

Approved: 3-18-98
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Vice-Chairperson Joann Freeborn at 3:30 p.m. on March 4, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. Steve Lloyd - excused

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: Mike Jensen, Executive Vice President, Kansas Pork Producers Council, 2601 Farm Bureau Road, Manhattan, KS 66502
Doug Claassen, Whitewater, Kansas Pork Producers Council, 2601 Farm Bureau Road, Manhattan, Kansas 66502
Dwight F. Metzler, 900 SW 31st, #325, Topeka, KS 66611
Marty Vanier, DVM, Executive Director, Kansas Agricultural Alliance, 1728 Thomas Circle, Manhattan, KS 66502
Gary Hall, President, Kansas Farm Bureau, 2627 KFB Plaza, Manhattan, KS 66503
Rich McKee, Executive Secretary, Feedlot Division, Kansas Livestock Association, 6031 SW 37th, Topeka, KS 66614-5129

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. in room 313-S. She welcomed Rep. Joann Flower, Chairperson for the House Agriculture Committee, who is attending today's meeting. She reviewed the agenda for next week, Monday, March 9, continued hearing on Substitute for HB2950, with guest speakers making comments in a neutral position to the bill. Also possible action on the bill. Tuesday, March 10, a hearing on HB2499, concerning controlled shooting areas, and Wednesday, March 11, possible action on bills previously heard.

The Chairperson stated there has been some confusion about the proposed Substitute for HB2950. The committee adopted the sub-committee report and often times do not have hearings on those reports, but because this is such a big issue for the state, decided to have public hearings on the sub-committee report. She thanked members of the sub-committee, Rep. Kent Glasscock, Chairperson; Rep. Tom Sloan; Rep. Sharon Schwartz; Rep. Laura McClure and Rep. Vaughn Flora, for their many hours of work and expertise in responding to environmental concerns and issues in this bill. She also thanked staff members for their long hours of work and effort, along with other personnel and experts in the field for their input. She distributed revised copies of the bill explanation. (See attachment 1) She opened public hearing on proposed Substitute for HB2950 for proponents.

Substitute for HB2950:

An act concerning livestock; relating to regulation of confined animal feeding facilities; imposing restrictions on construction, operation and expansion of certain facilities; relating to disposal of certain dead animals; providing for certain income tax credits.

Chairperson Freeborn welcomed Mike Jensen, Executive Vice-President, KS Pork Producers Council, to the committee. He spoke in favor of the bill. (See attachment 2) The KPPC firmly supports reasonable environmental guidelines. They have sponsored an Environmental Assurance Program for the past two years to help train their producers in environmental practices. They believe that this bill, in its present form, is at the point of a very fragile balancing act. Every shall, may, and or, and date was carefully discussed to balance the protection of the environment and the economic impact on the swine industry.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on March 4, 1998.

The Chairperson welcomed Doug Claassen, Whitewater, KS Pork Producers Council, to the committee. He appeared in favor of the bill. He and his family operate a diversified farm including about 2,500 acres of cropland and a cattle feeding operation. His responsibilities include the management of a 650 sow swine facility. He believes the bill sets environmental standards that pork producers can achieve without unduly straining the ability of their operation to survive. (See attachment 3)

The Chairperson Welcomed Dwight F. Metzler. He is a retired Secretary of Kansas Department of Health and Environment, and has spent much of his life managing public health, environmental, and water resource programs. He suggests a five year moratorium and feels that length of time is needed to measure the effect on ground water. His concerns include groundwater, disease transmission, odor, and regulation, and provided a list of four additions to the bill. (See attachment 4)

Chairperson Freeborn welcomed Marty Vanier, KS Agricultural Alliance. She spoke in support of the bill. Alliance members have worked very hard to safeguard the environment of Kansas while, at the same time, providing an affordable and abundant food supply not only to the state and nation, but to the world. Members of the Alliance are concerned about the imposition of new and more stringent regulations and ask the committee to carefully consider the new standards, particularly in light of the lack of a demonstrable imminent hazard to the environment of the state. (See attachment 5)

