted to the  
21 department for approval prior to the construction, alteration or operation  
22 of such facility or area. In adopting rules and regulations, the secretary  
23 may specify sites, areas or facilities where the environmental impact is  
24 minimal and may waive such preparation requirements provided that a  
25 review of such plans is conducted by a professional engineer licensed to  
26 practice in Kansas.

27 (g) Each permit granted by the secretary, as provided in this act, shall  
28 be subject to such conditions as the secretary deems necessary to protect  
29 human health and the environment and to conserve the sites. Such con-  
30 ditions shall include approval by the secretary of the types and quantities  
31 of solid waste allowable for processing or disposal at the permitted loca-  
32 tion.

33 (h) As a condition of granting a permit to operate any processing  
34 facility or disposal area for solid waste, the secretary shall require the  
35 permittee to:

36 (1) Provide a trust fund, surety bond, cash bond, a secured trust fund,  
37 irrevocable letter of credit or insurance to pay costs of closure and po-  
38 stelosure cleanup, or shall require the permittee to meet a financial test  
39 established by the secretary for closure and postclosure, which test may  
40 be met by a permittee's ad valorem taxing power. In addition, the see-  
41 cretary shall require the permittee to provide liability insurance, including  
42 coverage against sudden and nonsudden occurrences, or any combination  
43 thereof, in such amount as determined necessary by the secretary to in-

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1 sure the financial responsibility of the permittee for any: (1) Operational  
 2 activities contemplated by the act, rules and regulations adopted pursuant  
 3 thereto, and the permit; and (2) liability incurred in the operation of the  
 4 facility or area and to insure that, upon abandonment, cessation or inter-  
 5 ruption of the operation of the facility or area, all appropriate measures  
 6 are taken to prevent present or future damage to human health and the  
 7 environment surety bond guaranteeing payment, irrevocable letter of  
 8 credit or insurance policy, to pay the costs of closure and postclosure care;  
 9 pass a financial test or obtain a financial guarantee from a related entity,  
 10 to guarantee the future availability of funds to pay the costs of closure  
 11 and postclosure care. The secretary shall prescribe the methods to be used  
 12 by a permittee to demonstrate sufficient financial strength to become el-  
 13 igible to use a financial test or a financial guarantee procedure in lieu of  
 14 providing the financial instruments listed in (1) above. Solid waste proc-  
 15 essing facilities or disposal areas, except municipal solid waste landfills,  
 16 may also demonstrate financial assurance for closure and postclosure care  
 17 costs by use of ad valorem taxing power. In addition, the secretary shall  
 18 require the permittee to provide liability insurance coverage during the  
 19 period that the facility or area is active, and during the term of the facility  
 20 or area is subject to postclosure care, in such amount as determined by  
 21 the secretary to insure the financial responsibility of the permittee for  
 22 accidental occurrences at the site of the facility or area. Any such liability  
 23 insurance as may be required pursuant to this subsection or pursuant to  
 24 the rules and regulations of the secretary shall be issued by an insurance  
 25 company authorized to do business in Kansas or by a licensed insurance  
 26 agent operating under authority of K.S.A. 40-246b, and amendments  
 27 thereto, and shall be subject to the insurer's policy provisions filed with  
 28 and approved by the commissioner of insurance pursuant to K.S.A. 40-  
 29 216, and amendments thereto, except as authorized by K.S.A. 40-246b,  
 30 and amendments thereto. Nothing contained in this subsection shall be  
 31 deemed to apply to any state agency or department or agency of the  
 32 federal government.

33 (i) Permits granted by the secretary, as provided in this act: (1) Shall  
 34 not be transferable; and (2) shall be revocable or subject to suspension  
 35 whenever the secretary shall determine that the solid waste processing  
 36 or disposal facility or area is, or has been constructed or operated in  
 37 violation of this act or the rules and regulations or standards adopted  
 38 pursuant to the act, or is creating or threatens to create a hazard to per-  
 39 sons or property in the area or to the environment, or is creating or  
 40 threatens to create a public nuisance, or upon the failure to make payment  
 41 of any fee required under this act. The secretary also may revoke, suspend  
 42 or refuse to issue a permit when the secretary determines that past or  
 43 continuing violations of the provisions of subsection (c)(3) of K.S.A. 65-

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1 3407, and amendments thereto, have been committed by a permittee, or  
2 any principal, shareholder or other person capable of exercising partial  
3 or total control over a permittee.

4 (j) In case any permit is denied, suspended or revoked the person,  
5 city, county or other political subdivision or state agency may request a  
6 hearing before the secretary in accordance with K.S.A. 65-3412, and  
7 amendments thereto.

8 (k) (1) No permit to construct or operate a solid waste disposal area  
9 shall be issued on or after the effective date of this act if such area is  
10 located within 1/2 mile of a navigable stream used for interstate commerce  
11 or within one mile of an intake point for any public surface water supply  
12 system.

13 (2) Any permit, issued before the effective date of this act, to con-  
14 struct or operate a solid waste disposal area is hereby declared void if  
15 such area is not yet in operation and is located within 1/2 mile of a navi-  
16 gable stream used for interstate commerce or within one mile of an intake  
17 point for any public surface water supply system.

18 (3) The provisions of this subsection shall not be construed to pro-  
19 hibit: (A) Issuance of a permit for lateral expansion onto land contiguous  
20 to a permitted solid waste disposal area in operation on the effective date  
21 of this act; (B) issuance of a permit for a solid waste disposal area for  
22 disposal of a solid waste by-product produced on-site; (C) renewal of an  
23 existing permit for a solid waste area in operation on the effective date  
24 of this act; or (D) activities which are regulated under K.S.A. 65-163  
25 through 65-165 or 65-171d, and amendments thereto.

26 ~~Sec. 5. K.S.A. 65-3414 is hereby amended to read as follows: 65-  
27 3414. The county or district attorney of every county is hereby authorized  
28 and directed to file appropriate actions for enforcement of this act upon  
29 request of the secretary. The county or district attorney filing the action  
30 shall notify the secretary before filing the action.~~

31 Sec. 6. K.S.A. 1996 Supp. 65-3415 is hereby amended to read as  
32 follows: 65-3415. (a) The secretary is authorized to assist counties, des-  
33 ignated cities or regional solid waste management entities by administer-  
34 ing grants to pay up to 60% of the costs of preparing and revising official  
35 plans for solid waste management systems in accordance with the require-  
36 ments of this act and the rules and regulations and standards adopted  
37 pursuant to this act, and for carrying out related studies, surveys, inves-  
38 tigations, inquiries, research and analyses.

39 (b) ~~The secretary is authorized to develop and administer a base grant  
40 program to assist counties, designated cities or regional solid waste man-  
41 agement entities that are part of an interlocal agreement entered into  
42 pursuant to K.S.A. 18-2001 et seq. and amendments thereto or other  
43 applicable statutes. Projects eligible for funding under the base grant~~

insert sections 5 and 6, attached, and renumber remaining sections accordingly

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New Sec. 5.

(a)  
The secretary may authorize persons to carry out the following activities without a solid waste permit issued pursuant to K.S.A. 65-3407:

(1) Dispose of solid waste at a site where the waste has been accumulated or illegally dumped. Disposal of some or all such waste must be identified as an integral part of a site cleanup and closure plan submitted to the department by the person responsible for the site. No additional waste may be brought to the site following the department's approval of the site cleanup and closure plan.

(2) Perform temporary projects to remediate soils contaminated by organic constituents capable of being reduced in concentration by biodegradation processes and/or volatilization. Soil to be treated may be generated on-site or off-site. A project operating plan and a site closure plan must be submitted to the department as part of the project approval process.

(b) The secretary shall consider the following factors when determining eligibility for an exemption to the solid waste permitting requirements under this section:

(1) Potential impacts to human health and the environment;

(2) Urgency to perform necessary work compared to typical permitting timeframes;

(3) Costs and impacts of alternative waste handling methods;

(4) Local land use restrictions;

(5) Financial resources of responsible parties;

(6) Technical feasibility of proposed project;

(7) Technical capabilities of persons performing proposed work;

(c) The secretary may seek counsel from local government officials prior to exempting activities from solid waste permitting requirements under this section.

Sec. 6. K.S.A. 65-3409 is hereby amended to read as follows: 65-3409. (a) It shall be unlawful for any person to:

(1) Dispose of any solid waste by open dumping, but this provision shall not prohibit: (A) The use of solid wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not create a public nuisance or adversely affect the public health; or (B) an individual from dumping or depositing solid wastes resulting from such individual's own residential or agricultural activities onto the surface of land owned or leased by such individual when such wastes do not create a public nuisance or adversely affect the public health or the environment.

(2) Except as otherwise provided by section 5, construct, alter or operate a solid waste storage, processing or disposal facility or area of a solid waste management system without a permit ~~or other approval from the secretary~~ or be in violation of the rules and regulations, standards or orders of the secretary.

(3) Violate any condition of any permit issued under K.S.A. 65-3407, and amendments thereto.

(4) Conduct any solid waste burning operations in violation of the provisions of the Kansas air quality act.

(5) Store, collect, transport, process, treat or dispose of solid waste contrary to the rules and regulations, standards or orders of the secretary or in such a manner as to create a public nuisance.

(6) Refuse or hinder entry, inspection, sampling and the examination or copying of records related to the purposes of this act by an agent or employee of the secretary after such agent or employee identifies and gives notice of their purpose.

(7) Violate subsection (b) of K.S.A. 65-3424a, subsection (c) of K.S.A. 65-3424b or K.S.A. 65-3424i, and amendments thereto.

(b) No person shall be held responsible for failure to secure a permit under the provisions of this section for the dumping or depositing of any solid waste on land owned or leased by such person without such person's expressed or implied consent, permission or knowledge.

(c) Any person who violates any provision of subsection (a) shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished as provided by law.



1 program include:

- 2 (1) Public education and training;
- 3 (2) solid waste management planning expenses;
- 4 (3) worker training;
- 5 (4) local or regional solid waste reduction, reuse and recycling pro-
- 6 jects;
- 7 (5) local or regional household hazardous waste collection programs;
- 8 (6) closure and postclosure monitoring of old solid waste disposal
- 9 areas;
- 10 (7) construction of solid waste transfer stations;
- 11 (8) salaries for personnel conducting eligible base grant activities;
- 12 (9) consulting services for eligible base grant activities; and
- 13 (10) capital and equipment purchases for eligible base grant activities.

14 If a grantee is an individual county or designated city, the grant may  
 15 pay up to 60% of eligible project costs incurred in a fiscal year. If a grantee  
 16 is a regional entity, the grant may pay up to 75% of eligible project costs  
 17 incurred in the fiscal year beginning July 1, 1995, and up to 60% of eligible  
 18 project costs incurred in a subsequent fiscal year. The remainder of eli-  
 19 gible project costs shall be contributed by the county, designated city or  
 20 regional entity in either in-kind or monetary form.

21 (e) The secretary is authorized to assist counties, designated cities,  
 22 municipalities, regional solid waste management entities that are part of  
 23 an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq.  
 24 and amendments thereto or other applicable statutes or private entities,  
 25 by administering competitive grants that pay up to 75% of eligible costs  
 26 incurred by such a county, city, regional entity or private entity to imple-  
 27 ment those aspects of pursuant to an approved solid waste management  
 28 plans plan, for any project related to the development and operation of  
 29 recycling, source reduction, waste minimization and solid waste manage-  
 30 ment public education programs. To be eligible for competitive grants  
 31 awarded pursuant to this section, a county, designated city, regional en-  
 32 tity or private entity must be implementing a project which is part of an  
 33 approved solid waste management plan or implementing a project with

approved by the secretary

34 statewide significance as determined by the secretary with the advice and  
 35 counsel of the solid waste grants advisory committee.  
 36 (d) (c) The secretary is authorized to assist counties, cities or regional  
 37 solid waste management entities that are part of an interlocal agreement  
 38 entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto  
 39 or other applicable statutes, by administering grants that pay up to 60%  
 40 of costs incurred by such a county, city or regional entity for the devel-  
 41 opment and first year of operation of temporary and permanent house-  
 42 hold hazardous waste programs operated in accordance with K.S.A. 65-  
 43 3460 and amendments thereto.

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1 (e)(d) The secretary is authorized to assist counties, cities or regional  
2 solid waste management entities that are part of an interlocal agreement  
3 entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto  
4 or other applicable statutes, by administering grants that pay up to 75%  
5 of costs incurred by such a county, city or regional entity to develop and  
6 implement temporary agricultural pesticide collection programs.

7 (f)(e) The secretary is authorized to assist counties, cities or regional  
8 solid waste management entities that are part of an interlocal agreement  
9 entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto  
10 or other applicable statutes, by administering grants that pay up to 75%  
11 of costs incurred by such a county, city, or regional entity to develop and  
12 implement exempt small quantity hazardous waste generator waste col-  
13 lection programs, subject to the following:

14 (1) The aggregate amount of all such grants made for a fiscal year  
15 shall not exceed \$150,000; and

16 (2) no grantee shall receive any such grants in an aggregate amount  
17 exceeding \$50,000.

18 (g)(1) To be eligible for base grants awarded pursuant to this sec-  
19 tion, the counties, cities or regional solid waste management entities must  
20 submit to the department satisfactory proof that the county, city or re-  
21 gional entity has published a request for proposals for the project to be  
22 funded by the grant and has allowed sufficient time for notice and sub-  
23 mission of proposals. The city, county or regional solid waste management  
24 entity shall publish the request for proposals in the Kansas register and:  
25 (A) in the official county newspaper as defined in K.S.A. 64-101, and  
26 amendments thereto; if the applicant is a city or county; or (B) in the  
27 official county newspaper as defined in K.S.A. 64-101, and amendments  
28 thereto; of the county where the landfill is located if the applicant is a  
29 regional solid waste management entity.

30 (2) To be eligible for base grants awarded pursuant to this section,  
31 the counties, cities or regional solid waste management entities must be  
32 participating in a solid waste management planning process or imple-  
33 menting an approved solid waste management plan. To be eligible for  
34 competitive grants awarded pursuant to this section, the counties, cities  
35 or regional solid waste management entities must be implementing an  
36 approved solid waste management plan. Indications of planning process  
37 participation include the formation of a county or regional planning com-  
38 mittee; regular solid waste planning committee meetings; amendment of  
39 existing solid waste management plans and development of new compre-  
40 hensive solid waste management plans.

41 (3)(f)(1) Failure to pay solid waste tonnage fees on wastes disposed  
42 in Kansas pursuant to K.S.A. 65-3415b and amendments thereto, shall  
43 bar receipt of any grant funds until fees and related penalties have been

1 paid.  
2 (4)(2) The secretary may establish additional minimum requirements  
3 for grant eligibility.

4 (h)(g) The secretary shall prepare and deliver to the legislature on  
5 or before January 2, 1998, a report which summarizes all solid waste  
6 management grant program activities, solid waste management fund rev-  
7 enues and recommendations regarding continuation of solid waste man-  
8 agement programs.

9 (i)(h) All grants shall be made in accordance with appropriations acts  
10 from the state general fund or from moneys in the solid waste manage-  
11 ment fund created by K.S.A. 65-3415a and amendments thereto.

12 (i) *Local match requirements for all solid waste grant programs may*  
13 *be met by in-kind contributions from counties, designated cities or re-*  
14 *gional solid waste management entities.*

15 Sec. 7. K.S.A. 1996 Supp. 65-3415a is hereby amended to read as  
16 follows: 65-3415a. (a) There is hereby created in the state treasury the  
17 solid waste management fund.

18 (b) The secretary shall remit at least monthly to the state treasurer  
19 all moneys collected or received by the secretary from the following  
20 sources:

21 (1) Solid waste tonnage fees imposed pursuant to K.S.A. 65-3415b,  
22 and amendments thereto;

23 (2) application and annual fees provided for by K.S.A. 65-3407, and  
24 amendments thereto;

25 (3) gifts, grants, reimbursements or appropriations intended to be  
26 used for the purposes of the fund, but excluding federal grants and co-  
27 operative agreements; and

28 (4) any other moneys provided by law.

29 Upon receipt thereof, the state treasurer shall deposit in the state treas-  
30 ury any amount remitted pursuant to this subsection and shall credit the  
31 entire amount to the solid waste management fund.

32 (c) Moneys in the solid waste management fund shall be expended  
33 for the following purposes:

34 (1) Grants to counties or groups of counties or designated city or  
35 cities pursuant to K.S.A. 65-3415, and amendments thereto; ~~but the total~~  
36 ~~amount of expenditures from the fund in the fiscal year beginning July~~  
37 ~~1, 1995; for grants pursuant to subsection (b) of K.S.A. 65-3415 and~~  
38 ~~amendments thereto shall not exceed an amount equal to 20% of all~~  
39 ~~amounts credited to the fund during the preceding fiscal year;~~

40 (2) monitoring and investigating solid waste management plans of  
41 counties and groups of counties;

42 (3) payment of extraordinary costs related to monitoring permitted  
43 solid waste processing facilities and disposal areas, both during operation

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1 and after closure;

2 (4) payment of costs of postclosure cleanup of permitted solid waste  
3 disposal areas which, as a result of a postclosure occurrence, pose a sub-  
4 stantial hazard to public health or safety or to the environment;

5 (5) emergency payment for costs of cleanup of solid waste disposal  
6 areas which were closed before the effective date of this act and which  
7 pose a substantial risk to the public health or safety or to the environment,  
8 but the total amount of such emergency payments during a fiscal year  
9 shall not exceed an amount equal to 50% of all amounts credited to the  
10 fund during the preceding fiscal year;

11 (6) payment for emergency action by the secretary as necessary or  
12 appropriate to assure that the public health or safety is not threatened  
13 whenever there is a release from a solid waste processing facility or a solid  
14 waste disposal area;

15 (7) payment for corrective action by the secretary where the release  
16 presents actual or potential threat to human health or the environment,  
17 if the owner or operator has not been identified or is unable or unwilling  
18 to perform corrective action;

19 (8) payment of the administrative, technical and legal costs incurred  
20 by the secretary in carrying out the provisions of K.S.A. 65-3401 through  
21 65-3423, and amendments thereto, including the cost of any additional  
22 employees or increased general operating costs of the department attrib-  
23 utable therefor;

24 (9) development of educational materials and programs for informing  
25 the public about solid waste issues;

26 (10) direct payments to reimburse counties or cities for household,  
27 farmer or exempt small quantity generator hazardous wastes generated  
28 from persons not served by existing household hazardous waste programs  
29 or direct payment of contractors for the disposal costs of such wastes; and

30 (11) payment of costs associated with the solid waste grants advisory  
31 board pursuant to K.S.A. 1996 Supp. 65-3426, and amendments thereto.

32 (d) If the secretary determines that expenditures from the solid waste  
33 management fund are necessary, the person or persons responsible for  
34 the operation or long-term care of a disposal area whose failure to comply  
35 with this act, rules and regulations promulgated thereunder, or permit  
36 conditions resulted in such determination, shall be responsible for the  
37 repayment of those amounts expended. The secretary shall take appro-  
38 priate action to enforce this provision against any responsible person. The  
39 secretary shall remit to the state treasurer any amounts recovered and  
40 collected in such action. The state treasurer shall deposit all such amounts  
41 in the state treasury and credit the same to the solid waste management  
42 fund.

43 (e) Expenditures from the solid waste management fund shall be

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1 made in accordance with appropriations acts upon warrants of the direc-  
 2 tor of accounts and reports issued pursuant to vouchers approved by the  
 3 secretary or a person designated by the secretary.

4 (f) On or before the 10th of each month, the director of accounts and  
 5 reports shall transfer from the state general fund to the solid waste man-  
 6 agement fund interest earnings based on:

7 (1) The average daily balance of moneys in the solid waste manage-  
 8 ment fund for the preceding month; and

9 (2) the net earnings rate of the pooled money investment portfolio  
 10 for the preceding month.

11 (g) The solid waste management fund shall be used for the purposes  
 12 set forth in this act and for no other governmental purposes. It is the  
 13 intent of the legislature that the fund shall remain intact and inviolate for  
 14 the purposes set forth in this act, and moneys in the fund shall not be  
 15 subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and  
 16 amendments thereto.

17 Sec. 8. K.S.A. 1996 Supp. 65-3415b is hereby amended to read as  
 18 follows: 65-3415b. (a) Except for construction and demolition landfills  
 19 and industrial solid waste landfills, there is hereby imposed a state solid  
 20 waste tonnage fee of \$1.00 for each ton or equivalent volume of solid  
 21 waste disposed of at any solid waste disposal area in this state.

22 (b) There is hereby imposed a state solid waste tonnage fee of \$1.00  
 23 for each ton or equivalent volume of construction and demolition waste  
 24 disposed of at any construction and demolition landfill and solid waste  
 25 disposed at any industrial solid waste landfill, other than waste enumer-  
 26 ated in subsection (c).

27 (c) The fees imposed by this section shall not apply to:

28 (1) Any waste tire, as defined by subsection (j) of K.S.A. 65-3424, and  
 29 amendments thereto, disposed in or at a permitted solid waste disposal  
 30 area;

31 (2) any of the following wastes when disposed of at a monofill per-  
 32 mitted by the department:

33 (A) Sludges from public drinking water supply treatment plants;

34 (B) cement kiln dust from the manufacture of portland and masonry  
 35 cement;

36 (C) flue gas desulfurization sludge, fly ash and bottom ash from coal-  
 37 fired electric generating facilities; and

38 (D) foundry sand;

39 (3) clean rubble;

40 (4) solid waste solely consisting of vegetation from land clearing and  
 41 grubbing, utility maintenance and seasonal or storm-related cleanup but  
 42 such exception shall not apply to yard waste;

43 ~~(5) construction and demolition waste generated before January 1,~~

\_\_\_\_\_ New Deletion

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1 ~~1996, from federal facilities as provided for under contract with the U.S.~~  
2 ~~army corps of engineers before the effective date of this act, and.~~

3 (6) construction and demolition waste disposed of by the state and of  
4 Kansas, or by any city or county in the state of Kansas, or by any person  
5 on their behalf thereof.

6 (d) The operator of a solid waste disposal area shall pay the fee im-  
7 posed by this section.

8 (e) The secretary of health and environment shall administer, enforce  
9 and collect the fee imposed by this section. Except as otherwise provided  
10 by subsections (a) and (b), all laws and rules and regulations of the sec-  
11 retary of revenue relating to the administration, enforcement and collec-  
12 tion of the retailers' sales tax shall apply to such fee insofar as they can  
13 be made applicable, and the secretary of health and environment shall  
14 adopt such additional rules and regulations as necessary for the efficient  
15 and effective administration, enforcement and collection thereof.

16 (f) The secretary of health and environment shall remit daily to the  
17 state treasurer all moneys collected from fees imposed pursuant to sub-  
18 sections (a) and (b). Upon receipt thereof, the state treasurer shall deposit  
19 the entire amount in the state treasury and credit it to the solid waste  
20 management fund created by K.S.A. 65-3415a and amendments thereto.

21 Sec. 9. K.S.A. 65-3415e is hereby amended to read as follows: 65-  
22 3415e. (a) ~~Except as provided by subsection (e); on and after July 1, 1993;~~  
23 ~~any county or group of counties operating a solid waste disposal area shall~~  
24 ~~levy a special charge on solid waste generated outside such county or~~  
25 ~~counties and deposited at such disposal area. Such charge may be higher~~  
26 ~~than charges levied on solid waste generated within the county or coun-~~  
27 ~~ties. The revenue from such charge may be used by the county or group~~  
28 ~~of counties for the development and implementation of its solid waste~~  
29 ~~management plan and the costs of closure and postclosure cleanup of~~  
30 ~~solid waste disposal areas within the county or group of counties.~~

31 ~~(b)~~ Except as provided by subsection (e); on and after July 1, 1993  
32 (b), any county or group of counties operating a solid waste disposal area  
33 shall levy a charge on any solid waste, whether generated within or outside  
34 such county or counties, that is deposited at any privately owned solid  
35 waste disposal area located in such county or counties. The revenue from  
36 such charge may be used by the county or group of counties for the  
37 development and implementation of its solid waste management plan and  
38 the costs of closure and postclosure cleanup of solid waste disposal areas  
39 within the county or group of counties.

40 (e) (b) The board of county commissioners of any county by unani-  
41 mous vote may determine not to impose the fee provided for by subsec-  
42 tion (a) or (b).

43 (d) (c) Any charges imposed by counties under this section shall be

\_\_\_\_\_ New Deletion

8-18

1 in addition to any other fees, charges, franchise payments or taxes im-  
2 posed for solid waste deposited at a solid waste disposal area. The sec-  
3 retary of health and environment shall make available to counties infor-  
4 mation as to the amounts paid by the operators of solid waste disposal  
5 areas under the provisions of K.S.A. 65-3415b and amendments thereto.

6 Sec. 10. K.S.A. 1996 Supp. 65-3415f is hereby amended to read as  
7 follows: 65-3415f. (a) As used in this section, terms have the meanings  
8 provided by K.S.A. 65-3402 and amendments thereto.

9 (b) In addition to any other fee provided by law, the board of county  
10 commissioners of any county may impose, by resolution adopted pursuant  
11 to this section, a solid waste tonnage fee for each ton or equivalent volume  
12 of solid waste disposed of at any solid waste disposal area operated by  
13 such county. Such fees shall not apply to:

14 (1) Any waste tire, as defined by K.S.A. 65-3424 and amendments  
15 thereto, disposed in or at a permitted solid waste disposal area;

16 (2) any of the following wastes when disposed of at a monofill per-  
17 mitted by the department: (A) Sludges from public drinking water supply  
18 treatment plants; (B) cement kiln dust from the manufacture of portland  
19 and masonry cement; (C) flue gas desulfurization sludge, fly ash and bot-  
20 tom ash from coal-fired electric generating facilities; and (D) foundry  
21 sand;

22 (3) clean rubble;

23 (4) solid waste solely consisting of vegetation from land clearing and  
24 grubbing, utility maintenance and seasonal or storm-related cleanup but  
25 such exception shall not apply to yard waste;

26 (5) construction and demolition waste generated before January 1,  
27 1996, from federal facilities as provided for under contract with the U.S.  
28 army corps of engineers before the effective date of this act; and

29 (6) construction and demolition waste disposed of by the state of *Kan-*  
30 *sas* or by any city or county *in the state of Kansas*, or by any person on  
31 behalf of the state or any city or county thereof.

32 (c) Fees imposed pursuant to this section shall be collected by the  
33 county and deposited in a special fund in the county treasury. All interest  
34 earned on moneys in the fund shall also be deposited in the fund. If there  
35 is more than one solid waste disposal area in the county where fees are  
36 imposed pursuant to this section, a separate fund for each such disposal  
37 area shall be maintained from the fees collected from such disposal area.  
38 Money in the fund shall be used only for payment of costs of closure,  
39 postclosure actions and contamination remediation associated with the  
40 solid waste disposal area until the secretary determines that all require-  
41 ments for closure, postclosure actions and contamination remediation as-  
42 sociated with the disposal area have been met.

43 (d) The board of county commissioners, by resolution, may modify,

1 discontinue or reinstate the fee authorized by this section.

2 (e) Transfer or expenditure of moneys in a special fund provided for  
3 by this section for any purpose other than authorized by this section is a  
4 class A nonperson misdemeanor and constitutes grounds for forfeiture of  
5 public office.

6 (f) If two or more counties jointly operate a solid waste disposal area,  
7 the fee provided for by this section on solid waste disposed of at such  
8 disposal area may be imposed, modified, discontinued or reinstated only  
9 if a majority of the board of county commissioners of each county jointly  
10 operating the disposal area votes to impose, modify, discontinue or re-  
11 instate the fee.

12 Sec. 11. K.S.A. 65-3401, 65-3405, 65-3414, 65-3415c, 65-3415e and  
13 65-3422 and K.S.A. 1996 Supp. 65-3402, 65-3407, ~~65-3415, 65-3415a, 65-~~ → 65-3409,  
14 3415b and 65-3415f are hereby repealed.

15 Sec. 12. This act shall take effect and be in force from and after its  
16 publication in the statute book.

1-20



TOPEKA

HOUSE OF  
REPRESENTATIVES

February 20, 1997

Chairman Lloyd and members of the committee:

House Bill 2368 is introduced today as a response to a number of problems that the City of Fort Scott was experiencing in it's discussions with the Dept. of Health and Environment with respect to it's permitting process on a waste treatment plant that is barely 10 years old. I will spare you all of the details as I know that our City Manager Richard Nienstedt and many of the other conferees here will more fully address them in further testimony.

I spent an entire week looking at the Fort Scott facility and asking questions about the proposed "solutions" that KDHE was proposing, including building an entirely new 5 or 6 million dollar waste treatment plant. Finally, I asked for and was granted a personal meeting with KDHE back in 1995 for the purpose of understanding the basis for why we have the stream designation of "contact recreation" on the Marmaton River, what the criteria was that was used to place the designation, and finally, what reasonable science existed to logically explain why each of these designations was appropriate and properly addressed the protection of the water supply and the fiscal impact to the public. KDHE has yet to fully respond to my concerns on these issues.

As many of you may know, House Resolution 6013 was passed by the House in 1996 and recognized the "...estimated \$63 million in increased capital costs by approximately 60 cities in the state, not including operating and consultant study costs,..." and further asking the Dept. to hold public hearings across the state and to explain the following to various governing bodies;

1. "...the technical and scientific basis for the designated uses of water bodies affected by municipal point source discharges..."
  2. "...the technical and scientific basis for the effluent limits that the department has established or proposed to be established for municipal point source discharges..."
- Finally, 6013 requested that the secretary review and report to the legislature, on or before the first day of the 1998 regular session, regarding the designated uses for bodies of water in the state and justifications for the designations..."

I attended the meeting that was held in Fort Scott along with many local government officials, and frankly, I was disappointed to hear very little of the technical and scientific basis for the departments' regulatory decisions. Further, this bill basically sets into statute what HR 6013 has already requested.

*House Environment  
2-20-97  
Attachment 2*

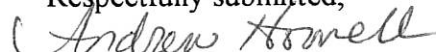
From time to time we do well to step back and ask ourselves, " What definable value does this proposal create, and how do we test or measure for verification of that value?" This bill I believe will help each of us as legislators to more fully understand the definable science that either does or does not exist in current regulations, and should help us to more completely understand the cost/benefit ratios of the requirements that we are imposing upon many of the municipalities and local governmental bodies, as they work to assure that our water is safe.

House Bill 2368 recognizes that the maintenance and conservation of the waters of Kansas within a cost-effective framework is a major state priority. To ensure that future public and private wastewater treatment improvements promote this state objective, this bill suspends the special aquatic life use waters designation, and the numeric aquatic life criteria for total ammonia, atrazine and chloride. The stay will be in effect until Dec. 31, 1998, at which time they shall be reinstated unless revised through rule and regulations adopted by the secretary.

Finally, the bill creates the Kansas special commission on surface water quality standards, to be made up of no less than three and no more than seven members to be appointed by the governor. Term of office is to last until July 1, 1998 unless terminated by the governor. Each appointee must have experience in one or more of the following fields: environmental sciences, civil engineering, business and industry, public finance, municipal wastewater treatment, agriculture or agribusiness, and environmental law. One member must represent the general public.

I must stress that I think that it is important that we allow the governor due latitude in making the appointments because, if we are not careful on this point, I think we may unknowingly make a difficult job even more difficult. Finding persons who understand the science and are willing to make the sacrifice of time and energy necessary to accomplish the public good will be difficult. Our governor is up to the task, so let us not stand in his way.

Respectfully submitted,

  
Andrew Howell





## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

OFFICE OF  
THE REGIONAL ADMINISTRATOR

Steven Lloyd, Chairman  
Committee on Environment  
Kansas House of Representatives  
300 S.W. 10th Avenue, Room 180 W  
Topeka, KS 66612

Dear Chairman Lloyd:

Thank you for the opportunity to deliver this written testimony on House Bill No. 2368 as offered by Representative Howell on February 14, 1997, before the Committee on Environment in the Kansas House of Representatives.

I am pleased to provide the Committee with the perspective held by the United States Environmental Protection Agency (EPA) with regard to the measures contained in Bill No. 2368 and their compatibility with the Clean Water Act (CWA). It is my understanding that this testimony will be read into the record before the Committee members.

Bill No. 2368 is inconsistent with the provisions of the CWA and it is my hope that the Committee will reconsider the merits of this Bill. We would be pleased to provide further information to the Committee or to further elaborate on our comments at the Committee's request.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Grams".

Dennis Grams, P.E.  
Regional Administrator

cc: Representative Laura McClure

STATEMENT OF  
DENNIS GRAMS  
REGIONAL ADMINISTRATOR  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
BEFORE THE  
COMMITTEE ON ENVIRONMENT  
KANSAS HOUSE OF REPRESENTATIVES

FEBRUARY 20, 1997

Mr. Chairman and members of the Committee: Thank you for the opportunity to provide the Committee with testimony on House Bill No. 2368 with regard to its compatibility with the requirements of the Clean Water Act.

Should House Bill No. 2368 be adopted into state law, the Regional Administrator will recommend to the Administrator of the EPA that she promulgate appropriate uses and criteria deemed necessary to the full protection of Kansas surface waters. National Pollutant Discharge Elimination System (NPDES) permits issued by the Kansas Department of Health and Environment (KDHE) that fail to implement such federally promulgated standards would meet with objection by the EPA.

The suspension of portions of the Kansas surface water quality standards found at K.A.R. 28-16-28b-f, as called for in House Bill No. 2368, is an action inconsistent with both the spirit and the program-specific requirements of the Clean Water Act (CWA). The suspension of water quality standards previously adopted in a manner consistent with both federal and state law will impair the state's efforts to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" as the sole objective of the CWA.

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Specifically, suspension of the "special aquatic life use" category as described in K.A.R. 28-16-28d would be considered a down-grade or removal of the designated use for those waters so classified. Federal regulations at 40 CFR 131.10(g) allow such actions under a limited set of circumstances, but require scientific justification of the down-grade. The suspension of the "special aquatic life use" category represents a reduction in the level of protection provided those individual waters by the Kansas surface water quality standards. Approximately 13% of Kansas' classified waters are designated as special aquatic life use. Suspension of the use could necessitate promulgation by the EPA to restore full protection of the aquatic life use.

The suspension of the numeric water quality criteria for aquatic life contained in K.A.R. 28-16-28e for total ammonia, atrazine and chloride also represents a reduction in the level of protection provided all surface waters under Kansas surface water quality standards. The 1994 adoption of numeric criteria for these pollutants by the KDHE was necessary to protect aquatic life uses and represents a scientifically supportable assessment of risks to aquatic life from these contaminants. From the current language contained in House Bill No. 2368, it is not clear whether any aquatic life criteria for these pollutants would apply, particularly where no criteria have been previously adopted. Deference to the previously adopted single value criterion for ammonia represents a reduction in the level of protection from that provided by the two value, pH- and

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temperature-dependent guidance criteria published by the EPA and adopted under standards by Kansas in 1994. The EPA continues to support the adoption and application by states of its current guidance criteria for ammonia. The toxicity data base supporting these criteria is the most extensive of all criteria published by the EPA.

Suspension of the currently adopted criteria for atrazine will hamper efforts by the KDHE and other state departments to control watershed-level contamination and use impairment. Development of total maximum daily loads (TMDLs) for atrazine by the state of Kansas, as required under Section 303(d) of the CWA, might be jeopardized with the suspension of the criteria which support those calculations. Suspension of its atrazine criteria by Kansas will impair efforts begun by the Governor's Office to implement the Governor's water quality initiative program for the Kansas-Lower Republican Rivers and will send the wrong message to those working in state border watersheds concerning Kansas' commitment to the reduction of atrazine in those waters. In response to the need to continue efforts to control watershed-level contamination with atrazine, the Nebraska Environmental Quality Council reaffirmed its commitment to its adopted aquatic life criteria for atrazine during a 1995 standards revision.

Suspension of Kansas' aquatic life criteria for chloride will not be supported by the EPA. Where levels of chloride in surface waters are elevated due to natural causes, regulatory relief currently exists within the existing Kansas water quality

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standards. Development of site-specific criteria for chloride reflecting localized natural water quality conditions is provided for within K.A.R. 28-16-28-f. The suspension of the general state-wide criteria for chloride removes protection of other surface waters from contamination by dissolved solids.

The EPA's interest in this Bill extends beyond general concerns over consistency with the CWA. Where surface waters flow beyond state borders and water quality in those waters fails to comply with downstream states' standards, the EPA must ensure that proper controls are administered where those pollutants originate. For example, the state of Missouri has identified in its 1996 draft Water Quality Report under Section 305(b) of the CWA that the Marmaton River is impaired as a result of discharges of sewage to the river in Kansas by the city of Fort Scott. Under the administration of the NPDES program, Kansas must develop and issue permits which implement the state's water quality standards. Issuance of NPDES permits by the KDHE which do not implement the currently adopted water quality standards, including aquatic life uses and associated criteria, will meet with objection by the EPA. The suspension of uses and criteria as proposed by this Bill brings into question the willingness of the state to administer the NPDES permit program as agreed to under the existing Memorandum of Agreement (MOA) between the KDHE and the EPA.

The EPA has significant concerns over the proposed Bill's provisions directing a commission to evaluate state water quality



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standards based on cost-effectiveness and economic impact. The CWA requires that water quality criteria protect designated uses. Economic and cost considerations may be addressed only when assigning designated uses and current Kansas water quality standards incorporate these procedures by reference. However, the development of water quality criteria must be based on the protection of designated uses without exception. Where the protectiveness of the adopted state water quality criteria is compromised by considerations of cost, those criteria would not comply with the CWA.

The EPA will continue to work in partnership with the state of Kansas to develop, adopt and implement water quality standards protective of Kansas surface waters and consistent with the requirements of the CWA. Flexibility in the administration of the water quality standards program is built into the CWA, federal regulation and current state regulation. However, where the authority of the Secretary of Health and Environment to properly administer the water quality standards program consistent with the CWA, existing state regulation and the MOA between the EPA and the KDHE is compromised, the EPA must give proper consideration to both the promulgation of state water quality standards and the withdrawal of federal delegation of specific programs to the state. Provisions within House Bill No. 2368 raise serious concern over the protectiveness of state water quality standards and the KDHE's ability to administer the NPDES program consistent with the CWA and the conditions of the MOA.

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We urge the Committee on Environment to re-evaluate the provisions under this measure and withdraw all provisions suspending current uses and criteria under the state standards.

Thank you for this opportunity to provide testimony to the Committee. The EPA would be pleased to provide further information to the Committee or to further elaborate on these comments at the Committee's request.



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HB-2368

Testimony of  
Jere White, Executive Director

Kansas surface water quality is a concern to all citizens of our state. We all want clean water; for ourselves, our children and generations yet to come. Our farmers live on the land they farm. They raise their family there. They drink the water. They continually strive to do what they do better, more efficient, mindful of our natural resources and of a future on the land. They are willing to respond to the needs of society. They incorporate sound science and economics in their daily operations. They request the same from those passing regulations and laws that impact on their ability to continue to farm.

HB-2368 proposes essentially two things. First, it temporarily sets aside certain standards for a specified interim period while it secondly, establishes a Kansas Surface Water Quality Commission to investigate and evaluate the current surface water quality laws in Kansas. Under the Clean Water Act, water quality issues are primarily a state responsibility. EPA oversees the state actions to insure compliance with minimum federal requirements, provides comments, and if EPA disapproves of the state action, EPA may promulgate and impose a federal standard. Based on research conducted by legal counsel advising us on this issue, we are confident that the Clean Water Act does not directly prohibit the proposed suspensions.

The Clean Water Act requires the establishment of water quality standards which consist of a designated use for each water body and a water quality criteria to protect the designated use. The Clean Water Act requires states to establish water quality standards considering water body use and the water bodies value for public water supply,

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*P.O. BOX 446, GARNETT, KS 66032-0446 • PHONE (913) 448-6922 • FAX: (913) 448-6932*

propagation of fish and wild life, recreational purposes, and agricultural, industrial and other purposes. Even a properly established designated use may be removed if the use is not feasible for chemical, physical, biological, social, or economic reasons. The proposed legislation does not remove a designated use or reverse a water quality criteria but rather suspends certain standards pending review of their original promulgation and propriety of modification. Even if the original designated use and water quality criteria were properly established, the state may change either. The process of periodic review and modification of the water quality standards is an integral part of the Clean Water Act and therefore the proposed review and reconsideration process is consistent with the Federal Act.

The suspension of the numeric aquatic life criteria contained in K.A.R. 28-16-28e for ammonia, atrazine, and chloride are contained in the bill before the committee. While we support a science based criteria for all three compounds, and support those proposed based on research and testimony from the regulated community, I will address the issue of atrazine in my comments today. The most stringent aquatic life standard for atrazine in Kansas is a chronic standard set at 1 part per billion (ppb). Yet there is substantial peer reviewed science that would suggest a more appropriate level of 20-50 ppb. In fact there is considerable scientific research to indicate a standard of 100 ppb or above. An extensive study published in January 1996 titled "Ecological Risk Assessment of Atrazine in North American Surface Waters" clearly documents that atrazine has little or no short term effect and no long term effect on the most sensitive species of aquatic life, phytoplankton, at levels of 20 ppb or less. In instances where short term effects were noted at that level of exposure, populations were quickly re-established even in the continued presence of atrazine. The study further states "Effects in field studies were judged to be ecologically important only at exposures of 50 mg/L (ppb) or greater".

Although there is an ever increasing amount of sound science that gives evidence to the inappropriateness of the 1 ppb standard, older research, much of it done here in Kansas

would suggest much the same conclusion. For instance a series of pond mesocosm studies were performed at the University of Kansas between 1979 and 1983 that showed phytoplankton biomass and production rates were unaffected by exposure to atrazine at 20 ppb. In fact several studies have noted the similarities between the effects of other factors, such as shading, that limit photosynthesis in other ways. Some species of phytoplankton actually became more abundant when exposed to atrazine at the 20 ppb range, although no species were measurably reduced. The impact of a 1 ppb standard could very well lead to the elimination of atrazine use for Kansas farmers. It is a idealistic goal lacking a base in sound science. In addition, the economic impact to our producers is easily over 200 million dollars annually, based on increased herbicide costs and documented yield reductions. Over ten years of data on corn and grain sorghum yields from the North Central Weed Science Society, which includes Kansas, demonstrate a 6.3 bushels per acre yield reduction on corn and 11.3 bushels per acre yield reduction on grain sorghum when comparing non-atrazine with atrazine weed control treatments. This adverse economic impact can only be justified if real world benefits to the environment or society would occur. Such benefits do not exist. Negative impact to the total Kansas economy could translate to an annual amount of one billion dollars.

There is no general prohibition from consideration for economic consequences in the Clean Water Act. As a matter of fact, numerous specific provisions require or specifically allow consideration of economic consequences. A state determination to suspend, modify or terminate a state standard that is more stringent than federal requirements is subject to EPA review, but EPA's authority only extends to imposing the federal requirement. It should be noted that as of two weeks ago, the 1994 standards adopted in Kansas had not yet been approved by EPA.

The proposed Kansas Surface Water Quality Commission is not in violation of or contrary to any provision of the Clean Water Act. In fact Section 303 of the Clean Water Act requires a review of water quality standards at least every three years, and as appropriate, modification of such standards. Review of the 1994 standards is not only appropriate but



required. The proposed Kansas Surface Water Quality Commission is well within the contemplated review process.

This commission would examine Clean Water Act requirements and how Kansas responded to those requirements when it promulgated our current laws in 1994. It would further examine the science that was used to arrive at the 1994 numerical criteria and whether sound peer reviewed science exists to sustain that criteria or to make changes.

I have had the opportunity to serve on a focus group looking at the 1994 Kansas Surface Water Standards as part of the required triennial review. It was very apparent that virtually all interests represented including municipalities, environmentalists, agriculture, and industry were concerned with standards and designations. Clearly all parties did not view the same issue lacking in the same way. We believe a commission empowered to investigate, evaluate and advise on the scientific basis for and socio-economic impacts from Kansas surface water laws will benefit all Kansans.

We encourage the following “friendly” amendments to HB-2368.

- Increase the minimum number of commission members to at least five.
- Add the department of agriculture to the list of cooperating agencies.
- Eliminate the exception of university faculty in the prohibition against state employees or officers serving on the commission.
- Provide for the automatic extension of the suspended standards beyond December 31, 1998 if such standards are in the process of being amended or revoked.
- Expand the focus of the proposed commission to look at all existing Kansas surface water quality standards.

We encourage the committee to incorporate these changes and stand in support of HB-2368 to further strengthen public and private efforts to improve the quality of water in Kansas.



**League  
of Kansas  
Municipalities**

**LEGISLATIVE TESTIMONY**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

**TO:** House Committee on Environment  
**FROM:** Chris McKenzie, Executive Director  
**DATE:** February 20, 1997  
**SUBJECT:** Support for HB 2368

Thank you for the opportunity to appear today on behalf of the over 500 member cities of the League in support of HB 2368. At the risk of sounding overly dramatic, I sincerely believe that HB 2368 presents the opportunity to the legislature to prevent the waste of many millions of public dollars in the construction and operation of new wastewater treatment facilities to comply with the questionable ammonia criteria contained in the 1994 Kansas Surface Water Quality Standards. These criteria are based on the 1984 National Ammonia Criteria of EPA which research done both before and since 1984 indicate are based on uncertain and conflicting scientific information. These questionable ammonia criteria are much more stringent than the previous standards and, if implemented, will work a substantial hardship on the ratepayers of Kansas cities, without any demonstrated benefit to the aquatic life of Kansas streams. This harm to the taxpayers of Kansas should be avoided, if possible. HB 2368 gives us the opportunity to do just that.

### **Background**

In 1967 the first state water quality criteria were adopted in accordance with the federal clean water act, and numerous revisions have taken place since that time. When KDHE implemented the most recent revisions in 1994, it upgraded a number of the use designations of the surface waters, including the designation of 17% of the streams in a new use category entitled "special aquatic life use" based on the presence of state or federally listed threatened or endangered species, or Kansas "species in need of conservation." This designation was done on many of the stream segments which contain municipal point dischargers, and it triggers substantially stricter limits on the discharge of municipal wastewater effluent. New numeric criteria also were adopted for substances such as ammonia which, when taken with the stricter limits as a result of the special aquatic life use designation, have necessitated the development of engineering plans to build new and extraordinarily expensive wastewater treatment plants in the affected communities.

### **The Problem**

- ▲ There is a growing body of evidence, much of it from EPA, that the EPA recommended ammonia criteria are based on flawed and incomplete scientific information.
- ▲ Since Kansas recognizes 72 protected species in comparison to the 2 recognized by federal law, it has caused an expanded use of the special aquatic life use designation. The presence of this designation dramatically reduces the amounts and concentrations of the allowable discharge.
- ▲ The 1994 state water quality standards have never been approved by EPA and are substantially more stringent than those of many of our surrounding states.
- ▲ Immediate relief is needed to avoid the waste of public funds to build new facilities to comply with the 1994 state standards which are based, in part, on questionable science. Cities which are affected expect rates to rise 200% - 300%, increasing rates in some cities for the average user from \$9 to \$25

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Attachment 5*

per month (St. Marys); and for high users from \$25 to \$75 per month (Independence). These rate increases are particularly burdensome in small cities with a smaller rate base over which to spread the costs.

### Scientific Problems With the Existing Ammonia Criteria

The 1984 ammonia criteria were published by EPA as guidance or recommendations to the states. They are not mandatory. In fact, today 20 states are using different ammonia criteria. The key to understanding the scientific uncertainty and problems underlying the 1984 ammonia criteria (i.e., the Kansas 1994 ammonia criteria) is to appreciate that while EPA published the criteria as guidance or recommendations for the states, EPA's own criteria document acknowledged the criteria are not intended to be applied to establish stringent ammonia limitations without site specific justification. More recent information and studies, much of it directly from EPA, underscores the problems with the 1984 criteria document.

Today I am pleased to share with you a letter from Mr. John Hall, a principal in the Washington, D.C. environmental consulting firm, Hall & Associates, which explains in considerable detail the extent to which EPA has acknowledged the uncertain scientific information underlying the 1984 ammonia criteria as well as the more recent pronouncements by EPA consultants and officials about the scientific problems with the 1984 EPA and 1994 Kansas ammonia criteria. Mr. Hall's resume is attached to my testimony. As you can see, his credentials are indeed impressive. In his conclusion to his letter to me of February 19th, he writes:

**"It is apparent that there are a number of critical technical issues regarding the 1984 National Ammonia Criteria that have never been resolved. To the degree that later research has been conducted, that research confirms that the criteria are far more restrictive than necessary to ensure aquatic life protection, particularly in winter months...Requiring compliance with the flawed criteria under rare low flow conditions and stringent mixing zone procedures, as currently implemented by the state, will misallocate local resources."**

### Conclusion

For years the state of Kansas and EPA have asked the cities and citizens of Kansas to invest billions in wastewater system improvements. Many of those investments were based on sound scientific information and a consensus about the need for the improvements. The rivers, lakes and streams of Kansas are much cleaner today as a result.

Since the adoption of the 1994 Kansas Surface Water Quality Standards, cities are being asked to comply with standards about which there are substantial and reasonable scientific questions. Before we spend one more dollar of public funds, we would respectfully submit it is desirable to provide immediate relief from the ammonia criteria and the special aquatic life use designation while a major evaluation of the standards as a whole is undertaken by an independent commission on surface water quality standards.

Thank you for your kind attention. Attached to my testimony are letters from cities that could not attend today but which are facing problems similar to the cities from whom you are about to hear testimony.

# HALL & ASSOCIATES

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1101 15th Street, N.W.  
Washington, D.C. 20005-5007  
E-Mail: hallanda@erols.com

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Fax: 202-463-4207

February 19, 1997

Mr. Christopher McKenzie  
Executive Director  
League of Kansas Municipalities  
300 S.W. 8<sup>th</sup>  
Topeka, KS 66603-3896

**Re: Review of Ammonia Water Quality Criteria**

Dear Mr. McKenzie:

We understand that the state legislature is considering a bill which would provide interim relief to municipalities on the ammonia toxicity criteria while the criteria undergo an appropriate technical update. As previously discussed, the existing water quality criteria are technically flawed, fail to reflect the latest scientific information on the environmental impacts of ammonia on fishery resources, and will, unless amended, result in major municipal expenditures with little if any associated environmental benefit. (See attached Table 1, capital costs associated with winter ammonia removal). One may easily expect the statewide cost of compliance with these criteria to exceed \$100 million. In light of the acknowledged deficiencies with the ammonia criteria, many other states have taken action to preclude further local expenditures associated with meeting these criteria until the long standing technical issues are resolved.

Per your request, we have prepared the following analysis of the current Kansas water quality criteria for ammonia which briefly reviews the key technical deficiencies associated with the state's current ammonia toxicity aquatic life criteria.

**KDHE Water Quality Standard**

The existing numeric ammonia standards (K.A.R. 28-16-28e(d)) are essentially identical to the 1984 National Ammonia Criteria published by EPA and are based on a formula which is dependent upon fishery type, temperature, and pH. The National Ammonia Criteria specify the acute criterion as a one hour average concentration not to be exceeded more than once every three years on average. The chronic criterion is specified as a four day (or 30 day) average not to be exceeded more than once every three years on average. In comparison, the KDHE water quality standards for ammonia are specified as maximum limits that are not to be exceeded. No duration of exposure or return frequency is specified in the KDHE standards.

## HALL & ASSOCIATES

Current state regulations require that water quality standards be maintained at stream flows equal to or greater than the ten year, seven day low flow level (7/Q/10). K.A.R. 28-16-28c. Depending upon the use classification and the available dilution, a flow less than the 7/Q/10 may be used in applying water quality criteria. The more stringent mixing zone provisions do not distinguish between acute and chronic criteria in their application as is normally done when mixing zone provisions are established. This causes the application of the criteria to be even more stringent than recommended by EPA's guidance on permit development.

### Problems with the Existing Ammonia Standards

In 1984, EPA published its latest National Ammonia Criteria pursuant to Section 304(a) of the Clean Water Act. The 1984 National Ammonia Criteria adopted a dramatically different approach to ammonia toxicity regulation than the previous Red Book methodology (which established fixed concentrations for ammonia allowing much less restrictive limits in the winter and at low pH values). The 1984 National Ammonia Criteria suggested the standard should fluctuate with ambient pH and temperature, as discussed above, thus producing much more stringent limitations. This is the criteria adopted by Kansas.

In the 1984 National Ammonia Criteria, EPA acknowledged the considerable scientific uncertainty and conflicting information regarding the level of protection required to regulate chronic ammonia toxicity (National Ammonia Criteria at 90-98). For example, the document states:

The very limited amount of data regarding the effects of pH on chronic NH<sub>3</sub> toxicity also indicate increasing NH<sub>3</sub> toxicity with decreasing pH, but the data are insufficient to derive a broadly applicable toxicity/pH relationship. Data on temperature effects on acute NH<sub>3</sub> toxicity are limited and somewhat variable, but indications are that toxicity to fish is greater as temperature decreases. There is no information available regarding the temperature effects on chronic ammonia toxicity.

National Ammonia Criteria at 91 (emphasis supplied).

Site-specific criteria development is strongly suggested at temperatures above 20°C because of the limited data available to generate the criteria recommendation, and at temperatures below 20° because of the limited data and



## HALL & ASSOCIATES

because small changes in the criteria may have significant impact on the level of treatment required in meeting the recommended criteria.

National Ammonia Criteria at 97 (emphasis supplied).

Because of this uncertainty and the substantial costs that could be incurred, the 1984 National Ammonia Criteria state that they are not intended to be applied to establish stringent ammonia limitations without site-specific justification. The Federal Register notice for the 1984 National Ammonia Criteria also cautioned against using the criteria for wasteload allocation purposes (i.e., their basic use):

There is limited data on the effect of temperature on chronic toxicity. EPA will be conducting additional research on the effects of temperature on ammonia toxicity in order to fill perceived data gaps. Because of this uncertainty, additional site specific information should be developed before these criteria are used in wasteload allocation modeling.

50 Fed. Reg. 30784 (July 29, 1985) (emphasis supplied).

### New Data on Ammonia Toxicity Impacts

Because of the acknowledged uncertainties surrounding EPA's suggested approach to ammonia toxicity regulation, the Agency committed to conduct additional research on the effects of pH and temperature on ammonia toxicity (National Ammonia Criteria at 95). The data generated (by both EPA and other laboratories) since the publication of the 1984 National Ammonia Criteria did not confirm the pH/temperature chronic toxicity relationship incorporated into the 1984 document.

For example, in 1987, EPA conducted field tests to determine whether the recommended criteria provided reasonable thresholds for adverse aquatic life impacts to salmonids and other cool and warm water species. The exposure period ranged from sixty to ninety days, contrary to the National Ammonia Criteria recommendation which allowed exposures of only four to thirty days, and the temperature and pH levels were allowed to fluctuate freely without apparent influence on the results. Based on these studies, an acceptable warm water fishery un-ionized ammonia level could be 5 to 10 times EPA's recommended approach.

Subsequently, Dr. Willingham of EPA Region VIII, one of the National Ammonia Criteria authors, confirmed that the criteria are out of date and should be revised. Dr. Willingham's statement was made at an April 1996 Red River of the North TMDL Group meeting which was convened to determine appropriate ammonia limitations for the City of



## HALL & ASSOCIATES

Moorhead, Minnesota. Dr. Thurston, another of the criteria authors, confirmed that the pH/temperature relationship requires systematic research to justify its application, which has yet to be conducted:

Although some research has been conducted on temperature effects on ammonia toxicity to fishes, including that done by Battelle in the latter '80s, I am not aware of any systematic studies addressing this area of concern. It is my opinion that more research is needed.

\* \* \* \*

Regarding more research on pH effect (such as that to which you refer as reported by Russo): no question about it, this is long overdue. There are so many mitigating factors in natural waters that affect ammonia toxicity it is hard to understand why EPA hasn't long ago sought to explore these to save costs in construction of wastewater treatment facilities.

Letter from Dr. Vance Thurston to Hall & Associates dated October 1, 1996 (attached hereto as Enclosure 1). Thus, it is apparent that the 1984 National Ammonia Criteria's own authors do not believe that criteria are well founded.

### **Implications of New Data on the Ammonia Criteria**

New research, much of it conducted by EPA, confirms that (1) the suggested water quality criteria in the National Ammonia Criteria were derived erroneously, and (2) substantially increased un-ionized ammonia levels would fully protect aquatic life uses. Subsequent EPA research never verified that the assumed pH and temperature algorithm used to establish the National Ammonia Criteria actually reflects expected impacts (Battelle Report [1987]; Arthur (EPA-Monticello) [1987]). EPA's latest field tests on a number of warm, cold, and cool water species could not discern adverse aquatic life effects for sixty to ninety day exposures at three to nine times the criteria (Hermanutz (EPA-Duluth/Monticello) [1987]). A constant chronic criteria approach similar to the pre-1984 criteria appears appropriate based upon the most recent data, and thirty day averaging (not four day averaging) should be applied to the chronic criteria. This means that application of the criteria at 7/Q/10 flows is unduly restrictive.

### **Standards Adopted by Other States**

In light of this new information, several states have either declined to adopt the National Ammonia Criteria or established fixed ammonia standards well above EPA criteria recommendations (e.g., California, Delaware, Illinois, New Jersey, New Mexico,

## HALL & ASSOCIATES

Pennsylvania). Others have adopted more appropriate instream design flows to reflect the acceptable chronic averaging period and return frequency (e.g., Maryland - 30/Q/5; Pennsylvania - 30/Q/10; Colorado - 30/Q/3). As a result of the on-going controversy regarding appropriate ammonia criteria, the Minnesota Pollution Control Agency has placed a moratorium on establishing new limitations based on this water quality standard (see Enclosure 2), and the State of Illinois recently adopted ammonia water quality standards which are less stringent than both the 1984 National Ammonia Criteria and the updated 1992 criteria. These updated criteria, approved by EPA Region V in 1996, were derived using methods approved by EPA within the scope and intent of the National Ammonia Criteria.

In a response to questions from a member of Congress, EPA recently addressed issues on interpretation of the ammonia criterion for the protection of aquatic life (see Enclosure 3). In this response, EPA's Assistant Administrator, Robert Perciasepe, acknowledged that:

- the 1984 National Ammonia Criteria is guidance for the states; however, states are not required to use it;
- EPA has approved state programs that include less restrictive but still protective ammonia water quality standards, as compared with both the 1984 and 1992 National Ammonia Criteria; and
- in implementing state ammonia water quality standards, it is acceptable to apply the chronic ammonia criteria as a 30 day average rather than a 4 day average and to utilize 30 day average flows such as the 30/Q/3.

From this acknowledgment by EPA, it is apparent that the "recommendations" contained in the 1984 National Ammonia Criteria and in the 1992 revisions are unnecessarily restrictive.

### Conclusion

It is apparent that there are a number of critical technical issues regarding the 1984 National Ammonia Criteria that have never been resolved. To the degree that later research has been conducted, that research confirms that the criteria are far more restrictive than necessary to ensure aquatic life protection, particularly in winter months. The available data suggest that the 30 day averaging period would be very conservative,

**HALL & ASSOCIATES**

and the National Ammonia Criteria (at 98) and current EPA interpretation support the use of a 30 day critical low flow. Requiring compliance with the flawed criteria under rare low flow conditions and stringent mixing zone procedures, as currently implemented by the state, will misallocate local resources.

Please let us know if you have any questions regarding this analysis or require further information.

Sincerely,



John C. Hall

Enclosures

TABLE I

**COST OF WINTER AMMONIA REMOVAL**

<u>SIZE (MGD)</u>	<u>CAPITAL COST</u>
1	\$1.5 MILLION
5	\$8.0 MILLION
10	\$15 MILLION



Montana State University  
Bozeman, Montana 59717

Fisheries Bioassay Laboratory

Telephone (406) 994-3371

1 October 1996

John C. Hall  
Hall & Associates  
888 16th Street, N.W. - Suite 500  
Washington, D.C. 20006

Dear John:

I am responding to your letter requesting comments on "areas of concern" and related to the U.S. EPA criteria (1984) for ammonia in aquatic systems. I'll address your questions in the order presented.

1. Although some research has been conducted on temperature effects on ammonia toxicity to fishes, including that done by Battelle in the latter '80s, I am not aware of any systematic studies addressing this area of concern. It is my opinion that more research is needed. Implied in your question is "does it make sense to take the most stressful of all possible environmental conditions and assume these will occur at the time of year when a fish is in the most sensitive stage of his development?"; I'd have to say "no".

2. The EPA averaging period approach for ammonia loads has never made sense to me. At low concentrations ammonia need not be toxic, and at high concentrations it can be. A fish lives with ammonia all the time; it is a routine metabolic byproduct and the most common method of elimination is across the gills. If ammonia enters a fish's blood stream as an outside insult, he's got to eliminate it just as he does his metabolic waste, or it will affect his respiratory and nervous systems, and he can only take just so much ammonia at any one time. He cannot store up "ammonia-free" time periods against the day that he might be heavily bombarded with ammonia. A reverse analogy would be if he is totally deprived of oxygen for some extended short period, it makes little difference if he's had a surfeit of oxygen his whole life to that point. There's a lot of information out there to make the case that under some circumstances a fish can survive days, weeks, even months at ammonia concentrations approaching a high percentage of what might be acutely toxic. This can only be quantified when the necessary research is done.

3. Histopathological effects on a fish from any toxicant are important, but the questions are to what extent may an effect be reversible, and/or at what point might an effect influence growth, survival, or reproduction, and are we talking individuals or are we talking survival of a population? I would think this cost/benefit discussion is socioeconomic and political, but it can't be conducted with any meaning without supportive scientific data.



4. Regarding more research on pH effect (such as that to which you refer as reported by Russo): no question about it, this is long overdue. There are so many mitigating factors in natural waters that affect ammonia toxicity it is hard to understand why EPA hasn't long ago sought to explore these to save costs in construction of wastewater treatment facilities. Potential cost savings in wastewater treatment could be orders of magnitude greater than the cost of research to nail down some of these factors.

5. You ask about needed research, and I think a good place to start would be that recommended by the committee members who put together the 1982 support document which was subsequently edited by EPA for publication as the 1984 ammonia criteria document. The 1984 document contains some of the concerns expressed by these committee members about areas of scientific uncertainties in the data base. I'll hit the high points here of what research I think should be undertaken. More information is needed on the toxicity of ammonia under extremes of temperature and pH, mitigating effects on ammonia toxicity of common cations and anions in natural water systems, toxicity of ammonia in combination with chlorine and with other nitrogenous and chlorinated compounds, physiological studies on sub-acute concentrations of ammonia for extended periods of time (including acclimation studies and effects of fluctuating concentrations), and histopathologic studies to determine limits that affect survival of individuals and/or populations. There's more, including partial chronic studies on a greater number of species, including those indigenous to saline and estuarine environments, but this list will do for openers.

I hope I may have helped you with my answers to your questions.

Sincerely,



Robert V. Thurston  
Research Professor





## MPCA's Interim Ammonia Strategy

The water-quality standard for ammonia is coming under increasing scrutiny in many states. This is because the standard is used to set limits for ammonia allowed in wastewater discharges. Some municipalities are concerned that the ammonia standard is too stringent, in part because it is outdated. The Minnesota Pollution Control Agency is working with the U.S. Environmental Protection Agency to resolve these problems. To provide context for this effort, some background on water-quality standards is helpful.

### Background

The protections of the Clean Water Act are founded on the concept of water-quality standards. These are the numerical values used to set the maximum amounts of pollutants allowed in lakes or streams. Under the Act, all states must adopt water-quality standards. But the states also are given flexibility to adopt standards that reflect their unique needs or values.

In order to set standards, states first establish "designated uses" for all their water resources. These are classifications that reflect how the citizens of a state value or use their lakes and rivers. Examples of designated uses include drinking-water supply, cold-water fishery, or use for human contact such as swimming. Numerical standards are drafted for the level of specific pollutants that will be allowed in those waters while still protecting the use.

Standards are derived in part from the water-quality *criteria* set by the EPA in the 1980s. These criteria reflected what was known at that time about the potential harm associated with different pollutants.

In some cases this is creating a problem. The science used to determine adequately protective criteria has changed, but the criteria for ammonia have not been updated for more than 10 years. The ammonia criteria need to be changed to reflect new information.

The MPCA has requested that EPA review and address concerns with the national ammonia criteria immediately and work in partnership with the MPCA and interested Minnesota dischargers to resolve these questions.

In the meantime, the MPCA is addressing the ammonia question on a number of fronts. We are actively working with many partners in a Red River water-quality workgroup to determine appropriate ammonia limits for dischargers in the Fargo-Moorhead area.

We are also proposing a statewide water-quality standards advisory group to begin in September, 1996 to meet with stakeholders to consider and address water-quality standards issues such as ammonia, dissolved oxygen, dissolved metals, mixing zones, etc. In addition, we're also surveying other Upper Midwest and Great Lakes states to better understand their approaches to water quality standards listed in the preceding paragraph. And we're striving to consider not only good science but the input and participation of our stakeholders in these questions.

### Interim strategy

Because of the uncertainty surrounding ammonia limits at this time, the MPCA has developed an interim strategy for some permits with ammonia limits. This is so that permittees will have the

information they need to adequately design, construct and operate municipal and industrial wastewater treatment facilities until these issues can be resolved.

In cases where there are ammonia (NH<sub>3</sub>) limits in a permit and the permittee has demonstrated the ability to comply with them, an interim strategy is not needed. In these cases, final ammonia limits will be maintained and enforced. This position is consistent with federal regulations which prohibit relaxation of final effluent limits when it would lead to backsliding.

A number of factors can trigger the need for new ammonia limits in a permit. These include facility expansions and upgrades, change from a controlled to a continuous discharge, new information on a discharge, or new information about the receiving water.

If it is determined under existing rules that a permit should have ammonia limits, the permit will be issued with final ammonia limits. However, in this case special language will be included in the permit to protect the permittee while the MPCA works with EPA to upgrade the federal criterion and state water-quality standards. The permit will state that the MPCA will not take enforcement action against the permittee for failing to meet the final ammonia limits as long as the discharge is not acutely toxic. When Minnesota's water-quality standard for ammonia is revised, the permit will be modified and final ammonia limits will apply.

For further information on these issues or the MPCA's interim ammonia policy, please contact John Hensel, Supervisor, Standards unit, (612) 296-7213 or toll-free (800) 657-3864.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

NOV - 5 1996

OFFICE OF  
WATER

Honorable Collin C. Peterson  
House of Representatives  
Washington, D.C. 20515

Dear Congressman Peterson:

Thank you for your letter of October 11, 1996, regarding the Environmental Protection Agency's (EPA's) ammonia criterion for the protection of aquatic life. You have asked about our response to questions raised by Mayor Stan Christ of the Coalition of Greater Minnesota Cities, in his letter of February 1, 1996. You have also asked for a copy of Tom Willingham's preliminary draft materials on ammonia criteria issues.

With regard to Mayor Christ's questions, my staff and I met with the Coalition of Greater Minnesota Cities on June 14, 1996, and had extended discussions about the ammonia criterion. The answers to the questions are as follows:

- (1) *Has EPA required States to adopt its 1984 criteria or is there flexibility to use alternative approaches?*

EPA criteria recommendations are guidance, not rules. In discharging its responsibilities to approve or disapprove State standards under Section 303 of the Clean Water Act, EPA has demonstrated flexibility in its judgments of the scientific acceptability of alternative criteria values.

- (2) *Has EPA approved State programs that did not use the 1984 criteria document approach? If so, what is the range of warm water fishery criteria approved as protective?*

In 1992, EPA somewhat relaxed the criteria values, and is currently recommending the 1992 values in place of the 1984 values. Furthermore, EPA has approved State criteria that differ from both the 1984 and 1992 values.



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5-14

The ammonia criterion is a complex formulation that takes on different values at different times and places, depending on the water temperature and pH. Whether one State's criterion is more or less stringent than another State's criterion may depend on the temperature and pH at each particular site of application. Depending on the pH or temperature being considered, either State's criterion might be the more stringent. As a result, even if my staff maintained a compilation of all State standards, they would be unable to express the differences as a simple range.

- (3) *Is it acceptable to apply chronic ammonia criteria as a 30-day rather than a 4-day average?*

Yes, it is acceptable, as stipulated in the 1984 criteria document.

- (4) *Has EPA approved application of ammonia criteria under design stream flows other than 7Q10 [the 7-day-average, once-in-10-year low flow]? If so, what is the range of flows approved?*

My staff has indicated that they do not maintain a compilation of all design flows used by the States. Nevertheless, they have ascertained that the range at least includes the 30Q3 and 7Q10. My staff has also indicated that the criteria are sometimes applied to systems in which the upstream adjective flow (that measured as the 7Q10 and the like) is not important in providing effluent dilution. As a result, the range of design frequencies for exceeding the criteria is actually greater than suggested by a comparison between the frequencies of the 30Q3 and 7Q10.

At this time, the Office of Water and the Office of Research and Development are forming a work group responsible for reviewing EPA's ammonia criteria recommendations. The scientists on this work group intend to reassess several facets of the ammonia criterion within the next six months, if possible. Vance Thurston will be an adviser to this group. Tom Willingham, whose preliminary and incomplete rough draft papers you have requested, is also one of the participating scientists. Because those materials you have requested do not constitute finished drafts that Mr. Willingham ever distributed to anyone for review or comment, I do not believe it is appropriate to transmit such material. I can assure you, however, that the completed draft work products of the ammonia work group will be available to you, should you wish to see them, at the time we have them peer reviewed.

5-15

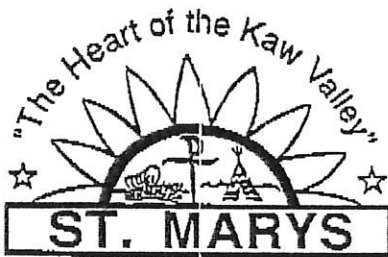


We appreciate your interest and concerns. If you have further questions, contact me or have your staff call Alan Hais, Associate Director of the Health and Ecological Criteria Division, at 202-260-5389.

Sincerely,



Robert Perciasepe  
Assistant Administrator



CITY OF ST. MARYS  
P.O. Box 130  
St. Marys, Kansas 66536  
913-437-2311

February 19, 1997

Mr. Christopher McKenzie  
Executive Director  
League of Kansas Municipalities  
300 S.W. 8th Street  
Topeka, KS 66603-3896

SUBJECT: Ammonia criteria in the 1994 Kansas Water Quality Standards

Dear Chris:

I welcome the opportunity to discuss the concerns and potential cost impact that the current ammonia criteria will have on the citizens of St. Marys, if the legislature does not pass HB 2368. The City's current waste water treatment plant operates at an average weekly pH of 7.5 with an ammonia level of 9 mg/l. The new ammonia limit required by KDHE for our plant is 3.9 mg/l. Although we are in the preliminary stages of determining what renovations will be required to meet the new ammonia standards, current estimates run between \$500,000 and \$2.5 million. The City of St. Marys has 832 sewer ratepayers, based on a 15-year loan or G.O. bond at 5% interest the current sewer rates would have to increase from between \$5.00 and \$25.00 per month, to comply with the new ammonia standards. I feel that the citizens of St. Marys deserve to have KDHE seriously investigate the soundness of the ammonia criteria, before requiring the City to commit such a large sum of money to correct a problem that may not exist.

Please feel free to contact me, should you have additional questions concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads "Steven W. Archer".

Steven W. Archer  
City Manager





## City of Phillipsburg

945 Second Street • Phillipsburg, Kansas 67661 • 913-543-5234

February 18, 1997

Chris McKenzie, Executive Director  
League of Kansas Municipalities  
300 SW 8th  
Topeka, KS 66603-3896

Dear Chris:

The City of Phillipsburg is in support of HB2368 which will suspend the ammonia criteria in the 1994 Kansas Surface Water Quality Standards until December 31, 1998. Attached is a table comparing the city's current NPDES Permit limits to the new proposed limits with the 1994 Standards. As you can see, there is a dramatic change in the ammonia requirements.

The City hired Wilson & Company Engineers (at a cost of \$33,900) to complete a study of the proposed discharge limits and the present wastewater facility. The study found that the present wastewater facility would not be able to meet the proposed discharge limits. The estimated cost to meet the proposed discharge limits range from \$2,152,800 to \$4,735,600. These options included updating the current plant and building a new facility.

As you can imagine, the impact to the users fees will be great. We hope that KDHE will seriously investigate the soundness of the ammonia criteria. If you have any questions please feel free to contact me.

Sincerely,

Scott Robertson  
Public Works Supervisor

SR/blc

City of Phillipsburg  
P.O. Box 447  
Phillipsburg, KS 67661-0447

Table 5  
Existing vs. Proposed Future NPDES Permit Limits

Effluent Parameter	Existing Permit Limit	Proposed Permit Limit*
BOD <sub>5</sub> - Monthly Average, mg/l		
January - March	45	45
April - May	30	45
June	30	35
July	25	25
August	30	35
September - October	30	45
November - December	45	45
TSS - Monthly Average, mg/l		
January - March	40	40
April - October	35	35
November - December	40	40
pH - Standard Units	6.0 - 9.0	6.0 - 9.0
Dissolved Oxygen (minimum) - mg/l	N.A.	6.0
Ammonia (NH <sub>3</sub> -N) - Weekly Ave, mg/l		
January - March	20.0	3.5
April - May	6.5	3.0
June - August	4.0	3.0
September	6.5	3.0
October - November	11.0	3.5
December	20.0	3.5
Fecal Coliform - Colonies per 100 ml	N.A.	2000
Chlorine Residual - Daily Max, ug/l	N.A.	23

\* If trickling filters are abandoned or supplemented with an activated sludge process, the proposed limits will not exceed 30 mg/l for BOD<sub>5</sub> and TSS.

# CITY OF LARNED

P.O. BOX 70 • 417 BROADWAY • LARNED, KANSAS 67550  
(316) 285-8500 • FAX (316) 285-8544

"Cities Are What People Make Them"

February 20, 1997

League of Kansas Municipalities  
300 S.W. 8th  
Topeka, KS 66603

ATTN: Chris McKenzie, Executive Director

RE: HB 2368 Regarding Surface Water Quality Standards

Dear Mr. McKenzie,

Your efforts to bring common sense to this issue of new discharge standards are greatly appreciated and the Legislature's consideration of this matter is long overdue. The 1994 standards established by KDHE are not scientifically based and we have yet to see a rational approach to setting standards and applying them to the unique environments each city faces.

Our NPDES permit renews in May of this year and we have already been given the new standards for discharging into the Arkansas River. As most cities have discovered, existing treatment plants cannot meet these stricter standards. As a result, the rate payers in the City of Larned are faced with building a new treatment facility costing upwards of \$2.5 million -- matching our current capacity of 500,000 gallons per day.

The impact of this cost on the ratepayer is significant. The current rates would have to be raised anywhere between 37% to 47%. For those on fixed incomes or the young families that are struggling to make ends meet, this is a burden which needs better justification than what we have received thus far.

The Legislature's Resolution requiring KDHE to meet with City officials and justify the new standards was certainly a step in the right direction. How can they justify the new standards if they are not based on sound scientific principles?

The new standards and what our existing treatment facility is capable of providing are described below. Please keep in mind, there are a few months out of the year during which we cannot meet one or more of the new standards due to the cold weather.



THE CITY OF WINFIELD

CITY HALL  
200 E. Ninth - P.O. Box 646  
Winfield, KS 67156-0646  
Phone (316) 221-5500  
FAX (316) 221-5590

OPERATIONS CENTER  
2701 E. Ninth - P.O. Box 646  
Winfield, KS 67156-0646  
Phone (316) 221-5600  
FAX (316) 221-5591

February 20, 1997

Mr. Chris McKenzie  
Executive Director  
League of Kansas Municipalities  
300 S.W. 8th  
Topeka, KS 66603-3896

Re: Ammonia Standards for Wastewater Treatment Plant

Dear Mr. McKenzie:

The City of Winfield is undertaking approximately \$6.7 million in renovations of its Wastewater Treatment Plant, primarily because of Kansas Department of Health and Environment regulations for sludge disposal and discharge standards. Within the cost estimate for construction cost are activities for the removal of ammonia from the treated water to comply with our new limits. We are currently under contract for the sludge handling equipment within Phase I and bids for installation and construction of the equipment will be opened later this month.

We have yet to design Phase II, but our consulting engineer has estimated that we will have at least \$500,000 in construction cost to meet the requirements of ammonia removal. Additionally, there will be new yearly operating cost for the removal of ammonia.

The impact of the proposed construction activities is significant. In 1993, we generated \$652,082 in total user fees within the Wastewater Utility fund. Because of the planned upgrades and existing debt from the last compliance project, we are projecting that our debt payment in 1997 for the Wastewater Utility to be \$524,700.

The impact on the customer has been dramatic. In 1993, the monthly cost to an average Winfield household (based upon 6,000 gallons of water use each month) was \$11.05. Today, that same bill will be \$19.40 per month, or an annual increase of \$101.40 per year. While parts of the proposed construction will be for capacity expansion, the major emphasis of our project is for compliance with new regulatory standards.

Thank you for your interest in our project. If we can provide additional information, please feel free to call upon us. We welcome further review of the standards.

Sincerely,

Warren Porter

6-2

BOD -- on average, these standards can be met.  
Suspended Solids -- no problem meeting these standards

PH -- on average, these standards can be met

Fecal Coliform -- we do not regularly test for this, but in a test conducted 8/29/95, this standard was met

TRC -- we do not disinfect at this time and do not use Chlorine

Dissolved Oxygen -- on average, these standards can be met

WET -- we do not regularly test for this, but in a test on 11/15/95, a sampling detected mercury above the aquatic life use criterion.

Sludge Disposal -- we meet EPA 503 requirements

Ammonia -- there is no standard in our current permit, but we have been testing for it and we cannot meet the new standard. On average, it has been running 3.72 mg/l May - October, and 13.1 mg/l November - April. The annual averages are as follows: 1994 - 10.5, 1995 - 10.2, and 1996 - 8.7 mg/l.

As you discuss these standards with KDHE, the Governor, and the Legislature, it would be helpful to allow for the occasional violation of these standards during a month. In order to build some flexibility into the standards, KDHE may want to consider setting limits of annual averages rather than limits which have to be met each month.

Thank you again for taking this issue to the Legislature. It seems to make sense to first set scientifically based standards. Once these are set, make sure that the standards are appropriate to the environment in which they will be applied. Perform a cost/benefit analysis and adjust the standards so that they make sense. And then build in some flexibility for meeting those standards.

Sincerely,



Don Gaeddert  
City Manager

cc Melvin Minor, Representative  
Larry Salmans, Senator

**REMARKS MADE TO HOUSE ENVIRONMENT  
COMMITTEE CONCERNING HB-2368**

**THURSDAY, FEBRUARY 20, 1997**

by Richard U. Nienstedt, City Manager  
City of Fort Scott, Kansas

On behalf of the Fort Scott City Commission, I want to express the City's support of HB-2368 which has been introduced by State Representative Andrew Howell. In this bill, Representative Howell has offered a method for affected and interested parties to study the proposed 1994 Kansas Water Quality Standards in a cooperative manner.

I want to first assure you that the City of Fort Scott supports clean water. While I cannot directly speak for other Cities, I can tell you that in almost twenty (20) years of public service, it is rare to find the public servant who does not support clean and safe water. We are not seeking relief to reduce the standards or permit unwarranted pollution which could be harmful to human health and life. What we are seeking is a *fair* application of the standards based upon good science and field information which are *achievable* in an affordable manner to the taxpayers of Kansas. KDHE estimates that the cost of complying with the 1994 ammonia standards is \$60,000,000. The cost for Fort Scott is estimated to be \$6,000,000.

The City Commission became concerned about imposition of these standards for several reasons:

- 1) A new plant had been constructed in 1984 and is still being financed by the taxpayers of Fort Scott. The plant was state of the art and approved by KDHE.
- 2) Concern that the ammonia criteria being imposed was solely for the protection of special aquatic life, not human life and safety. At the very least, it did not appear that there was enough information available concerning ammonia effects on these endangered species. Additionally, there were questions concerning the existence of such species in the habitat below the discharge point.



3) Concern that following a \$6,000,000 expenditure, water quality would still not be achieved, the designated use would not be achieved and the special aquatic life would not reappear, however, the Citizens of Fort Scott would be saddled with a debt that could increase their monthly wastewater bills up to \$40/month.

4) Concern that flexibility in applying the standards was not being exercised by the State.

The City then engaged an outside expert in water quality standards and contracted with them to review the issues of ammonia criteria, designated uses and special aquatic life. To show how complex these very technical issues can be, the City has been reviewing and receiving information from the State for three (3) years, at an estimated cost of \$150,000 to local citizens. The City came to the following conclusions and submitted them to KDHE in December, 1994:

1) AMMONIA CRITERIA: There are questions about the science upon which these criteria are based, even within EPA, and as to whether or not the standards can be obtained. There also are questions concerning what level of flexibility is granted to KDHE, by EPA, as to the application of these standards. Our study indicated that we were in compliance with the current and proposed standards. There were also questions raised as to how toxicity levels actually affected special aquatic life.

2) SPECIAL AQUATIC LIFE DESIGNATION: Sufficient evidence does not exist that would suggest the actual presence of two (2) endangered species within several sections of the Marmaton River below the discharge point. Our study indicates that the habitat does not exist for these species, below the discharge point, due to natural, geological formations and other factors not associated with the City of Fort Scott.

3) DESIGNATED USES: The Clean Water Act talks about the standards being able to *attain* and *maintain* designated uses. Because of the natural, geological conditions of this portion of the river, full body and recreational contact is not attainable. There were questions raised about the rationale used to assign the designated use.

It became very apparent to the Governing Body that construction of a \$6,000,000 plant would not improve water quality nor guarantee return of a special aquatic

species or obtainment of the highest recreational designated use. The City has submitted these findings in a report to KDHE with a request for alternative studies to be accomplished jointly between the City and KDHE in order to arrive at a realistic, obtainable and affordable solution that maintains safe water. The estimated cost of doing the additional studies, by the City's consultants, is approximately \$100,000. This information was submitted in December, 1994.

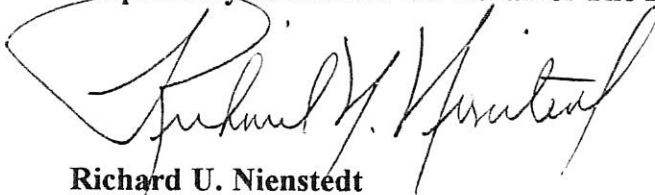
I want to point out to the Committee that KDHE Management and Staff have worked with the City of Fort Scott to address these issues. We believe that they recognize there are questions concerning applicability of the standards and are willing to work on these issues provided the resources are available.

HB-2368 helps establish a collaborative and cooperative discussion between interested parties in the State of Kansas concerning the applicability of the proposed 1994 standards. It allows an opportunity to gather more information about science, habitat and designated use attainability so that good, sound public policy can be developed.

The City of Fort Scott supports this Bill and strongly urges the Committee to approve it for consideration by the entire House. Thank you for the opportunity to comment on this important discussion which affects all Kansans.

Should the Committee need additional information, the City of Fort Scott will be happy to provide it.

Respectfully Submitted On Behalf of The Fort Scott Governing Body,



Richard U. Nienstedt  
City Manager

cc: Mayor and City Commissioners

Testimony Presented in Favor of House Bill 2368  
before the House Environment Committee  
by John A. Metzler, P. E., Chief Engineer for  
Johnson County Wastewater

3:30 p.m., February 20, 1997

I am John Metzler, Chief Engineer for Johnson County Wastewater, a County agency providing sewer service to approximately 300,000 people in Johnson County. From 1975 to 1983 I worked for the Kansas Department of Health and Environment (KDHE) in the Department's Water Pollution Control program, so I believe I have an understanding of the challenges facing KDHE with respect to water quality. Since 1983, I have worked for Johnson County as Chief Engineer. I am testifying today on behalf of Johnson County, as well as the Kansas Society of Professional Engineers, as I am Chairman of that organization's Environmental Resources Committee.

Our primary concern relates to two aspects of the KDHE regulations known as the Kansas Surface Water Quality Standards which are currently being reviewed by KDHE. These two concerns are:

1. The criteria, or maximum pollutant level, allowed in streams for ammonia.
2. The special aquatic life use designation, which makes the treatment requirements for cities and industries twice as stringent as they otherwise would be on streams where this use designation applies.

CONCERNS REGARDING AMMONIA

1. EPA's original 1984 document setting out the criteria, or maximum pollutant level allowed in streams for ammonia cautions against using the criteria for most discharges. Unfortunately, KDHE and some other states have ignored this warning, and have widely applied the criteria. EPA headquarters has finally recognized this concern, and has begun a review process that could lead to a significantly less stringent ammonia standard for streams.
2. Under the current criteria, Johnson County may need to spend up to \$80 million in capital costs to remove ammonia with an additional \$6 to \$7 million increase in annual operating costs. The combined increase in sewer charges for a typical user of our system would be about \$50 per year, or over a 1/3 increase in existing rates. This would be an enormous waste of the taxpayer's money if the EPA review described earlier ultimately shows that these expenditures were unnecessary.

*House Environment  
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Attachment 8*

3. Every other year KDHE submits a "report card" to EPA on the health of Kansas streams known as the 305(b) Report. The 1996 report shows that 99.7% of Kansas streams meet the ammonia standard, yet KDHE is requiring ammonia removal for many cities and industries that discharge to streams that already meet the ammonia stream standard.

#### CONCERNS REGARDING THE SPECIAL AQUATIC LIFE USE DESIGNATION

1. As noted earlier, when a stream is designated for this use, the treatment requirements for cities and industries which discharge to these streams are made twice as stringent as they otherwise would be. This special use is applied to streams where aquatic species needing protection have been identified. While this designation only applies to 17% of Kansas streams, many city and industrial discharges exist on streams with this use designation.
2. The intent of this use designation is to help protect threatened and endangered species. However, the two major scientific texts on endangered and threatened species in Kansas recognize that agricultural practices, consumption of water, construction of dams, and introduced species have had by far the greatest effect on these species. So, if these four factors are not returned to their condition before the arrival of the white man, many of these species will not return, regardless of the level of wastewater treatment required of cities and industries.
3. The aggressive approach taken by the Kansas Department of Wildlife and Parks (KDWP) has caused this use designation to be applied in many more instances than would be required by using the federal threatened and endangered species designation approach. The attached maps show that for aquatic species, the federal government believes only two species, impacting 12 counties, need protection, while the KDWP believes that 72 species, impacting 87 counties, need protection.

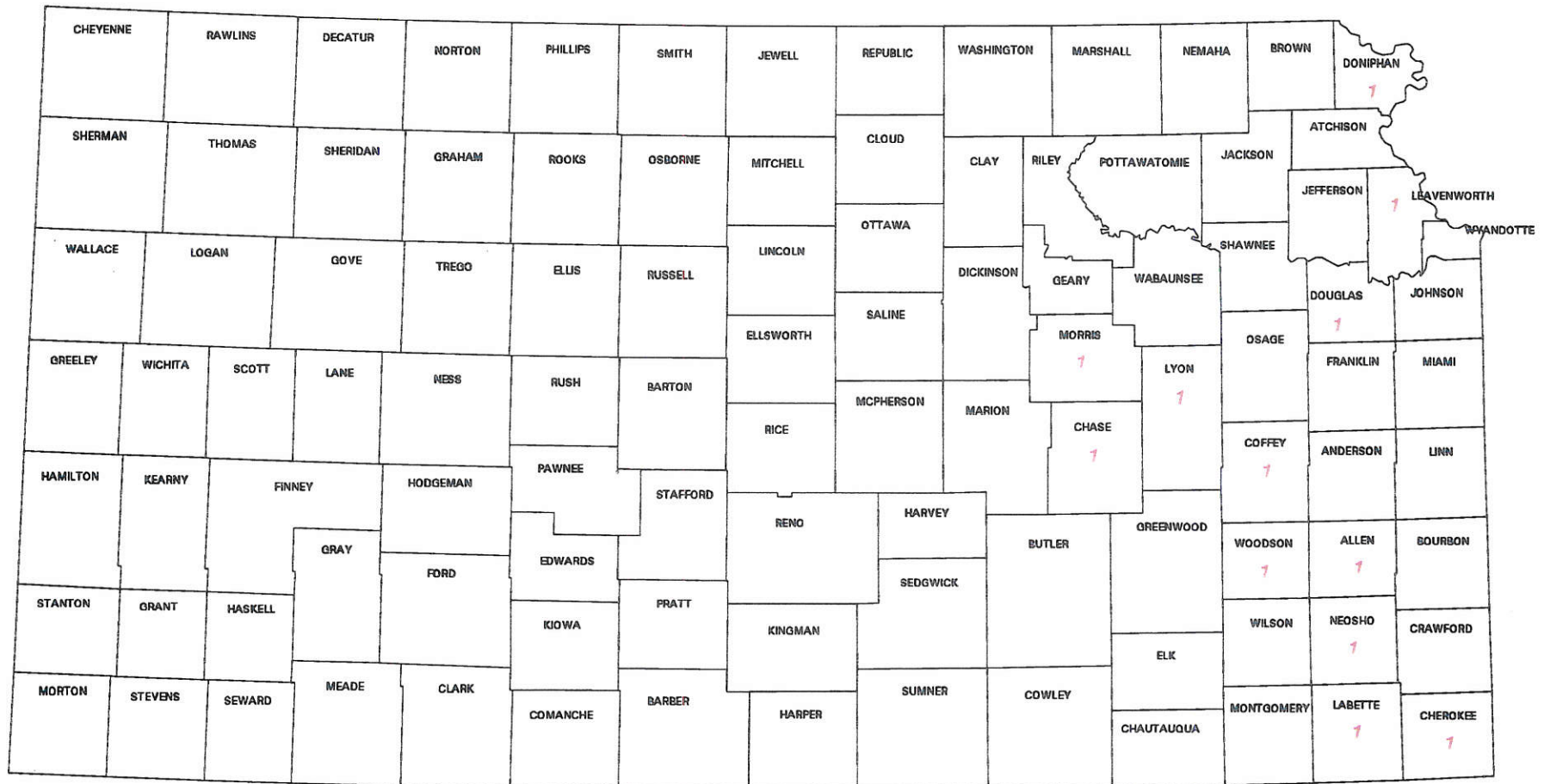
In conclusion, we recommend the temporary suspension of the ammonia criteria and the special aquatic life use designation pending further study as provided in House Bill 2368.

ksw:7397016

# Federal Designation of Aquatic Species Threatened, Endangered, or in Need of Conservation (SINC) by Number of Species in Each County



## Total Species - 2



8-3

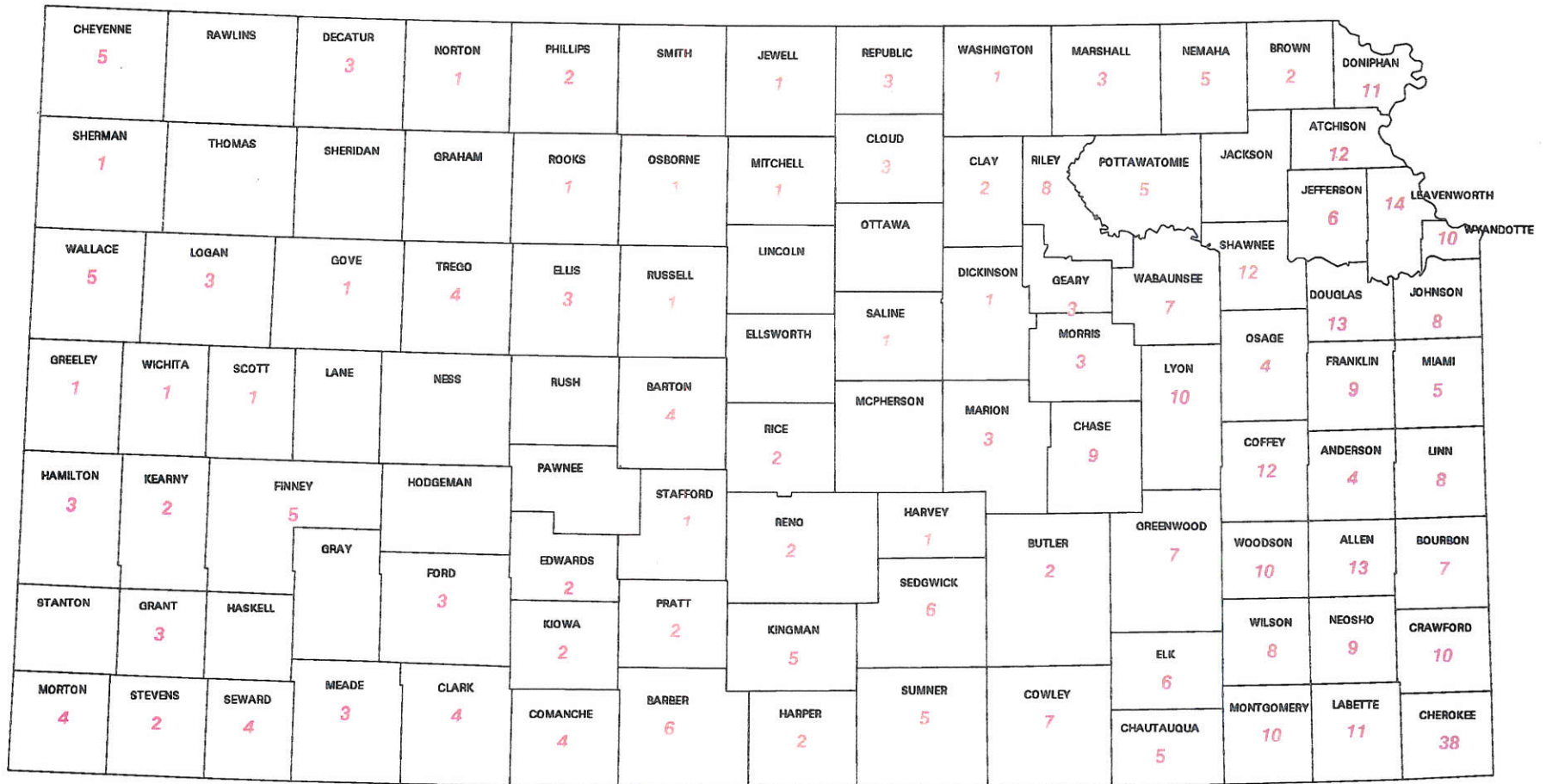


# Kansas

## Designation of Aquatic Species Threatened, Endangered, or in Need of Conservation (SINC) by Number of Species in Each County



Total Species - 72



4-8



# The City of Medicine Lodge

114 West First Street - Medicine Lodge, Kansas 67104 (316) 886-3908

February 20, 1997

Honorable Chairman Steve Lloyd  
Members of the House Committee on Environment

Thank you for allowing Mayor Charles Swayze, City Superintendent Jerry Martin and myself, City Administrator Rick Shain, of Medicine Lodge, in Barber County, to appear before you and present testimony in support of House Bill 2368.

With the expiration of our NPDES permit on April 22, 1996 and application of the new ammonia regulations required to be implemented under the 1994 Kansas Surface Water Quality Standards, we have been forced to study our present WasteWater Treatment Facility and propose alternatives for its' replacement. In good faith toward KDHE we contracted with Wilson and Company Engineers of Wichita to study the treatment facility. This study looked at four or five possible alternatives, and three were recommended by Wilson and Co. These were: 1) a non-discharging lagoon estimated at \$9.4 million; 2) a discharging lagoon estimated at \$4.4 million; and 3) a new mechanical plant estimated at \$2.3 million. The mechanical plant was determined by the engineers to be the most feasible alternative.

The fiscal impact of having to build a new mechanical plant just to meet a change in ammonia criteria, accomplished with a stroke of the pen and possibly based on questionable science, would be devastating to individuals and businesses in our community. We are currently studying sewer rates and a possible restructuring of the same with the assistance of the Kansas Rural Water Association. However, we would have to go a long way in a short period of time to get where we would be required to be in order to meet new debt service, capital costs and operation and maintenance costs for a new plant. Our present residential monthly rate for 916 customers, is a \$7.10 per month flat rate. Our light commercial rate, which consists almost entirely of our small businesses (124 accounts) would go from the present rate of \$16.55 per month to \$44.70 per month (flat rate). Our heavy commercial rate consisting of 11 customers, would go from the present rate of \$62.50 monthly to \$168.70. Our institutional rate is the only one tied to water use. This category consists of schools, nursing homes and the hospital. That rate would go from \$1.20 per 1,000 gallons to \$3.25 per 1,000 gallons. These new rates amount to a 270% increase (proposed for 1997) over and above our present rate. At the end of a 5 year phase-in of higher rates ending in 2001, the increase would amount to 290% or more. Businesses would be hardest hit with this requirement and forced to raise their cost of goods and services which even now mean the difference between whether residents shop at home or go to Pratt, Wichita or even Alva, Oklahoma to take advantage of perceived or real savings.

Municipally speaking, the new debt service requirements, just on a new \$2.3 million mechanical plant financed under the KDHE Revolving Loan Fund would be \$186,000. This is more than our present 1997 sewer fund budget of \$185,260 which allows us to maintain, in very good condition, our present facility. Our present revenue stream of about \$125,000 per year funds the present facility on a little better than break-even basis.

To further stress the economic impact, please consider the recent Research Report by Kansas, Inc. in their 1995 Report Update on County Economic Vitality and Distress, dated October 1996. In studying the economic vitality and distress of all 105 counties of Kansas, they considered the following indicators: 1) net population change; 2) elderly population; 3) labor force; 4) long-term employment growth; 5) short-term employment growth; 6) per capita property valuation; 7) per capita income; and 8) AFDC/General Assistance participants. The results of this research shows a distress ranking of 81 out of 105 (pg.3). Table 2, (pg. 15) shows the change in yearly

House testimony, 2/20/97 on HB 2368.

rankings from 1994-95 as well as the 7 year period between 1989 and 1995. In 1989, Barber County (Medicine Lodge, County Seat) was ranked 23rd of 105 counties, showing that just 7 years ago we were in the upper quartile of counties with a healthy economic vitality. In those 7 years we have declined by 58 standings, with only Harper County, our neighbor to the east, faring worse, going from 11th to 96th, respectively. Percentage wise, in terms of net population change (see pg. 19) we suffered a negative -17.60% (-17.60%) loss in population. In absolute numbers this equates to 1,197 people. We ranked 104 of 105 counties in net population loss as a percent. Only Jewell County in North Central Kansas fared worse in this category.

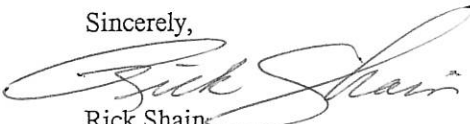
We also question why stricter ammonia limits are necessary, but no one can answer. Who will listen to both sides of the argument and make a decision that creates a win-win situation for both sides? We certainly favor protecting our God-given environment but not at all costs when reason fails to prevail. We can not continue to penalize rate payers who are struggling to survive and make a living, whether it's done in Topeka, Independence, Great Bend, or Medicine Lodge. Who will justify the stricter limits and provide proof with a preponderance of the evidence that they must be followed at all costs? Is not this the way our form of government applies justice, or should caveat prevail?

What seems unreasonable about the new ammonia criteria is that with a stroke of the pen, our current trickling filter plant is now considered out of compliance with the ammonia criteria. Everything else is okay as far as we know. We do not dump raw sewage into Elm Creek and Medicine Lodge River during heavy rainfall periods. Our filters, digesters, and clarifiers are not cracked and leaking even though our plant is mid-fifties vintage. We are willing to make modifications and upgrades at our plant to improve upon our present effluent criteria which are met under our old NPDES permit. Engineers and KDHE itself have stated that our plant is well-maintained and functional. Our plant is well maintained and operational due to the diligent care expressed by Superintendent Martin. How then, if KDHE admits to a well-operated and maintained plant can we now be required to build a new one? Surely there is a middle ground we can both stand on that is fair to all of us. This is where we want to be.

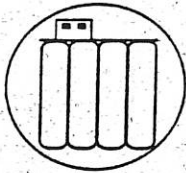
We are asking for relief from the imposition and implementation of these new, stricter ammonia limits that are designed to force us to build a new plant using a newer, activated sludge technology. This forced compliance with new stricter limits, if not based on sound reasoning and documented scientific criteria, will needlessly waste precious and limited local public funds. Please vote to pass favorably on this bill.

On behalf of the Governing Body of Medicine Lodge, and the League of Municipalities, we thank you for this opportunity and are prepared to answer at this time any questions the committee may wish to ask.

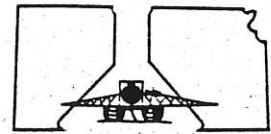
Sincerely,



Rick Shain  
City Administrator



**Kansas Grain & Feed Association  
Kansas Fertilizer & Chemical Association**



**Statement of the  
Kansas Grain and Feed Association  
and the  
Kansas Fertilizer and Chemical Association  
to the  
House Environment Committee  
Regarding H.B. 2368  
Rep. Steve Lloyd, Chair  
February 20, 1997**



**KGFA & KFCFA advocate public policies that advance a sound economic climate for agribusiness to grow and prosper so they may continue their integral role in providing Kansans and the world with the safest, most abundant supply of food and fiber.**



Mr. Chairman and members of the committee, I am Doug Wareham appearing today on behalf of both the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). KGFA is comprised of 1150 member firms including country elevators -- both independent and cooperative -- terminal elevators, grain merchandisers and feed manufacturers, all of which rely on the production of Kansas producers for the vital raw ingredients which make our grain and feed industry the envy of the world. KFCA's nearly 500 members are primarily plant nutrient and crop protection retail dealers with a proven record of supporting Kansas producers by providing the latest services available in today's rapidly changing crop production system.

After participating in the Kansas Department of Health and Environment's recent public focus meetings, which reviewed the current Kansas Surface Water Quality Standards, we became very concerned about the possible negative economic and environmental impact which will be felt by all Kansans if river and stream designations and numeric criteria adopted by KDHE in 1994, were to be enforced today. We were equally concerned by the apparent lack of current scientific information utilized when establishing numeric criteria for those standards.

In light of our many concerns regarding the current Kansas Surface Water Quality Standards, we support and ask that you look favorably upon House Bill 2368 which addresses many of those concerns. Our industries are committed to protecting the surface waters of Kansas and have reinforced that commitment by recently investing millions of dollars by constructing fertilizer and crop protection chemical containment structures to insure agricultural crop inputs are not lost to ground or surface water from storage facilities.

No industry is grasping technology at a faster pace than the agriculture industry in Kansas. New technologies, such as the precision application of crop protection chemicals and fertilizers, which includes the use of satellite global positioning systems, and the practice of no-till and other environmentally friendly cropping practices, have continued to be readily adopted by Kansas producers and the agribusiness industry which supports their efforts.



While our industries will continue to adopt the latest technologies to protect Kansas Surface Water Quality, we firmly believe that Kansas Surface Water Quality Standards should be based on the best and most current science available. By establishing a special commission to review Kansas surface water quality standards, House Bill 2368 will enable some very important questions to be addressed, such as:

1. Are the current surface water quality standards, including the use designations, surface water criteria and the "Kansas Surface Water Register" based on sound science?
2. Are Kansas Surface Water Quality Standards more stringent than are required by federal law and if so, in what way?
3. Were environmental impact studies done to determine what negative effects these standards might have on Kansas rivers and streams?
4. Were economic impact studies done to determine what negative effects these standards might have on the people of Kansas?

We believe H.B. 2368 uses the common sense approach of "looking before you leap" and for that reason we ask for its passage. Given our support for H.B. 2368, we respectfully request it be amended at Section 2 (c) to increase the minimum number of persons appointed by the Governor to serve on the special commission to five. Given the wide scope of this issue and potentially affected parties, we believe less than five might not represent all of Kansas' many interests.

Thank you for the opportunity to appear in support of H.B. 2368 and I'll be happy to answer any questions you might have.



# PUBLIC POLICY STATEMENT

## HOUSE COMMITTEE ON THE ENVIRONMENT

**RE: HB 2368 - Temporarily suspends surface water quality standards and creates the Special Commission on Water Quality Standards to evaluate and advise the Governor, Legislature and Secretary of KDHE.**

**February 20, 1997  
Topeka, Kansas**

**Presented by:  
Bill R. Fuller, Associate Director  
Public Affairs Division  
Kansas Farm Bureau**

Chairman Lloyd and members of the House Committee on the Environment, I am Bill Fuller, Associate Director of the Public Affairs Division for Kansas Farm Bureau.

We support HB 2368 on behalf of the farm and ranch members of the 105 county Farm Bureaus in Kansas. The more than 435 Voting Delegates at the 78<sup>th</sup> Annual Meeting of Kansas Farm Bureau adopted a "Environmental Standards" resolution that relates to the issues outlined in HB 2368. We have attached the KFB policy statement for your review.

We appreciate the invitation extended by the Kansas Department of Health and Environment to be a member of the Water Quality Standards Advisory Group. A series of workshops held

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Attachment 11*

January 30, February 4 and February 6 conducted the required triennial review of the standards.

While participating in the advisory workshops, many questions arose and major concerns developed. Issues centered around the designated uses that were established, the criteria used and the future development of Total Maximum Daily Loads (TMDL's).

Many of the concerns surround the designated uses: Are they a goal or are they a realistic and attainable description of "real world" stream use? How were the designations determined? What scientific information was used? Can Kansas set designated uses for the state's streams and rivers, or must they be approved by EPA? Why are designations in Kansas more stringent than designations in other states in our region? What impact does this have on Kansas and Kansans?

Passage of HB 2368 does not lower water quality standards now being administered in Kansas. The bill merely delays the implementation of new standards until a thorough and open review can be conducted. It is absolutely essential for the economic and social impacts to be examined. Kansas citizens should not be burdened and Kansas agriculture, industry and municipalities should not be threatened with staggering expenses to meet unrealistic standards that may not have been backed up with adequate research and sound science.

Safe drinking water is essential to all Kansans and is a goal we must meet. We all have responsibilities: agriculture, industry, homeowners, municipalities, business, construction, government, etc.

We are trying to do our part. As an organization, Farm Bureau in Kansas has a network of 105 county natural resource committees involved with watershed projects, plugging abandoned water wells, testing water and encouraging wetland and riparian areas improvement.

As an industry, we supported and are working to implement the most environment/natural resource friendly federal farm bill in history. More BMP's (Best Management Practices) are being developed and utilized every day. New technology allows safer and more limited use of crop protection products. We simply ask all this be considered before implementing new surface water quality standards.

We suggest two amendments to HB 2368. On page 2, Lines 41 and 42, the bill calls for the commission to consist of no less than three and no more than seven members appointed by the governor. We recommend the minimum size of the commission be five. This will allow more stakeholders to be involved.

Also, on page 2, line 10 we recommend inserting a new (3) "Evaluate the surface waters designation and standard for contact and noncontact recreational use as referenced in K.A.R. 28-16-28d(c)(1) and K.A.R.28-16-28e(c)(7)", then renumber the other sections.

In closing, we respectfully ask you approve and advance HB 2368. This will allow a temporary delay in the implementation of new water quality standards, create a commission to examine and advise the legislature and administration, assure that sound science is utilized and prevent unacceptable adverse economic and social impacts on the citizens and industries of Kansas.

Thank You!

## **Environmental Standards**

**CNR-1**

We believe any legislation that is enacted, or any environmental regulations which are proposed for promulgation must be based on:

1. Factual information;
2. Scientific knowledge; and
3. Economic impact studies.

Legislation and regulations regarding damage or "probable damage" to land, water, air, wildlife or endangered species must be supported by data which substantiate actual damage.

We support a uniform, safe, effective, and scientifically based system of regulation of agricultural chemicals, fertilizers and pesticides which is consistent with state and federal law and administered by appropriate state and federal agencies.

We believe state standards should be no more stringent than federal standards. Rules and regulations promulgated by any Kansas agency should not put Kansas producers or businesses at a competitive disadvantage with any other state.





# Kansas Dairy Association

*Providing a unified voice for Kansas dairy farmers*

Warren Winter  
President  
Hillsboro

Cletus Grosdidier  
Vice President  
Eudora

Roy Buessing  
Treasurer  
Axtell

Richard Benoit  
Damar

Walter Burress  
Augusta

Richard Gress  
Seneca

Joe Hinton  
Fort Scott

Dennis Metz  
Wellington

Elwood Schmidt  
Riley

## Office

4210 Wam-Teau Drive  
Wamego, KS 66547  
913-456-8357  
FAX 913-456-9705

## Comments In Support of HB 2368 from the Kansas Dairy Association

**Submitted by: Kerri Ebert, executive secretary, Kansas Dairy Association**

The Kansas Dairy Association, representing Kansas' nearly 900 dairy producers, supports HB 2368 that will temporarily suspend certain surface water quality standards and create a special water quality standards commission to be appointed by the governor.

Dairy producers believe that safe water is of utmost importance to Kansas and Kansans. We also believe that state-imposed water quality standards should be based on current, sound, accurate scientific data. We support this measure because it is a common sense approach to assuring that the surface water in Kansas is as safe as possible and that quality levels are based on accurate and up-to-date standards.

We would also ask for one additional task to be enumerated under the duties of the commission and that is to: *Evaluate the surface water designation and standards for contact and noncontact recreational use as referenced in K.A.R. 28-16-28d(c)(1) and K.A.R. 28-16-28e(c)(7).*

We ask for this addition because it brings to the forefront the water quality issue that affects dairy producers as well as all livestock producers in the state and that is suspended solids and levels of fecal coliform in surface water. As livestock producers, we believe that the Commission should look at these standards as well as the others cited in HB 2368 so that we producers and the general public can be assured that mandated levels are both safe and attainable.

Thank you for taking our thoughts on this issue into consideration. We ask for your support of HB 2368.

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Attachment 12*



*Since 1894*

## **Testimony**

presented by

LewJene Schneider,

***Director of Research and Legal Affairs***

regarding

## **House Bill 2368**

before the

***HOUSE COMMITTEE ON ENVIRONMENT***

FEBRUARY 20, 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.

Chairperson Lloyd and members of the House Committee on Environment, thank you for the opportunity to testify today. My name is LewJene Schneider, and I am Director of Research and Legal Affairs for the Kansas Livestock Association.

I am here today to discuss House Bill 2368. We urge you to give favorable consideration of House Bill 2368. KLA members believe it is important to be stewards of the land and water. KLA members pride themselves in being such stewards, and environmentally friendly. If we aren't, someday there will be no natural resources to allow us to make a living.

KLA has participated in the Kansas Department of Health and Environment's recent public focus meetings, which reviewed the current Kansas Surface Water Quality Standards. During these meetings it came to our attention the apparent lack of up to date, scientific information utilized when establishing numeric criteria for these standards.

This has caused great concern, especially in light of the fact these standards have such environmental and economic impact on the agricultural industry in Kansas. Additionally, to have such standards based on other than sound scientific data is very disconcerting.

As you know, technology is advancing daily. During these focus groups, information presented indicates that the 1994 surface water quality standards were set without the use of the latest technology and science available at that time.

While KLA members will continue to adopt the latest technologies to protect Kansas Surface Water Quality, we firmly believe that Kansas Surface Water Quality Standards should be based on the best and more current science available. By establishing a special commission to review Kansas surface water quality standards, House Bill 2368 will enable some very important questions to be addressed.

We respectfully request HB 2368 be amended as follows:

Page 2, line 10,

Section 3: add :

(3) Evaluate the surface waters designation and standard for contact and noncontact recreational use as referenced in K.A.R. 28-16-28d(c)(1) and K.A.R. 28-16-28e(c)(7).

Page 2, line 41

(c) increase the minimum number of person appointed by the Governor to serve on the special commission to five.

Given the wide scope of this issue and potentially affected parties, we believe less than five might not represent all of Kansas' many interests.

In light of our many concerns regarding the current Kansas Surface Water Quality Standards, we support and ask that you look favorably upon House Bill 2038.

Thank you for the opportunity to appear in support of HB 2368. I'll be happy to answer any questions.

**KAPA**

Kansas Aggregate  
Producers' Association

Edward R. Moses  
Managing Director

**Testimony**

**By**

**The Kansas Aggregate Producers' Association**

**Before the  
House of Environment Committee on HB 2368  
Water Quality Standards**

February 20, 1997

Good afternoon, Mr. Chairman and members of the Committee, my name is Edward R. Moses representing the Kansas Aggregate Producers' Association. The Kansas Aggregate Producers' Association is an industry-wide trade association comprised of over two hundred fifty (250) members located in all one hundred and sixty five (165) legislative districts in this state, providing basic building materials to all Kansans.

We thank you for the opportunity to appear before you today to voice our concerns about HB 2368, which would provide for temporary suspension of the "Kansas Water Quality Standards." Our purpose for appearing before you today is to discuss how the current water quality standards have impacted our industry and discuss the "Outstanding Natural Resource Water" designation. In May 1, 1996, five (5) aggregate dredgers located on the Walnut River met with nine (9) government officials to conduct a site tour to review permitting of their operations under the United States Clean Water Act. As part of the permit or certification process, the dredgers were required to have their permit applications reviewed by the Kansas Department of Health and Environment in order to certify compliance with water quality standards. It was at this time that the dredgers were first confronted with the term or designation "Outstanding Natural Resource Water." This was a designation given to the lower segment of the Walnut River by the Kansas Department of Health and Environment during the promulgation of the water standards being discussed today. As a result of this designation, the dredgers were informed that their dredging operations could no longer be conducted in such a manner to further degrade the current condition of the Walnut River. After a lengthy process, the dredgers were allowed to continue "severely limited" operations with the proposed permit authorizations which were issued in August. However, reviewing the conditions, all five (5) dredgers refused to sign and submit their permits and announced intentions to abandon operations. In September, Cowley County faced with no local source of road

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aggregate, then intervened to reach a compromise with regulating officials in order to allow continued dredging on the Walnut River.

Since this time, in order to prevent future confrontations, the Kansas Aggregate Producers' Association has been actively seeking many answers regarding the "Outstanding Natural Resource Waters" designation. The designation in and of itself is very severe, in that, once applied, it does not allow any further degradation of water quality from where that particular "Outstanding Natural Resource Water" may be at that time. Upon further research, it appear to us that the designation "Outstanding Natural Resource Water" has a very fuzzy origin. In addition, there are no specific standards on how "Outstanding Natural Resource Waters" are determined in this State, especially with respect to any type of scientific criteria. Furthermore, once an "Outstanding Natural Resource Water" designation is achieved, the criteria by which the water quality of the segment is to be maintained also appears to be somewhat unclear and subjective of nature. More specifically, in the Walnut dredging case, regulators made an automatic assumption that dredgers withdrawing loose gravel from the river since the turn of the century, were contributing to the degradation of the water quality of the river. However, what was the quality of the river before the turn of the century? In other words, there appears to be no benchmarks in these determinations, just an assumption that any operation taking place must be contributing to the degradation of that water. We would suggest that many of the morphological impacts that have occurred to the Walnut River since the turn of the century, most importantly the building of the El Dorado Dam, have done far more to effect the quality of the Walnut River than the four (4) or five (5) dredgers removing loose gravel from the sand bars located on the bends of that river.

Because the "Outstanding Natural Resource Water" designation has the drastic effect of suspending any further activity or development of water use, and because its use and administration appears to be based on vague criteria (both time and morphology), the Kansas Aggregate Producers recommend HB 2368 be amended by adding in Section 2 (A) at line 32 the following language: [(3 ) "The Outstanding Natural Resource Water" designation contained in the "Kansas Surface Water Register," as published by the department on June 20, 1994, and referenced in K.A.R. 28-16-28d, and amendments thereto]. This would allow the proposed commission to also study how, where and why an "Outstanding Natural Resource Water" designation is made and to establish criteria for future designations of such waters.

We thank you for the opportunity to appear before you today.



City of Topeka  
Testimony Before House Environment Committee  
on House Bill 2368  
3:30 p.m. February 20, 1997

My name is Edie Snethen, I am Director of Public Works for the City of Topeka. I come before you today in support of House Bill 2368. The City of Topeka owns and operates two wastewater treatment plants, the 16 MGD Oakland Plant and the new 12 MGD North Topeka Plant. Additionally, we operate under contract numerous smaller treatment plants owned by Shawnee County. The total population served by these facilities is approximately 120,000. I would like to provide a brief background of information to explain our support for House Bill 2368.

The City of Topeka has a strong record of support for environmental protection. The list of recent and planned investments in our treatment plants demonstrates that commitment. The total for these investments in water and wastewater treatment plants is \$63,100,000 over a seven year period.

North Topeka Wastewater Treatment Plant*	\$29,800,000
Biosolids Project**	\$ 2,300,000
Water Treatment Plant Residuals Project**	\$ 7,000,000
Water Treatment Plant Upgrade * & **	<u>\$24,000,000</u>
completed or under construction*	\$63,100,000
under design**	

This list does not include investments in interceptor sewers which are being extended to eliminate smaller treatment plants and regionalize into the City's treatment facilities. These improvements were supported by the City Council because of a demonstrated community need or environmental benefit of the improvements. Financially, it has not been easy, but Topeka has been committed to accomplishing these improvements.

When the North Topeka Plant discharge permit was developed, the effluent loading from the two treatment plants (North Topeka and Oakland) were considered together. The North Topeka Plant was constructed with ammonia removal. The Oakland Plant does not remove ammonia. At the time the North Topeka permit was issued and the discharges were considered in combination, it was noted that no ammonia removal would be required at Oakland.

On March 15, 1996, we received a copy of a draft permit for the Oakland Plant from the Kansas Department of Health and Environment. That draft permit listed proposed discharge limitations to include ammonia removal. The explanation for the change of position cited in the letter was that the use designation for the Kansas River had changed from Expected Aquatic Life Use to Special Aquatic Life Use. The estimate of cost for removing ammonia at the Oakland Plant is \$15,000,000. Initially, we were told that the Special Aquatic Life use designation was due to the sturgeon chub species. We presented published biological studies which identified the cause of the loss of sturgeon chub as being a result of habitat changes created by impoundments upstream of this stretch of the

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Attachment 15*

Kansas River. We were then told that the use designation was due to other species in addition to the sturgeon chub.

On April 2, 1996, the City of Topeka submitted a written request to the Kansas Department of Health and Environment asking that a use attainability analysis be conducted on the Kansas River near Topeka for the Special Aquatic Life Use designation. This request was made in accordance with House Resolution 6013. One of our primary concerns was that if the loss of certain species was due to habitat changes, investing \$15,000,000 in public funds to remove ammonia would provide little if any benefit. To date we have not received a response from our letter of April 2, 1996 nor have we received any additional information concerning the draft permit.

We support House Resolution 2368 because it pursues that question which we have asked but received no answer, that being "whether there is an established and clear relationship between the presence of the regulated pollutants and the protection or restoration of the targeted aquatic species." (Section 3(b)(2)) . When the citizens of Topeka are being required to expend \$15,000,000 to remove ammonia, a clear, accurate, and site-specific examination of environmental benefits is essential.

We support House Resolution 2368 because it seeks to ensure that the Kansas Water Quality Standards are based on sound science and technical information. The EPA ammonia criteria document states that the criteria should not be applied universally. In 50 Federal Register 30784 dated July 29, 1985, it is stated,

"There is limited data on the effect of temperature on chronic toxicity. EPA will be conducting additional research on the effects of temperature on ammonia toxicity in order to fill perceived data gaps. Because of this uncertainty, additional site-specific information should be developed **before these criteria are used in wasteload allocation modeling.**"

Again in that same document, it is stated,

"Where the treatment levels needed to meet these criteria below 20° C may be substantial, use of site-specific criteria is strongly recommended."

Before communities are required to spend millions of dollars in public funds to remove ammonia, the scientific basis for the criteria and the manner in which the criteria are applied must be carefully evaluated.

Finally, we endorse the appointment of a commission to review the Kansas Water Quality Standards. Our goal is to protect and preserve the quality of Kansas' streams while ensuring that public expenditures are directed towards projects which provide the greatest environmental benefit. The assignment of tasks for the Commission to investigate listed in Section 3, will help to ensure that the Kansas Water Quality Standards meet these goals.

In summary, the City of Topeka supports the temporary suspension of the ammonia criteria and the special aquatic life use designation until such time as these issues can be reviewed by an appointed commission and resolved. We request that members of the House Environment Committee approve House Bill 2368.

Office of the Mayor

City Hall - 120 North Sixth Street  
Independence, Kansas 67301

February 18, 1997

Representative Steve Lloyd  
Chairperson  
House Environment Committee  
State House  
Topeka, KS 66612

RE: H.B. 2368

Dear Representative Lloyd:

The City of Independence requests your support for passage of House Bill No. 2368 with a suggested amendment.

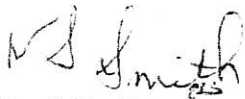
The basis of our support is the impact that the 1994 Water Quality Standards and KDHE's interpretation of these standards, have on the cities in the State. An example of this impact is the estimated cost included in the wastewater mater plan recently prepared for the City by the firm of Black and Veatch. It is estimated that in order for the City to comply with the 1994 standards will require a capital cost of 7.8 million dollars for treatment plant upgrades and 8.3 million dollars for other system improvements, for a total of 16.1 million dollars. This does not include the additional cost of an estimated \$540,000.00 in annual operating costs. The total cost to the City for implementation of the Black & Veatch recommendations will require the City to increase its existing rates by an estimated three times.

It is our belief that the water quality standards were not established based on good science or included adequate cost benefit analysis, nor has it been proven that implementation of these standards for the City of Independence will accomplish the desired objectives on the Verdigris River.

The City would propose one amendment to the bill to provide as follows. In section 3(7f) that it be amended to provide that on or before January 1, 1998 the Commission shall submit a final report to the Governor and the Legislature. The Water Quality Standards suspended by Section 2 shall not be reinstated until action is taken to approve the standards by the Legislature.

We appreciate your consideration and support of House Bill 2368 and our proposed amendment.

Sincerely yours,



Scott Smith  
Mayor

PS:kz

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Attachment 16*

**REMARKS BY JIM BRADLEY  
TO THE HOUSE ENVIRONMENT COMMITTEE  
REGARDING HOUSE BILL 2386**

**February 20, 1997**

Chairman Lloyd and members of the Committee, my name is Jim Bradley, Director of Utilities for the City of Ottawa. The City of Ottawa strongly supports House Bill No. 2386. While the City supports the protection of our environment, and water quality within our state, the City however wishes to ensure that this protection and quality are realized through a cost-effective program supported by complete technical and scientific data. While wanting to improve the quality of life for our residents we do not feel the financial burden should be placed on our citizens with out firm evidence that the imposed expenditures will create the actual mandated results. The results should be long lasting and should not impose a burden on the City and state residents that are not imposed upon neighboring states and no more strict than those imposed by EPA.

The City of Ottawa therefore supports the establishment of the proposed "special commission on water quality standards" to attain the goals of improvements to surface water quality within a cost-effective framework.

In closing, we urge your favorable consideration of House Bill 2386.

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Attachment 17*

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Environment Committee

by

The Kansas Department of Health and Environment

House Bill 2368

Good Afternoon, Mister Chairman and members of the House Environment Committee. I am here today to speak on House Bill 2368. The Department is very supportive of an open, public examination and discussion of the surface water quality standards, designated uses and identified waters in need of extraordinary protection. In fact, it began that process this past fall with a series of informal "listening tours" around the state and has continued it more recently with public "focus group" discussions. We welcome discussion of this bill for a number of reasons. First, the development of public policy of this type benefits from thorough public examination. Second, this public discussion will add to public awareness of the issues surrounding the protection of the waters of Kansas. Finally, the commission will provide all interested parties with a forum whose makeup should be balanced and impartial to submit information and air their opinions.

KDHE has long administered the NPDES program for Kansas. The department has attempted to develop a Kansas program dealing with Kansas issues and priorities. We often find ourselves at odds with the federal program managers over our approach. The suspension in Section 2 of the bill could have a number of effects, some predictable and some not, on the NPDES program and regulated community. In the long-term, suspension of the standards could result in the USEPA taking action to revoke our ability to conduct the NPDES program in Kansas. The USEPA could also adopt standards for use by Kansas in the NPDES program.

Possible short-term actions may be more likely. The USEPA will probably perform a closer review of permits issued by the agency during the period in which the standards are suspended. What does this mean? First, KDHE



may be required to submit any or all NPDES permits to the regional office in Kansas City for review. The EPA staff may recommend and or demand changes in draft permits and may actually require certain dischargers to have an EPA issued federal permit. I should mention the permits subject to this review primarily include municipal and industrial discharges. In addition, we may be subjected to more frequent program audits and perhaps joint federal/state inspections of permitted facilities.

The suspension could also result in a one or more of private suits. During the time we worked on the 1994 standards, a suit was brought against the agency for failure to timely review and adopt the 1994 standards. The agency prevailed because the court determined sufficient progress toward adoption had been made. The proposed suspension could invite further actions. While we cannot say these actions will occur, you should be aware of the possibility. I tell you these potential negative consequences not out of opposition to the bill, but because I believe we have a responsibility to make you aware of them.

The policy we have tried to follow in my tenure at KDHE is to base changes in standards on sound, objective scientific information. For example, there has been a lot of discussion urging more stringent design standards in confined animal feeding facilities, but little objective information existed to support that change. We are now seeking it. Similarly, a commission and a solid public participation process can be an excellent approach to obtaining objective, scientifically based information on which to determine appropriate water quality standards.

As mentioned, the department has conducted a number of focus group discussions in recent weeks. The input from these meetings and earlier listening tour meetings will be provided to the commission. The creation of a commission should support expectations of an open, unbiased examination. Therefore, we suggest the addition of a qualification statement for both commission members, staff, and any consultants hired by the commission. This qualification would require that commission members and consultants be independent of and unrelated to NPDES permit holders, nor should they derive income from parties holding permits. We can provide such language if requested by the committee.

Funding for the operation of the commission and subsequent recommended actions for the department must be adequately funded. The responsibility of KDHE to cooperate and assist with the deliberations of the commission

can be carried out within the proposed budget for the agency. However, in Section 3(a)7 the commission is charged with the duty to recommend procedures. Those recommended activities, if they are to be agency responsibilities, may not be possible without additional funding. If for instance, the commission were to recommend the department conduct use attainability analysis upon request, a suitable funding source must be identified to provide this service. Similarly, if the commission recommends independent research to define aquatic toxicity limits, funding must be identified because funds for these activities have not been budgeted.

In Section 3(c) we suggest the addition of several state agencies. These include the Kansas Water Office, the Conservation Commission and the Department of Agriculture. You may also want to include the Department of Commerce and Housing because of the economic implications of the commission's activities and mandates.

The tasks of the commission will necessarily include the examination of the federal requirements for approval of the state's standards and recommendations for achieving such approval. The state's water quality standards must be reviewed and approved by the US EPA under the provisions of the Federal Water Pollution Control Act and EPA regulations. It has been very frustrating for the department to be criticized for the stringency of the 1994 standards while EPA has been unwilling to approve the same because they are not stringent enough. For your review I have attached a copy of a recent letter from the Regional Administrator. You will note he refers to a 1994 letter critical of the standards. Examples of areas in which the department has pursued an independent course from federal programs are stated in the letter from the acting Region VII Water Program Director which is included with the EPA letter attached to the testimony. These items include:

Kansas' antidegradation regulations do not include provisions for "Outstanding National Resource Waters"

Relaxation of standards for "effluent created habitat" do not adequately protect designated uses

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Page Four

Kansas' waste stabilization pond (lagoon) exemptions for ammonia and bacteria from monitoring or wasteload allocations circumvents the water quality standards

Inclusion of disinfection requirements in NPDES must be premised on meeting the water quality criteria supporting recreational use categories regardless of the documentation of existing use.

Kansas' regulations exempt privately owned lakes and wetlands from protection

There are additional examples and explanation of these points in the attached material. Although KDHE addressed these concerns in the department's responsiveness summary for the 1994 water quality standards, EPA continues to take KDHE to task for these items.

In conclusion, I restate the department's support for an open, public process to examine the state's water quality standards. This bill creates an excellent opportunity for the setting of public policy for Kansas. The state should make a determination of the standards to which we wish to protect our aquatic resources. It is time Kansas addressed this issue head on and defined our expectations and set our course. We should also begin the process to establish funding mechanisms and develop resources to deal with these issues. When we have begun this process, you may also wish to consider the next step which is the establishment of similar quality standards and expectations for our vast groundwater resources.

Thank you for your attention. I am willing to attempt to address any questions you may have.

Testimony presented by: James J O'Connell  
Secretary  
Kansas Department of Health & Environment  
February 20, 1997

State of Kansas

Bill Graves



Governor

---

Department of Health and Environment

James J. O'Connell, Secretary

January 21, 1997

Mr. Dennis Grams, Regional Administrator  
U. S. Environmental Protection Agency  
726 Minnesota Avenue  
Kansas City, Kansas 66101

Dear Mr. Grams:

We have scheduled three advisory group meetings in late January and early February to begin the initial review of the Kansas Surface Water Quality Standards (K.A.R. 28-16-28b-f). The 1994 standards are legally adopted state regulations. They have not, however, been approved or disapproved by Region VII. Neither, has EPA promulgated standards for the state. This places us in a very awkward position to move forward with the triennial review required by the federal Clean Water Act.

I request approval of the 1994 Kansas Surface Water Quality Standards; or -- in light of the lack of action by EPA -- a written response regarding the need to conduct the triennial review .

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald F. Hammerschmidt".

Ronald F. Hammerschmidt, Ph.D.  
Director, Division of Environment

cah

18-5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

FEB 06 1997

OFFICE OF  
THE REGIONAL ADMINISTRATOR

Ronald F. Hammerschmidt, Ph.D.  
Director, Division of Environment  
Kansas Department of Health and Environment  
Forbes Field, Building 740  
Topeka, KS 66620-0001

Dear Dr. Hammerschmidt:

In response to your letter of January 21, 1997, I appreciate your apprehension in moving forward with the 1997 triennial review. However, please be assured that the status of the 1994 triennial review process does not need to delay the 1997 triennial review. We expect to complete our review of the 1994 revisions over the next few months and anticipate that Kansas will have the opportunity to incorporate those review approval/disapproval actions into their 1997 standards.

In accordance with CFR 40 part 131.20 we are directed that states shall at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. In addition, any water body segment with standards that do not include the uses specified in section 101(a)(2) of the Clean Water Act (CWA) shall be re-examined to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) are attainable, the state shall revise its standards accordingly.

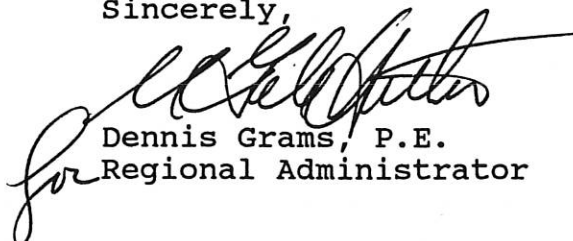
Upon finalizing the review and revision process of the standards, the state shall submit to the Environmental Protection Agency (EPA) Regional Administrator, the results of the review, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards. Under section 303(c) of the Clean Water Act, EPA is then required to review and to approve or disapprove state-adopted water quality standards. With regard to all of the above, and in response to your request, the state of Kansas does need to conduct its 1997 triennial review.



The status of the review of the 1994 Kansas water quality standards package does not influence the current state review process. However, we hope that Kansas will focus on several standards components noted in previous correspondence (enclosed) which were characterized as "jeopardizing full approval" when going through this triennial review. We resubmitted the 1994 Kansas standards package to EPA headquarters for a final review on November 7, 1996, and are currently waiting for response. Headquarters has recently stepped up the review involvement as a result of litigations not only with the review process with many states, but with the TMDL process as well. As a result of increased headquarters involvement, our final decision on the 1994 revision has been delayed more than anticipated. At your request however, we are communicating with headquarters concerning the possibility of a partial approval on the 1994 standards. As soon as we are informed of any developments, we will contact you promptly.

We are looking forward to assisting Kansas with this triennial review process and commend the effort intended with the three focus group meetings scheduled. If you have any questions please contact Gale Hutton, Director, Water Wetlands and Pesticides Division, at (913) 551-7307, or Ann Lavaty, Water Quality Standards Coordinator, at (913) 551-7370.

Sincerely,



Dennis Grams, P.E.  
for Regional Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

MAY 24 1994

Mr. Mark Bradbury  
District Environmental Administrator  
South Central District Office  
- Kansas Department of Health and Environment  
919 N. Amidon, Suite 130  
Wichita, KS 67203-2118

Dear Mr. Bradbury:

We have completed our review of the most recent draft of the revisions to Kansas' surface Water Quality Standards (WQS) dated April 7, 1994, and offer the following comments as part of the official record for this state action. We are transmitting these comments to you as the assigned Hearing Officer for the public hearings on the revised state WQS scheduled for May 26 and 27, 1994.

Under Section 303 of the Clean Water Act (CWA), states are to submit revised or new WQS to EPA for approval. Should EPA determine that those Standards are not consistent with the CWA, Section 303 authorizes EPA to promulgate WQS for the state. Federal regulations at 40 CFR 131.20 and 131.21 implement these requirements.

The revisions to the Kansas Administrative Regulations (K.A.R.) 28-16-28 proposed by the KDHE represent a tremendous advancement in the sophistication and protectiveness of Kansas' WQS. We especially wish to congratulate KDHE on its development of a very detailed listing of state surface waters and maps through the Kansas Surface Water Register (Register). These actions represent a huge improvement in the level of protection afforded Kansas waters and in the public's ability to understand the WQS themselves.

In addition, we strongly support the state's adoption of a significantly larger number of numeric water quality criteria than are found in the current Standards. The addition of pH and temperature dependent acute and chronic aquatic life criteria for ammonia is particularly noteworthy. EPA also strongly supports and concurs with the state's expansion of the number of waters classified for contact recreation and special aquatic life uses, especially the Kansas and Missouri Rivers. The CWA calls for such designation for all waters of the U.S.

Although these revisions represent a significant step forward in the state's efforts to protect water quality, there remain a number of provisions within the proposed Standards which are not consistent with the CWA. We have summarized those issues, which we believe jeopardize our full approval of the Standards revisions, within this letter. A more expanded discussion of those issues and other significant deficiencies is included with this letter as Enclosure A. In addition, Enclosure B contains suggested changes to the current draft which are intended to both clarify the meaning and intent of the regulations and establish EPA's position regarding each issue. Under each category, we have arranged our detailed comments according to each section of the draft proposed K.A.R., specifically noting which provisions are not approvable.

In our evaluation of the proposed revisions and additions to the water quality criteria under K.A.R. 28-16-28e, Tables 1a, 1b, and 1c, we have identified specific criteria which are less stringent than EPA's Section 304(a) guidance criteria and pollutants for which the state has not proposed criteria where EPA has published guidance values. These criteria and pollutants are listed in Enclosure C.

As a result of Kansas' inclusion in the National Toxics Rule, the federal criteria currently applicable to Kansas waters will remain effective until EPA promulgates a removal of those criteria. EPA will not promulgate such a removal until Kansas has adopted and EPA has approved state criteria for all appropriate pollutants. Until EPA promulgates the removal of the federal water quality criteria, Kansas must continue to use those criteria as the basis for all water quality control activities such as NPDES permitting. As mentioned earlier, where Kansas fails to adopt criteria for a given priority pollutant or where Kansas adopts criteria less stringent than the federal criteria without adequate justification, EPA will disapprove the state-adopted criteria and retain the federal criteria.

In addition, we are reviewing the list of designated uses contained in the Register for any downgraded waterbodies and waters without aquatic life and contact recreation uses. In meetings held between KDHE and EPA, KDHE has stated that no downgrading of designated uses has occurred between existing standards and the revised standards. Any waters not designated for both aquatic life use and contact recreation are considered to be inconsistent with the CWA and those designations must be supported by a Use Attainability Analysis (UAA).

Where the Register includes designated uses for waters specifically excluding aquatic life or contact recreation, we will require a UAA with the Standards submission. Where the Register fails to designate a waterbody for aquatic life or

contact recreation for lack of adequate information, EPA will require that the state provide a schedule for conducting UAAs based on NPDES permit issuance or on a priority watershed basis ensuring that UAAs will be completed and uses adopted prior to any permitting or water quality certification activities for those waters. UAAs must follow the provisions contained under federal regulations at 40 CFR 131.10.

#### SUMMARY OF STANDARDS PROVISIONS JEOPARDIZING FULL APPROVAL

Kansas' antidegradation regulations do not include provisions for Outstanding National Resource Waters. This "tier 3" level of protection is required under federal regulation. Omission of this component of antidegradation eliminates the public's opportunity to nominate surface waters of national importance for special protection.

Regulations at K.A.R. 28-16-28c (c)(3) addressing "effluent-created habitat" will result in the state's failure to control point source discharges in a manner that protects designated uses.

K.A.R. 28-16-28c (d)(3) assumes that discharges from waste stabilization ponds which meet minimum design standards will meet water quality standards for bacteria and ammonia without supporting monitoring data or wasteload allocations. This provision circumvents the application and implementation of WQS. This provision also represents permitting policy and its inclusion within the WQS is inappropriate; however, regardless of its placement within state regulation, it is not consistent with the CWA.

Regulations at K.A.R. 28-16-28c (d)(4) may be interpreted to allow dischargers to avoid disinfection requirements regardless of a waterbody's designation for primary or secondary contact recreation under the Standards. Inclusion of disinfection requirements in NPDES permits must be premised on meeting the water quality criteria supporting the recreational use categories regardless of the documentation of existing use.

The regulations at K.A.R. 28-16-28c (f) and 28-16-28d (b)(2) and (3) exempt some privately owned lakes and wetlands from protection under the state's WQS. The CWA requires that water quality standards apply to all waters of the U.S., making no distinction between publicly and privately owned waters.

The criteria proposed for metals within Table 1b of K.A.R. 28-16-28e are less stringent than federal criteria already in place for Kansas under the National Toxics Rule. These criteria are not acceptable substitutes for the federal criteria.

Enclosure C includes a listing of priority pollutants for which Kansas has proposed no criteria or less stringent criteria than are presently in place under the federal promulgation. These criteria will be disapproved and the federal criteria retained unless adequate justification is provided by the state. In addition, the enclosure lists additional pollutants with criteria published by EPA under Section 304(a) of the CWA, but which were not included in the National Toxics Rule. Where the Kansas WQS fail to include criteria for these pollutants or where proposed criteria are less stringent than EPA's, the state must provide technical justification. K.A.R. 28-16-28e(c)(3)(C) limits the adoption of protective criteria for Domestic Water Supplies to Maximum Contaminant Levels (MCLs). Many of the pollutants listed in Enclosure C are pollutants for which EPA has not issued an MCL, but has issued Section 304(a) criteria for the protection of human health through water and fish consumption. This provision must be expanded to allow adoption of EPA's Section 304(a) criteria to protect human health for pollutants which EPA has not issued MCLs.

KDHE had originally planned to submit its Standards implementation procedures to EPA concurrently with the Standards revisions. We continue to urge KDHE to complete these procedures and submit them with the revised Standards. EPA may delay or condition its approval of the Standards based upon submission of these procedures.

If you have any questions regarding these comments, please contact Larry Ferguson, Chief, Water Compliance Branch, at (913) 551-7447; John Houlihan, Chief, Planning and Evaluation, at (913) 551-7432; or Larry Shepard, Regional Water Quality Standards Coordinator, at (913) 551-7441. Thank you for your consideration of these comments.

Sincerely,

  
 Ronald R. Ritter  
 Acting Director  
 Water Management Division

Enclosures

cc: Ronald Hammerschmidt, KDHE  
 Karl Mueldener, KDHE  
 Robert Angelo, KDHE



## ENCLOSURE A

### STANDARDS PROVISIONS WHICH ARE NOT CONSISTENT WITH THE CWA

#### K.A.R. 28-16-28c General Provisions

##### Antidegradation

The antidegradation provisions fail to include a Tier 3 level of protection for Outstanding National Resource Waters (ONRW) consistent with federal regulations at 40 CFR 131.12(a)(3). Regardless of current or future state designations of state waters as ONRWs, the WQS must provide the opportunity for such designation and, thereby, the opportunity for the public to nominate waters for ONRW status. The antidegradation policy as currently written is incomplete and inconsistent with the Clean Water Act (CWA) and federal regulation. This omission may require EPA disapproval.

##### Mixing Zones

The prohibition against overlapping mixing zones should not provide for any exceptions. Overlapping mixing zones should be treated under these regulations as one mixing zone subject to the standard width and length restrictions. The current language allows for overlapping mixing zones, but prohibits violation of the general criteria or impairment of uses. As mixing zones allow for concentrations of pollutants in excess of criteria, violations of the specific criteria and, therefore, impairment of designated uses would occur.

The basis for providing mixing zone dimensions for streams where discharges receive at least 3-to-1 dilution is invalid. Discharges to Outstanding Natural Resource Waters and Special Aquatic Life streams receive only 25% of the 7Q10 flow for dilution, discharges to Expected Aquatic Life streams receive 50% of the 7Q10 flow for dilution, and discharges to Restricted Aquatic Life streams receive 100% of the 7Q10 flow. The use of less than 100% of the critical low flow is not based as much upon maintaining a zone of passage as it is on providing a margin of safety to ensure that not all of the stream's assimilative capacity is utilized by one discharger. Actually modeling the dimensions of a mixing zone using stream flow and morphology and effluent characteristics such as density, discharge velocity, temperature, and pollutant concentrations would be more effective in documenting "zone of passage." However, in simplifying mixing assumptions, regulatory agencies attempt to err in behalf of water quality protection by limiting available dilution to

fractions of stream flow.

Awarding 50% of the 7Q10 flow for dilution of discharges to Expected Aquatic Life streams where the dilution ratio is greater than 3 to 1 is not conservative and will, in many cases, result in extensive areas well beyond the mixing zone length restrictions where acute and chronic criteria will be violated. Current provisions allowing 100% of the 7Q10 for dilution for discharges to all streams providing less than 3-to-1 dilution or Restricted Aquatic Life use streams also will not ensure that water quality in those streams does not result in acute or chronically toxic conditions.

Although these mixing zone provisions represent "shall not exceed" restrictions, there is no mechanism present within the Standards themselves or within any implementation procedures which would guide KDHE reductions in mixing zone dimension. Further, unless dye studies are to be performed for every NPDES permit, there is no mechanism for limiting the maximum award of dilution based on violations of either the mixing zone length limitations or the provision under K.A.R. 28-16-28c(b)(5). Therefore, it is prudent to ensure that the "default" dilution awards (i.e., 50% of the 7Q10) will be protective in virtually all stream applications. We specifically request that KDHE reduce the present dilution awards to 25% of the 7Q10 for all streams where the dilution ratio is greater than 3-to-1 and to 50% of the 7Q10 where dilution is less than 3-to-1.

Provisions for mixing zones for lakes should exclude the opportunity for zones of initial dilution. Discharges to lentic systems will not behave in the same manner as discharges to flowing systems. Large areas of acute toxicity and sediment contamination are likely if utilizing acute mixing zones in lakes. It is also likely that organisms will not be physically precluded from colonizing these areas as they might in flowing water systems. We request that KDHE prohibit the use of ZIDs in lake discharges.

#### Protected Flows

We strongly object to the inclusion of "protected flows" to low flow streams where the 7Q10 is less than the two established minimums. We are particularly concerned with the assumption of 0.03 cubic meters per second of dilution flow in Expected Aquatic Life use streams where the 7Q10 is less than that value. The state is effectively relying on dilution which does not exist to mitigate effluent toxicity. We specifically request that KDHE delete the "protected flow" provisions from K.A.R. 28-16-28c(b)(2)(D).

Under K.A.R. 28-16-28c(c), Special Conditions, KDHE establishes a low flow "cut-off" for application of the numeric water quality criteria. This provision must explicitly state that the general criteria at K.A.R. 28-16-28e(b) do apply regardless of flow and the application of this exemption.

#### Effluent-Created Habitat

The provisions addressing effluent-created habitat under K.A.R. 28-16-28c(c)(3) have been discussed extensively over the past two years. The specifics of our position are contained in our May 13, 1993, letter to KDHE and were discussed at great length during meetings between KDHE and EPA staff over the past two years. We must, however, reassert that this provision is not approvable by EPA.

#### Water Quality Standards Waivers

K.A.R. 28-16-28c(d)(3) waives requirements for determining the reasonable potential of certain waste stabilization ponds to violate water quality standards for ammonia and fecal coliform bacteria when issuing NPDES permits. Fundamentally, this provision is a permitting regulation and is inappropriately placed within the state Standards regulations. This provision also circumvents the application of water quality standards and will not ensure that discharges meet state standards. This provision cannot be approved by EPA.

The disinfection provision at K.A.R. 28-16-28c(d)(4) requires disinfection if KDHE determines that such a discharge will result in a threat to public health. This provision relies on a information indicating that the waterbody is shown to be used for either primary or secondary recreation or domestic water supply. The need for disinfection of wastewater effluent must be a function of the need to protect designated uses and accompanying water quality criteria, regardless of any demonstration of the actual existence of that use. As all waters of the state are designated for secondary contact recreation by default, this provision has no apparent use except to undermine the protection of designated uses. This provision is not approvable by EPA and must be removed.

#### Waters of the U.S.

K.A.R. 28-16-28c(f) addresses the limited application of state WQS to privately owned surface waters. As with provisions at K.A.R. 28-16-28d(b)(2) and (3), which also address restricted application of Standards to private surface waters, this provision is inconsistent with the CWA and cannot be approved by EPA.

K.A.R. 28-16-28d Surface Water Use Designation and Classification

Classified Waters

The provision under this section for classifying only those streams with mean summer base flows of greater than 0.003 cubic meters per second is not consistent with the CWA. The CWA requires all waters of the U.S. to be designated for beneficial

uses and to be assigned water quality criteria to protect those uses. The state may elect to develop a use category for which only baseline criteria apply, but it cannot exclude any waters of the U.S. from designation. We understand that the state is to provide baseline water quality protection to all waters as established by the General Criteria under K.A.R. 28-16-28e(b), regardless of classification status. In addition, K.A.R. 28-16-28d(b)(1) provides for classification regardless of flow based on field studies supporting use designation. We suggest that KDHE create a separate general use designation category which would contain formerly unclassified streams and would provide baseline protection based on prevention of acute toxicity.

Waters of the U.S.

The distinction between public and "private" lakes and wetlands for purposes of classification under K.A.R. 28-16-28d(b) is inconsistent with the CWA. The CWA does not recognize ownership in the application of water quality standards to waters of the U.S. This issue was also addressed in our May 13, 1993, letter and in two meetings between KDHE and EPA. The exclusion of privately owned lakes and wetlands from coverage under state WQS is not approvable by EPA.

K.A.R. 28-16-28e Surface Water Quality Criteria

Domestic Water Supply

The April 7, 1994 draft of the Standards revisions at K.A.R. 28-16-28e(c)(3)(A) departs from a provision contained in the previous draft which applied criteria to protect domestic water supply to the entire water segment. The current version restricts application of drinking water criteria to only the point of diversion. This does not provide for a watershed scale level of water quality protection for this beneficial use and makes total maximum daily load development much more difficult. This provision is not consistent with the intent of the CWA and represents a reduction in the level of protection afforded domestic water supply waters.

K.A.R. 28-16-28e(c)(3)(C) limits KDHE to the adoption of criteria in support of the domestic water supply using maximum contaminant levels (MCLs) only. Where EPA has not published MCLs for a given contaminant, but has published human health criteria under Section 304(a) addressing the consumption of water and organisms, the state must adopt criteria for that contaminant or demonstrate its absence in state waters and effluent discharges. This section should be modified to authorize such adoptions.



ENCLOSURE B

STANDARDS PROVISIONS REQUIRING MODIFICATION OR CLARIFICATION

K.A.R. 28-16-28b Definitions

(uu) "Surface waters"

The reference to the Federal Delineation Manual should be changed to cite the 1987 Manual and the phrase "or any subsequent revisions" should be added to the definition to ensure that the citation is current.

K.A.R. 28-16-28c General Provisions

Antidegradation

Under K.A.R. 28-16-28c(a)(5), temporary sources of pollution complying with regulations addressing minimum treatment requirements and the general water quality criteria and resulting in "ephemeral" water quality degradation are allowed. This provision must also reference K.A.R. 28-16-28e(c) to require attainment of the specific criteria supporting designated uses. All sources of pollution must meet both the general and specific water quality criteria regardless of the time length of discharge or its treatment under antidegradation. In addition, the planned antidegradation implementation procedures should define "temporary" and "ephemeral" for purposes of implementing this regulation.

Mixing Zones

Under General Limitations, mixing zones should be prohibited from extending across tributary mouths. The current language can be interpreted as prohibiting such mixing zone placement, but a more explicit prohibition would result in clearer application in NPDES permit writing and interpretation by the regulated public.

Mixing zones extending into classified streams may be limited in length to the nearest current crossover point or 300 meters. This provision should be amended to include the statement "the more restrictive of." The standards-to-permits implementation procedures should specify how the "nearest current crossover point" will be determined in routine permit issuance.

The provisions of K.A.R. 28-16-28c(b)(2)(5) which allow KDHE to restrict or prohibit mixing zones should be addressed under the standards-to-permits implementation procedures to specify under what circumstances these restrictions and prohibitions will be enacted.

The apparent deletion of waters formerly listed as Outstanding National Resource Waters (ONRWs) on page 10 of K.A.R. 28-16-28c must be addressed by KDHE. We understand from discussions during the March 8, 1994, meeting between KDHE and EPA that these waters were never intended to be listed as ONRWs, but were to be listed as Outstanding Natural Resource Waters. We related to KDHE that although the level of protection afforded both types of water under Kansas' antidegradation regulations and the federal regulations is identical, downgrading of ONRWs is not acceptable to EPA. We also recognize that Kansas' WQS have never included an ONRW "tier" within its antidegradation regulations, thereby providing no opportunity for such listing. As this issue appears to consist of correcting a historic typographical error rather than constituting a formal downgrade of established ONRWs, a clarification of this issue by KDHE will likely address our concerns.

K.A.R. 28-16-28d Surface Water Use Designation and Classification

As there is no specific use designation for wetlands, this section should clarify that the specific criteria under K.A.R. 28-16-28e(c) apply to classified wetlands, as does the antidegradation regulation. It does not appear that wetlands are included within the Surface Water Register for designation of specific beneficial uses. Rather than listing individual wetlands against categories of beneficial uses, EPA recommends that KDHE adopt a blanket statement that the antidegradation regulations under K.A.R. 28-16-28b and all general criteria under K.A.R. 28-16-28e apply to all classified wetlands. In addition, KDHE should specify that all classified wetlands are designated for expected aquatic life and food procurement. Should KDHE wish to limit the application of specific criteria (e.g., dissolved oxygen, ammonia, fecal coliform, etc.) to wetlands, provisions for reliance upon "natural" background values can be considered.

We strongly suggest that all classified surface waters be designated for food procurement as well as non-contact recreation. It will be difficult to demonstrate through a UAA that the potential for fish consumption does not exist in any surface water designated for aquatic life.

We request that KDHE include its UAA procedures, as referenced under K.A.R. 28-16-28d(c)(1), in its Continuing Planning Process (CPP) documentation and submit this material to EPA for review along with the adopted revised standards.

## K.A.R. 28-16-28e Surface Water Quality Criteria

The reference under K.A.R. 28-16-28e(a) to site-specific criteria should specify that all such criteria must be adopted into the WQS regulations prior to their implementation in any control measure.

### General Criteria

In general, KDHE should develop implementation procedures for its narrative criteria which would outline how the narrative prohibitions will be translated into control measures such as NPDES permit limits. Such procedures should be contained in the CPP document and submitted to EPA.

The "free from" described under K.A.R. 28-16-28e(b)(1) includes reference to substances which produce "any public health hazard, nuisance condition, or impairment of beneficial use. As these general criteria are applicable to all waters, including unclassified waters, the reference to preventing the impairment of beneficial uses will not provide protection for aquatic life in unclassified waters which have no beneficial uses. KDHE should consider adding the phrase "toxic conditions" to the string of prohibitions and modifying the phrase "impairment of beneficial uses" to read "impairment of ecological integrity" under this section. Ecological integrity is defined in the proposed standards and is not limited to classification status.

We were disappointed that KDHE failed to add a general prohibition against impairment of aquatic community structure and function consistent with EPA's priorities for the adoption of narrative biological criteria during the 1991-93 Triennial Review. We request that KDHE add a statement prohibiting "impairment of aquatic community structure and function consistent with the designated aquatic life use" to the list of general criteria.

### Criteria for Designated Uses

The provisions under K.A.R. 28-16-28e(c)(2)(F), Toxic Substances, prohibit toxicity outside the ZID and mixing zone. Although we recognize the association that the Standards make between violations of criteria and the occurrence of toxicity, we wish to re-emphasize that the CWA prohibits toxicity in all portions of the surface waters of the U.S. While the criteria may be exceeded within the ZID and mixing zone, theoretically toxicity is avoided by restricting the size of the ZID and mixing zone to limit organism time of exposure. Our concerns regarding Standards-recommended ZID and mixing zone size and provisions for ZIDs in lakes originate in this concern for preventing toxic conditions.

K.A.R. 28-16-28c(b)(4) and (5) provide for the prohibition of mixing zones and ZIDs in some instances. K.A.R. 28-16-28e(c)(2)(F)(ii) provides that acute criteria apply at the edge of the ZID and chronic criteria at the edge of the mixing zone. This language suggests that ZIDs and mixing zones will always be allowed. It should be clarified that acute and chronic criteria may also be applied at the end-of-pipe in certain instances.

K.A.R. 28-16-28e(c)(2)(F)(iii) allows the use of whole effluent toxicity limitations where discharges contain toxic substances without published criteria, but makes no provisions for utilizing chemical-specific toxicity data which may be available from scientific literature or EPA databases. KDHE should clarify the intent of this passage.

One of the exposure assumptions upon which the food procurement criteria are based is the rate of fish consumption. K.A.R. 28-16-28e(c)(4) generally states that "average rates of tissue consumption and lifetime exposure shall be assumed by the department." We suggest that the Standards specify the exposure rates within the standards regulation.

K.A.R. 28-16-28e(c)(7) relies on the measurement of fecal coliform bacteria as the basis for recreational use criteria. EPA has since 1986 recommended the use of either enterococci or *E. coli* as more appropriate indicators of conditions supporting recreational uses. KDHE must provide the rationale for the state's continuing reliance on fecal coliform for its bacterial criteria.

#### K.A.R. 28-16-28f Administration of Surface Water Quality Standards

K.A.R. 28-16-28f(d) provides for temporary variances from meeting WQS. WQS regulations should specify that variances are valid for only three years. The three-year time limit is tied to the length of time between Standards revisions. The regulations must specify the life-span of the Standards variance. We also anticipate that KDHE will be developing implementation procedures for determining what constitutes "substantial and widespread socioeconomic impact" for purposes of awarding variances.

ENCLOSURE C

KANSAS WATER QUALITY CRITERIA LESS STRINGENT THAN EPA'S

<u>Pollutant</u>	<u>Kansas WOC</u> (ug/L)	<u>EPA WOC</u> (ug/L)	<u>Use Category</u>
Antimony*	4500	4300	Food Procurement
Arsenic (III)*	379	360	Acute Aq. Life
	-----	14	Food Procurement
	-----	0.018	Dom. Water Supply
Chromium (III)@	3,433,000	670,000	Food Procurement
Chromium (VI)*	17	16	Acute Aq. Life
	12	11	Chronic Aq. Life
Mercury*	2.8	2.4	Acute Aq. Life
Silver@	-----	110,000	Food Procurement
Thallium*	48	6.3	Food Procurement
Zinc@	-----	69,000	Food Procurement
	-----	9,100	Dom. Water Supply
		5,000	Organoleptic
Dichlorobenzenes	-----	400	Dom. Water Supply
1,2,4-trichloro- benzene@	-----	940	Food Procurement



1,2,4,5-tetrachloro- benzene	48	2.9	Food Procurement
	----	2.3	Dom. Water Supply
Pentachloro- benzene	85	4.1	Food Procurement
	----	3.5	Domestic Water Supply
Nitrobenzene	----	17	Dom. Water Supply
Bis(2-chloroethyl) ether*	----	0.031	Dom. Water Supply
Bis(2-chloro- isopropyl) ether*	----	1400	Dom. Water Supply
Bis(chloromethyl) ether	----	0.00016	Dom. Water Supply
1,2-dichloroethane*	243	99	Food Procurement
1,1,2,2-tetra- chloroethane*	----	0.17	Dom. Water Supply
Hexachloroethane*	----	1.9	Dom. Water Supply
1,3-dichloro- propene*	----	10	Dom. Water Supply
Halogenated methanes, Total	100	80	Dom. Water Supply+
Bromomethane*	----	48	Dom. Water Supply
Dichlorodifluoro- methane	----	6900	Dom. Water Supply

Trichlorofluoro- methane	-----	10,000	Dom. Water Supply
Carbon Tetra- chloride*	6.94	4.4	Food Procurement
Di(2-ethylhexyl) adipate	500	400	Dom. Water Supply+
Hexachlorobuta- diene*	---	0.44	Dom. Water Supply
Isophorone*	520,000	600	Food Procurement
	-----	8.4	Dom. Water Supply
N-nitroso- dibutylamine	-----	0.0064	Dom. Water Supply
N-nitroso- diethylamine	-----	0.0008	Dom. Water Supply
N-nitroso- dimethylamine*	-----	0.00069	Dom. Water Supply
N-nitroso- diphenylamine*	-----	5.0	Dom. Water Supply
N-nitroso- di-n-propylamine@	-----	0.005	Dom. Water Supply
N-nitroso- pyrrolidine	-----	0.017	Dom. Water Supply
Acrylonitrile*	-----	0.059	Dom. Water Supply
Benzidene*	-----	0.00012	Dom. Water Supply

3,3'-dichloro- benzidine*	----	0.04	Dom. Water Supply
1,2-diphenyl hydrazine*	0.56	0.54	Food Procurement
	----	0.04	Dom. Water Supply
Acenaphthene@	----	2700	Food Procurement
	----	1200	Dom. Water Supply
	----	20	Organoleptic
Acenaphthylene@	----	0.0028	Dom. Water Supply
Anthracene*	----	9600	Dom. Water Supply
Benzo(a)anthracene* 0.2		0.1	Dom. Water Supply+
Benzo(g,h,t)perylene*#			
Fluoranthene*	----	370	Food Procurement
	----	300	Dom. Water Supply
Fluorene*	----	1300	Dom. Water Supply
Phenanthrene@	----	0.0028	Dom. Water Supply
Pyrene*	----	960	Dom. Water Supply
Di(2-ethylhexyl)- phthalate*	5,000	5.9	Food Procurement

Dibutyl phthalate*	154,000	12,000	Food Procurement
	----	2,700	Dom. Water Supply
Diethyl phthalate*	1,800,000	120,000	Food Procurement
Dimethyl phthalate*	----	313,000	Dom. Water Supply
Phenol*	----	21,000	Dom. Water Supply
		300	Organoleptic
2,4-dimethyl phenol@	----	540	Dom. Water Supply
		400	Organoleptic
2-chlorophenol@	----	120	Dom. Water Supply
		0.1	Organoleptic
2,4-dichloro-phenol*	3,090	790	Food Procurement
	----	93	Dom. Water Supply
		0.3	Organoleptic
2,4,5-trichloro-phenol	----	9,800	Food Procurement
	----	2,600	Dom. Water Supply
		1	Organoleptic
3-methyl-4-chlorophenol@		3,000	Organoleptic
2,4-dinitrophenol*	----	70	Dom. Water Supply

4,6-dinitro-o-cresol*	----	13.4	Dom. Water Supply
Toluene*	424,000	200,000	Food Procurement
2,4-dinitrotoluene*	----	0.11	Dom. Water Supply
Acrolein*	----	320	Dom. Water Supply
Aldrin*	----	0.00013	Dom. Water Supply
4,4'-DDE*	----	0.00059	Dom. Water Supply
4,4'-DDD*	----	0.00083	Dom. Water Supply
DDT, Total*	----	0.00059	Dom. Water Supply
Dieldrin*	----	0.00014	Dom. Water Supply
Endosulfan, Total	----	110	Dom. Water Supply
Alpha-endosulfan**	----	110	Dom. Water Supply
Beta-endosulfan**	----	110	Dom. Water Supply
Endosulfan sulfate*	----	0.93	Dom. Water Supply
Endrin Aldehyde*	----	0.76	Dom. Water Supply
Heptachlor*	0.00029	0.00021	Food Procurement
Alpha-HCH*	----	0.0039	Dom. Water Supply



Beta-HCH*	-----	0.014	Dom. Water Supply
Technical HCH	-----	0.0123	Dom. Water Supply
Hydrogen Sulfide^	-----	2	Chronic aquatic life
Aluminum!	-----	750	Acute aquatic life
	-----	87	Chronic aquatic life

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KEY:

- \* - Substance listed on National Toxics Rule
- @ - Substance listed on National Toxics Rule, but not for specified use category.
- + - MCL listed in WQS is incorrect.
- # - Should be listed as Benzo(g,h,i)perylene.
- \*\* - Criterion based on an up-dated IRIS RfD. Not included under NTR for Kansas.
- ^ - Hydrogen sulfide has an aquatic life chronic criterion listed from the 1976 Red Book.
- ! - Aluminum has acute and chronic criteria for aquatic life issued by EPA in 1988.



## Kansas Chapter of the American Fisheries Society

### TESTIMONY ON HOUSE BILL NO. 2368, AN ACT SUSPENDING SURFACE WATER QUALITY STANDARDS AND CREATING A SPECIAL COMMISSION ON THOSE STANDARDS, BY THE KANSAS CHAPTER OF THE AMERICAN FISHERIES SOCIETY:

The Kansas Chapter of the American Fisheries Society, a professional society of more than 130 of Kansas' fishery biologists, ichthyologists, and students and an affiliate of the American Fisheries Society, supports the maintenance of current surface water quality standards in Kansas. We believe that strong water quality standards are necessary for conserving our wildlife legacy for future generations.

Our society has passed numerous resolutions supporting the conservation of the state's natural resources. These included support of: protection of rare fishes such as the Topeka Shiner, the moratorium on gravel dredging to protect the designated critical habitat of the threatened Neosho Madtom, and nongame wildlife programs in the state. Although many of our members concentrate on sportfishes such as largemouth bass, by vote, the chapter has supported the conservation of all fishes and aquatic ecosystems in Kansas. Our student subchapter has increased public awareness of the need to conserve rare species and raised funds to send students to professional meetings. Meetings that will increase their understanding and knowledge of aquatic systems and benefit us all in the future. The students are the future of our society and they have shown a special interest in conservation of fishes.

Please do not weaken the state's protection of aquatic ecosystems, even temporarily. Surface waters include those containing our foodfishes, sportfishes, threatened and endangered species, as well as species in need of conservation. It is not necessary to suspend the surface water quality standards to evaluate them. Furthermore, the current Kansas water quality standards are already less than the minimum standards recommended by the federal Environmental Protection Agency. This includes the 20% of our streams and rivers that have been designated critical habitat for threatened or endangered species (and have thereby received "special aquatic life use" designation). Moreover, current Kansas standards for the remaining 80% of our streams and rivers are even weaker, such that they already receive an even greater pollutant load (including ammonia, atrazine and chlorides).

As Kansans moving into the 21<sup>st</sup> Century, we must not endeavor to go back in time and attempt to re-establish old standards that are insufficient to protect us and our aquatic ecosystems. The age-old belief that rivers and streams essentially provide continuous, infinite (or nearly infinite) dilution of wastes and pollutants has been shown to be false. Not only are base flows capricious in Kansas; someone always lives downstream. We must recognize that it is our

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responsibility to ensure that we do not increase the damage to our environment, but rather take responsibility and move pro-actively toward the future. The cost of reclamation is always higher than the cost of prevention.

In addition, recent advances in testing have shown that atrazine belongs to a class of compounds considered endocrine disrupters in fishes. Compounds of this type have been linked to break downs in endocrine systems, which control reproductive functions (including sexual development and egg development). We do not yet know the long-term, sub-clinical effects of compounds like atrazine on people. However, our record with other chemicals is not good. For example, an agricultural insecticide, chlordane, has contaminated our aquatic environments to the extent that fishes in many areas of the state are no longer safe to eat. Moreover, even though we are no longer using chlordane, its effects on the fish fauna continue to mount, such that the number and extent of fish consumption advisories are growing. Must we wait until our native fauna is toxic to us? We beg that, as stewards for all Kansans, you will consider our aquatic environment and our fishes a valuable part of the state, long before we have to declare them hazardous. We trust that we will learn from our past mistakes and not be destined to continuously repeat them.

For all the reasons given above, we believe that the legislative commission as envisioned in this act must also include at least one biologist. Issues of Kansas water quality standards potentially affect everyone who considers the state home, including organisms such as fishes, fresh-water mussels, and even birds, in addition to people. Although members of the Departments of Health and Environment and Wildlife and Parks will cooperate and assist the commission, someone must speak for those Kansans who have no voices of their own (like the fishes) and for our children.

We believe this bill would be destructive to the conservation of rare fishes and other wildlife species in Kansas. We pray that you turn down this bill as worded and hope, that if it is rewritten that you provide reasonable opportunity for public input, including the Kansas Chapter of the American Fisheries Society. Thank you for providing us this opportunity to submit written testimony. We regret that the short notice of this hearing did not facilitate our appearance in front of your committee. If you need additional information or review, please feel free to contact us.

Sincerely,



Dr. Kate Shaw, Editor and Environmental Concerns Chairperson  
Kansas Chapter of the American Fisheries Society

Testimony of  
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Before the Kansas House of Representative  
Committee on the Environment  
February 20, 1997

Re: H.B. 2368

Mr. Chairman, members of the Committee, thank you for the opportunity to testify in opposition to H.B. 2368. Although this bill purports to be concerned with "the technical and scientific basis of the surface water quality standards," H.B. 2368 seems to us a blatant attempt by certain special interest to replace science-based standards with standards that favor their interests over the interests of the citizens of Kansas.

Water quality standards are crucial to carrying out the Clean Water Act, which is a strong national policy protecting our nation's waters. The Clean Water Act, and its objective of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters, have always received a great deal of popular support. Here in Kansas, our current good fortune with abundant rainfall should not blind us to the fact that our state has frequently suffered prolonged droughts that forced us, as well as other living things that depend on our streams, lakes and wetlands, to depend on water supplies that were marginal in terms of quality and quantity.

The Clean Water Act establishes the national goal of eliminating discharges of pollutants into our surface waters while protecting the use of water for aquatic life, fishing, and swimming. The implementation of the Clean Water Act begins with the surface water quality standards. These regulations define uses for the surface waters of the state, establish criteria that will protect those uses, and lay out certain mechanisms used in putting the standards into practice. It is important to realize that the Clean Water Act establishes a framework for protecting water quality. It gives the state certain flexibility, but is very restrictive in other ways. The intent of the law is to lower toxic discharges, thereby raising water quality. The state must protect the water for aquatic life, fishing, swimming, and other uses. The Act explicitly prohibits putting waste disposal ahead of any designated use of the state's surface waters. The state may develop water quality standards more stringent than those required by EPA, but not less stringent. The state must protect uses existing as of November 28, 1975. The state must set criteria that protect designated uses. The state may not weaken, and most assuredly not suspend, criteria, in order to balance protection against economic impacts. If the state's standards do not meet these criteria, EPA may set standards for the state and/or take over the state's permitting program for discharges.

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The Clean Water Act requires that the state update its water quality standards every three years. The standards in question in this bill were promulgated three years ago. They were issued four years late, only after we went to court. What this means is that it has been a long time since many dischargers have had to upgrade their facilities to meet the expectations based on current scientific knowledge.

In promulgating standards in 1994, KDHE bent over backwards to accommodate dischargers, especially some of those involved with this bill. EPA's recommended ammonia criterion had been based on levels toxic to many different fish, some of which did not occur in Kansas. KDHE based its standards only on species present in Kansas, which eliminated consideration of some of the more sensitive species. However, the biggest change in application of the ammonia criterion comes from changing the size of the allowable mixing zone. Under the 1994 standards, dischargers into the majority of water bodies (83% of the stream miles, almost all of the lake acres) are now allowed to pollute twice as much of the water flow to toxic levels. That is because under the old standards, all mixing zones were limited to 25% of the 7Q10 flow, while under the 1994 standards, those waters (83% of stream miles, almost all of lake acres) classified as "expected aquatic life use" are now allowed 50% of the flow. "Special aquatic use waters" are still limited to the 25% mixing zone rule. Therefore, those who support H.B. 2368 are not asking for a stay in the application of more stringent standards, but are seeking to further degrade those streams with threatened or endangered species, or unusual combinations of habitats and biota.

For example, Atrazine causes cancer in animals. Under the earlier standards, the domestic water supply criterion should have been set at the 1 in a million cancer risk level, which is 0.15 ug/l (microgram per liter). In 1994, KDHE dropped the specific protection against cancer-causing substances and set the domestic water supply criterion at the level considered cost-effective for public water suppliers to provide after treatment, the maximum contaminant level or MCL. For atrazine, the MCL is 20 times as high as the cancer based number, 3 ug/l. The aquatic life protection criterion has now become the target of agribusiness, only because the human health criterion was weakened, but even the aquatic life criterion is 10 times as high as the concentration allowed in Europe.

It might appear that environmentalists, too, have reason to question the scientific basis of the water quality standards. There are some places where we believe the standards have been unjustifiably weakened. However, our disagreement is with the policy choices that were made rather than the science. KDHE scientists know that atrazine causes cancer, but someone made a policy decision to give cancer less weight. The current standards should have been implemented seven years ago, so let's not delay them any longer. The next revisions are underway, and that is where this debate belongs.



## Short Factsheet on Atrazine's Effects

### Health Effects

*The critical non-cancer effect in animal studies is enlargement of the heart and irregular heart beat.*

*An epidemiological study in Minnesota found that pesticide applicators who applied atrazine were more likely to have children with birth defects than the general population.<sup>1</sup>*

*Atrazine has been shown to disrupt the endocrine system by increasing levels of carcinogenic estrogens in the blood.<sup>2</sup>*

*Atrazine probably causes cancer in humans.*

EPA's cancer classification of Class C or "possible human carcinogen" is under review, but IARC, the International Agency for Research on Cancer classifies atrazine as a 2B or possible human carcinogen.

There is evidence that other triazines also cause similar cancers.

EPA's classification is based entirely on studies submitted by the manufacturer, and does not take into account peer-reviewed studies, including epidemiological studies, demonstrating a positive link to cancer.<sup>3</sup>

Some of the additional animal studies find dose-related tumors in mammary glands of male and female rats, the testicles of male rats, uterine tumors in females, and combined incidence of leukemia and lymphoma. In mice, injected atrazine product caused lymphoma and cancer of the uterus.<sup>4</sup>

Epidemiological studies link atrazine to one of the same types of cancer that are seen in experimental animals--breast cancer. The same epidemiological studies link atrazine to cancer at another hormonally sensitive site--their ovaries.<sup>5</sup>

In addition, other epidemiological studies have found higher incidence of non-Hodgkin's lymphoma among farmers using atrazine and other herbicides.<sup>6</sup>

*EPA has estimated a dose-response relationship for atrazine--a cancer potency of  $2.2 \times 10^{-1}$  (mg/kg/day)<sup>-1</sup>, which translates to a lifetime cancer risk of  $2.0 \times 10^{-5}$  for the assumed 70 kg adult drinking 2 liters of water at the maximum contaminant level per day, or  $7.0 \times 10^{-5}$  for a 10 kg child drinking 1 liter of water per day.<sup>7</sup> Because atrazine bioaccumulates, the bioaccumulating carcinogen rule should be applied. In order to be consistent that rule and with the  $10^{-6}$  cancer risk level mandated by the EPA toxics rule for conventional pollutants, the atrazine criterion for public water supply needs to be changed to 0.15 ug/l. These cancer risk numbers do not include doses received from diet, inhalation of vapors or dusts, or dermal absorption, nor do they include the contribution of atrazine metabolites.*

*Metabolites may be as toxic or more toxic than atrazine itself.*

EPA adds metabolites in food residue measurements, and generally assumes that at least chlorinated metabolites are as toxic as atrazine itself.

In tests submitted to EPA, the metabolite diaminochlorotriazine (DACT) was twice as potent a developmental toxicant as atrazine.<sup>8</sup>

### Ecological Effects

*Ecosystem level studies have shown that a whole ecosystem can produce or experience the effects of the chemical that are difficult to identify when only a portion of the ecosystem is used for the assessment. The detrimental effects of atrazine on plankton, algae, cyanobacteria, and aquatic plants have been demonstrated in streams, ponds, and estuaries. Evidence includes reduction in biomass, inhibition of photosynthesis, and changes in water chemistry. These effects have been found at concentrations as low as 0.1 parts per billion (ppb).<sup>9</sup>*

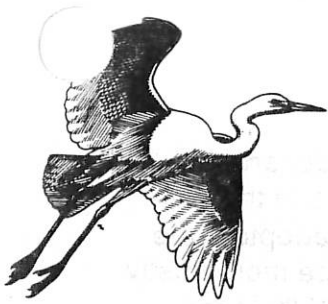
*Atrazine also affects animals. Studies using experimental ponds show that as little as 20 ppb of atrazine significantly affects the diet and reproductive success of bluegill although the bluegill feeds on insects that would not be directly harmed by atrazine. Atrazine also produced physiologic changes in carp. Earthworms exposed to atrazine experienced weight loss, reproductive failure, and death. Atrazine has been shown to*

*have strong negative effects on the total abundance of several species of insects at concentrations as low as 20 ppb. Species richness, total abundance of emerging insects, and the total number of herbivorous insects were all reduced.*<sup>10</sup>

Implications for the water quality standards

*The aquatic life support criterion should be set at 0.1 ppb.*

*The domestic water supply criterion should be set no higher than 0.*



# Kansas Audubon Council

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February 20, 1997  
House Environment Committee  
Testimony on HB 2368

Thank you very much for the opportunity to appear before you in opposition to HB 2368. My name is Cynthia Abbott, and I am here on behalf of the Kansas Audubon Council and the approximately 5000 Audubon members throughout the state of Kansas.

As I understand this legislation, it is arising in large part from the desire of a few municipalities and others within our state to avoid having to upgrade their facilities. Instead of rising to meet current national scientific standards based upon current scientific knowledge, the push is to move backwards to meet less stringent requirements based upon scientific knowledge of a decade or more ago.

We know so much more about the environment than we did even 10 years ago. As in other segments of our scientific knowledge base, our understanding of the processes involved is expanding exponentially. Unfortunately as far as costs are concerned, along with increased knowledge comes an increased understanding of the sensitivity of living organisms and an increased awareness of the complexity of the systems involved. This knowledge isn't convenient. It also isn't easy to accept, but it's arrived at by the same scientific process that brings us the latest advances in many other areas.

A major part of the problem attempting to be addressed here seems to be the cost of upgrading facilities. Upgrading is almost always expensive, yet it is considered part of life in a technological society. As our scientific knowledge expands, we upgrade computers, we upgrade automobiles, we upgrade farm equipment, we upgrade plant varieties, we upgrade medical procedures and technology...the list goes on and on. What this legislation says is that, while we can afford to pay money to upgrade all these other things to current standards, we don't want to pay the money necessary to upgrade the quality of the water that we drink, the water that underpins the natural systems of our state and upon which, ultimately, the health of the state depends.

These are health and welfare issues for the state - we wouldn't countenance moving our medical technology and medical standards back to early 1980s levels of scientific knowledge, although medicine and medical technology are also expensive. Why should we, as citizens, accept that cost containment requires the use of old scientific standards only so far as it concerns the waters of our state?

One of the issues of specific concern to the Kansas Audubon Council is the "special aquatic life use" designation. As I understand it, this designation is an extra level of protection for waters specified as critical habitat for species that are threatened,

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endangered or in need of conservation. According to sources within the department, the Kansas Department of Health and Environment used to hold all waters in the state to the same level of protection. However, when the new guidelines were adopted, the Department realized that meeting these more stringent standards would be more costly; therefore, in the interest of economics, they halved the safety margin for 80% of the streams in the state. For those waters designated as critical habitat, however, they felt that the original level of safety standards was still prudent and so they maintained the extra level of protection for that 20% of the state's waterways. Thus, in this regard, economic impacts have already been taken into consideration by the 1994 state water quality standards.

A final concern with this particular bill regards the make-up of the commission, as outlined in Section 3(c). There is no mechanism in this proposed legislation to assure a balance of interests in the membership on the commission. As the bill is written, it would be entirely possible, to use an extreme example, to have a commission charged with protecting the state's water that was composed of a sewage treatment plant operator (whose municipality was in a budget crunch), a farmer (with a large mortgage who believed passionately that the only thing between him and bankruptcy was the ability to use atrazine and to farm to the water's edge), and an environmental lawyer (hired to protect the interests of a chemical company). It would not be in the best interests of this particular commission to work for strict water quality standards in the state.

To use a concluding analogy, plumbing is not a glamorous part of the house on which to spend money, but it's an integral and important part. If the plumbing hasn't been updated in many years, it will probably need to be modernized for a variety of reasons. Putting off the remodeling at best defers the costs until later, when inflation has had the chance to add its part to the cost of the project; at worst it will lead to major problems affecting other portions of the home or, even worse, threaten the health of the home's occupants.

The Kansas Audubon Council, as citizens of Kansas, believes that excellent water quality is an important goal to work for throughout our state. Hiding our head in the sand and lowering the standards is not going to improve the quality of the water. Therefore, we feel that this bill is counterproductive to the goal of clean water in Kansas. We urge you to vote in opposition to HB 2368.

**Testimony Before the House Committee on Environment on HB 2368  
20 February 1997.**

My name is Eric Rundquist. I am a co-founder, past president, and current editor for the Kansas Herpetological Society, a conservation organization concerned with the state's amphibians and reptiles. I am also the communicator for Kansas for the international Declining Amphibian Populations Task Force, a network of thousands of people around the world monitoring amphibian populations. I have over 35 years of field experience in Kansas, having worked in every county in the state during this period.

I strongly urge this committee to reject HB 2368 for the following reasons: suspending current state regulations on water quality could have a significant impact on aquatic reptile and amphibian communities, could have a significant impact on the health of the people of this state, and the health of the people of this state is a primary consideration over so-called cost-effectiveness.

There is strong evidence and indications that surface water pollutants have had a considerable negative impact on aquatic turtle and amphibian populations in Kansas. Research conducted some years ago by Dr. David Edds and his students at Emporia State University showed a strong correlation between pollutants and population declines and developmental defects in aquatic turtles in southeast and south-central Kansas, particularly among Map Turtles, a group that includes one state threatened species. Work by Dr. Lou Guillette, formerly of Wichita State University, strongly indicates that certain pollutants and their breakdown by-products act as artificial reproductive hormones in many creatures, including reptiles and mammals. These false hormones dramatically reduce the reproductive abilities of these creatures and there is no reason to believe that they do not have the same effect on humans. I believe that atrazine is one of the pollutants that has been linked with this syndrome. In addition, I have recent reports from Meade and Douglas Counties of frogs with deformed, missing, or additional limbs. This phenomenon has caused considerable alarm in Missouri and Minnesota and there is some evidence that surface water pollutants are responsible for these defects. Reports from localities as widely separated as Meade and Douglas Counties indicate that this may be a statewide problem. Again, there is no reason to believe that pollutants would not have the same effect on humans.

Procedurally, I believe, that should this bill pass, it will be in direct conflict with legislation currently under consideration by this committee and the Senate Committee on Energy and

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Natural Resources. I refer to HB 2361 and SB 309, which are a result of task force recommendations mandated by the State Legislature last year.

On a personal note, as a taxpayer and voter, I am concerned that any legislation would be proposed that could possibly compromise my health and that of those people I love and for whom I care. I believe that HB 2368 is an example of just that kind of legislation and, again, I strongly urge this committee to reject this bill. Thank you for your time and consideration.

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February 19, 1997

From: William J. Denton

Client Code: 350741

TO	COMPANY	FAX #
Jere White	Kansas Corn Growers Association	(913) 448-6932

Number of Pages Transmitted (including this cover sheet): 4

Message: I also transmitted via E-Mail around 3:00 p.m. today. Please let me know if you have difficulty receiving that transmission.

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Sent by Operator: \_\_\_\_\_

(816) \_\_\_\_\_

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Original to follow  Yes  No

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## **POSITION PAPER**

### **PROPOSED KANSAS LEGISLATURE AFFECTING WATER QUALITY STANDARDS**

This paper addresses three specific questions related to the proposed bills before the Legislature of the State of Kansas to create a Special Commission on Water Quality Standards and temporarily suspend certain surface water quality standards. Specifically, it addresses whether either the establishment of a special commission to review water quality standards or the suspension of certain surface water quality standards would violate the federal Clean Water Act or threaten EPA's delegation of authority to the State of Kansas to run the National Pollutant Discharge Elimination System (NPDES) program. Also addressed is whether the Clean Water Act prohibits any consideration of economic impact in the evaluation of water quality standards. This position paper is a summary based on applicable federal statutory and regulatory authority and does not reflect an in-depth legal analysis of all relevant issues.

The following are brief statements of defensible positions in support of such legislation.

#### **SPECIAL COMMISSION ON WATER QUALITY STANDARDS**

The proposed Special Commission on Water Quality Standards is not in violation of or contrary to any provision of the Clean Water Act. In fact § 303 of the Clean Water Act requires a review of water quality standards at least every three years, and as appropriate modification of such standards. Review of the 1994 standards is not only appropriate but required. The proposed Special Commission on Water Quality Standards appears to set well within the contemplated review process.

#### **SUSPENSION OF WATER QUALITY STANDARDS**

Under the Clean Water Act, water quality issues are primarily a state responsibility. EPA oversees the state actions to insure compliance with minimum federal requirements, provides comments, and if EPA

disapproves of the state action, EPA may promulgate and impose a federal standard. The Clean Water Act does not directly prohibit the proposed suspension.

The Clean Water Act requires the establishment of water quality standards which consist of a designated use for each water body and a water quality criteria to protect the designated use. The Clean Water Act requires states to establish water quality standards considering water body use and the water bodies value for public water supply, propagation of fish and wild life, recreational purposes, and agricultural, industrial and other purposes. Even a properly established designated use may be removed if the use is not feasible for chemical, physical, biological, social, or economic reasons. The proposed legislation does not remove a designated use or reverse a water quality criteria but rather suspends certain standards pending review of their original promulgation and propriety of modification. Even if the original designated use and water quality criteria were properly established, the state may change either. The process of periodic review and modification of the water quality standards is an integral part of the Clean Water Act and therefore the proposed review and reconsideration process is consistent with the Federal Act.

State water quality standards must meet the minimum federal water quality standards, but may be more stringent than the federal standards. A state determination to suspend, modify or terminate a state standard that is more stringent than federal requirements is subject to EPA review, but EPA's authority only extends to imposing the federal requirement. EPA is required to review state water quality standards and proposed changes to state water quality standards to insure compliance with the federal water quality requirements. If EPA disapproves of state water quality standard it may issue a federal water quality standard applicable to those state waters. Disagreements over water quality standards should not be the basis for revocation of EPA delegation of authority to the state to operate the National Pollutant Discharge Elimination System (NPDES) program. The Clean Water Act NPDES provisions require that delegated states comply with specific provisions of the Act. That list of specific provisions does not include the state water quality provisions.

## ECONOMIC CONSIDERATIONS

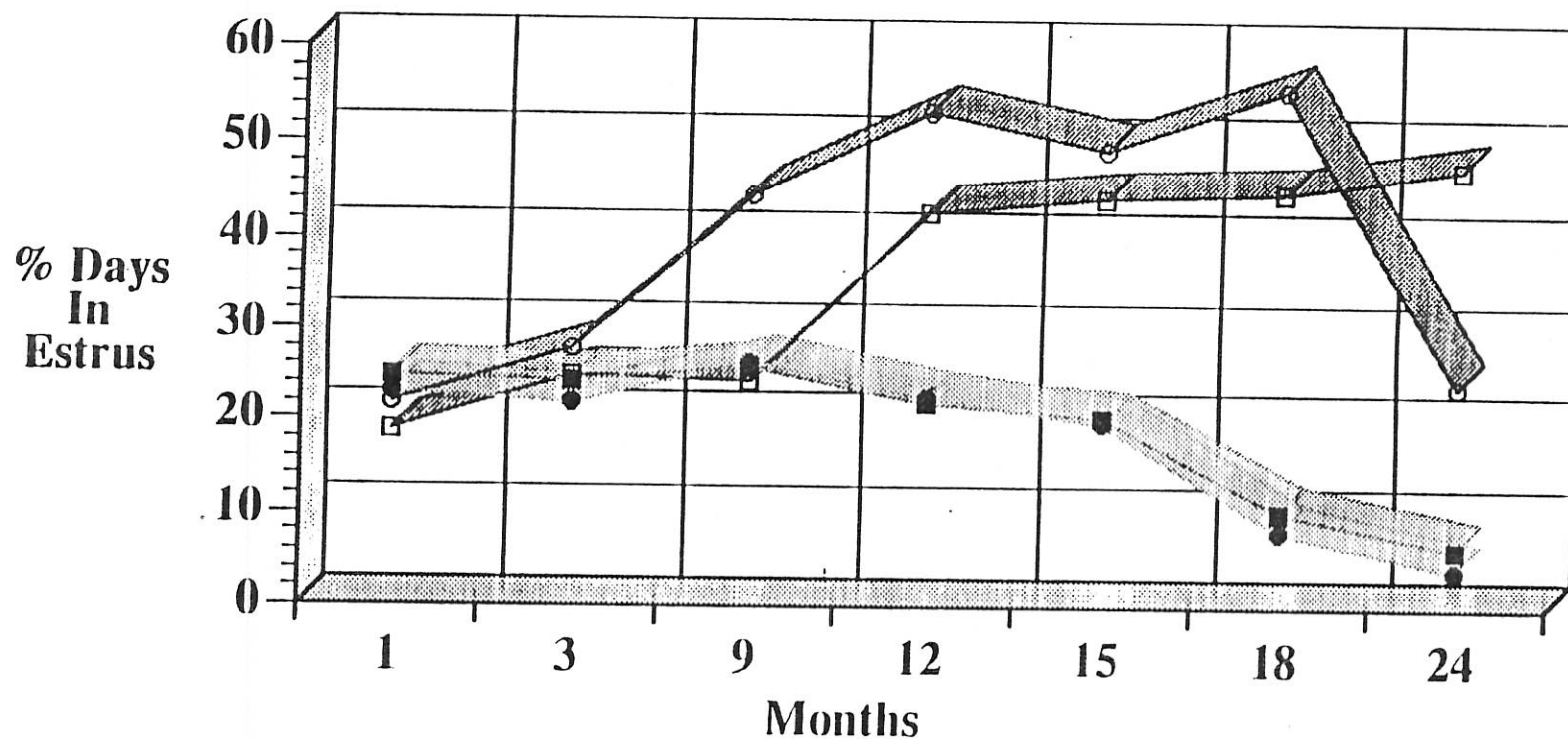
There is no general prohibition from consideration for economic consequences in the Clean Water Act. As a matter of fact, numerous specific provisions, including designated use determinations, require or specifically allow consideration of economic consequences. There are, however, some specific standards which must be set without economic consideration. The proposed legislation raises issues of economic consideration but does not require inappropriate consideration of economic consequences.



# Atrazine

- ✓ **Atrazine exerts its weed control by inhibiting photosynthesis.**
- ✓ **Atrazine is not very toxic to animals.**
  - **For atrazine, the LD<sub>50</sub> (lethal dose) in rats is about 3,000 mg/kg.**
  - **For table salt, the LD<sub>50</sub> in rats is about 4,000 mg/kg.**

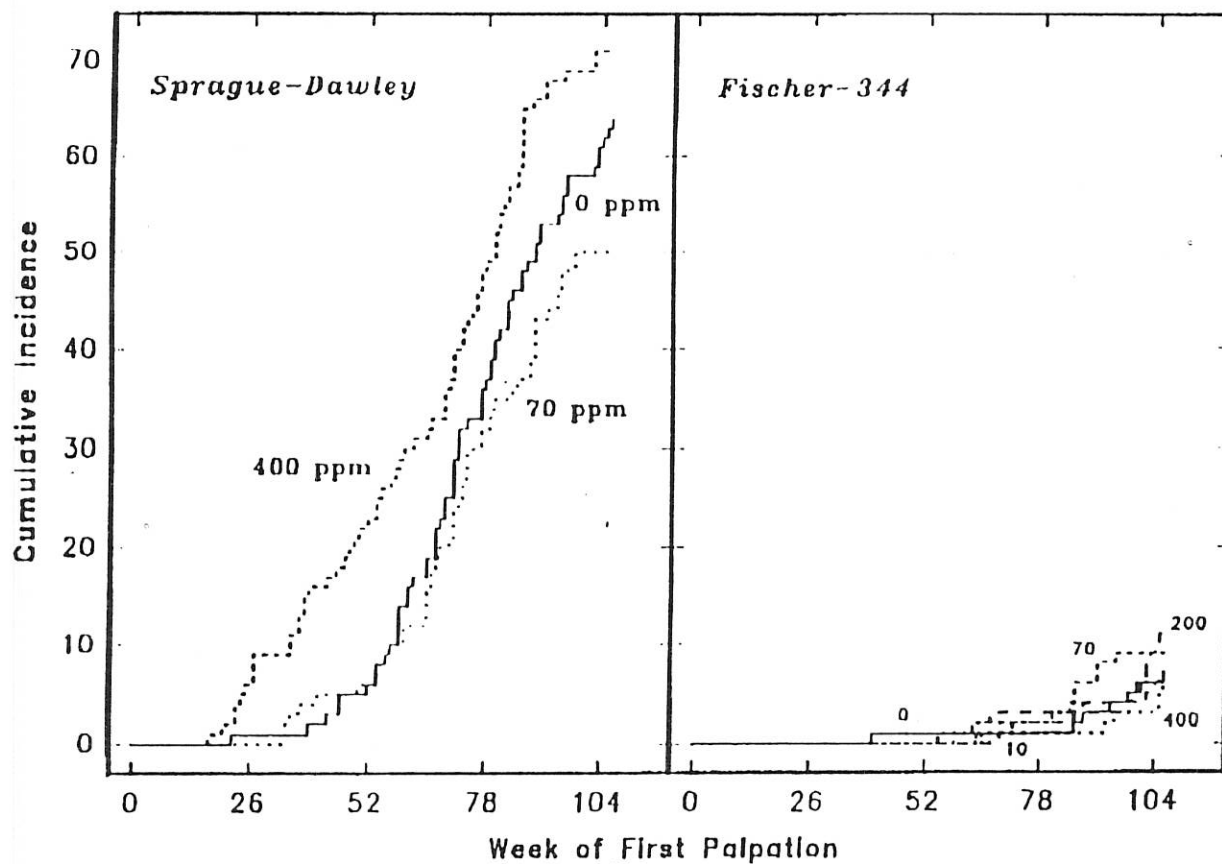
# Effect Of Feeding Atrazine On The Percent Of Days Of The Reproductive Cycle Spent In Estrus



- Sprague-Dawley, 0 Atrazine
- Sprague-Dawley, 400 ppm Atrazine
- Fischer 344, 0 Atrazine
- ◆ Fischer 344, 400 ppm Atrazine

24-2

# Cumulative Incidence Of Palpable Masses\* In Lifetime Rat Feeding Studies With Atrazine



**\*Histologically Confirmed As Mammary Tumors**

24-3

# **Atrazine Effects in Sprague-Dawley Rats**

**Estrous Cycles Are Prolonged**

**Hormone Changes Similar to Aging Occur**

**Mammary Tumors Occur Earlier Than in Untreated Rats**

# Atrazine

## Human Data

- **Epidemiology Data From Over 30 Years Of Production Are Favorable: No Early Mortality, No Increased Cancer Deaths**
- **Studies At NCI Have Concluded There Is No Increased Risk Of NHL From Agricultural Use Of Atrazine**
- **Risk Of Breast Cancer In Women Involved In Farming, Forestry, And Fishing Is Below The National Average**



# Atrazine And Safety

- **Atrazine Is Not Estrogenic**
- **The Mammary Tumors In S-D Rats Are Different From Breast Cancer In Humans**
- **The Mechanism Of Tumor Formation In The S-D Rat Appears To Be Unrelated To Tumor Formation In Humans**
- **Compounds That Cause Tumors In Humans Usually Show Up In More Than One Strain And At More Than One Site**
- **Human Epidemiology Data Are Generally Favorable Without Indications Of Adverse Effects**

# Atrazine

## Safety Evaluation

- **The Mechanism Of Tumor Formation In The Sprague-Dawley Female Rat Is Related To A Deficiency Unique To This Strain Of Rat. However,**
- **The Results In The Sprague-Dawley Rat Should Not Be Ignored.**
- **The Effects In The Sprague-Dawley Rat Demonstrate A Clear Threshold.**
- **Safety Should Be Evaluated Using A Safety-Factor Approach.**

# Atrazine Perspective on MCL

**In order for a person to ingest a dose equal to the lowest feeding level that produced mammary tumors in Sprague Dawley rats,**

**1986 study**

**70 ppm feeding level**

**it would be necessary to drink about**

**22,000 gallons of water per day**

**at the MCL.**