The Chairperson welcomed Gary Hall, President, KS Farm Bureau. He appeared in support of the bill and believes it places a number of new responsibilities on swine facilities that will cost owners additional time and dollars. The legislation will impact many Farm Bureau members. It is important to know that the farm and ranch members of Farm Bureau have long standing concern about the environment, and are becoming even more involved with activities that protect natural resources. This awareness and willingness is demonstrated by Farm Bureau policy. (See attachment 6)

The Chairperson welcomed Rich McKee, Executive Secretary, Feedlot Division, KS Livestock Association. He appeared in support of the bill. The KLA is willing to support **Substitute for HB2950** as currently written. They believe the bill will allow the swine industry to grow in Kansas under some of the most restrictive environmental regulations in the country. There are provisions contained in the proposal that they find objectionable but are willing to accept in the spirit of compromise. KLA cautions the committee from making additional substantive amendments that could change the delicate balance struck by the sub-committee. (See attachment 7) Questions and discussion followed.

The meeting adjourned at 4:45 p.m.

The next meeting is scheduled for March 5, 1998.

HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 3-4-98

NAME	REPRESENTING
Lewis Webster	FACT
Elizabeth Webster	FACT
Dwight Metzler	Myself
Bill Henry	Ks Socy of Prof. Engineers
Jakie Long	KPPC
Law Justice	KPPC
Susan Nelson	KPPC
Don K. Goldstein	KPPC
Wonglas Hanson	KPPC
Tim Stroda	KPPC
Leslie Kaufman	Ks Farms Bureau
Kerri Ebert	Kansas Dairy Association
John Fairbanks	Rep McKinney
Kimbra Caywood	Rep. Tom Sawyer
Mike Beam	Ks LIVESTOCK ASSN.
Don Rezac	Rezac Land & Livestock
Russ Frey	Riley Co
Lee Masenthin	KDOC & H
Lois May	County

HOUSE ENVIRONMENT COMMITTEE COMMITTEE
GUEST LIST

DATE: 3-4-98

NAME	REPRESENTING
Charles Benjamin	KNRC/US Sierra Club

February 27, 1998

To: House Committee on Environment
From: Raney Gilliland, Principal Analyst
Re: Proposed Substitute for H.B. 2950

Proposed Sub. for H.B. 2950 would make amendments to current law and establish new provisions relating to the regulation of confined animal feeding facilities. Most of the provisions would establish standards for swine feeding facilities.

The bill would amend the current definition of the term "habitable structure" so that the term would exclude those habitable structures owned by a person operating a confined feeding facility for swine.

In addition, the bill would establish new separation distances for new construction or new expansion of confined feeding facilities for swine. The new separation distances would apply to distances to "habitable structures" and from any county, state, or federal park, or wildlife refuge in existence when the application for a permit is submitted. The new separation distances for swine facilities in the bill would not apply to facilities which were permitted or certified by the Secretary of the Kansas Department of Health and Environment (KDHE) on the effective date of the bill, or to the expansion of a swine confined feeding facility with an animal unit capacity of less than 4,500 including any expansion for which an application is pending under certain conditions. (Sec. 1(j)(2))

The bill would require a separation distance of 1,320 feet for facilities with an animal unit capacity of 300 to 999 and of 4,000 feet for facilities with an animal unit capacity of 1,500 to 4,499. A separation distance of 4,000 feet would be required for the expansion of an existing facility to an animal unit capacity of 4,500 or more if the expansion is within the perimeter of facilities from which distances are determined under other provisions of the bill. Further, the bill would establish a separation distance of 5,000 feet for construction of new swine facilities with more than 4,500 animal units for expansion of existing facilities where the animal unit capacity is greater than 4,500 and the expansion extends outside the perimeter as established by the bill. (Sec. 1(h)(2))

The bill would require that separation distances would be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine, any waste detention lagoons or ponds or other manure or wastewater storage structure, and any additional areas designed by the applicant for future expansion. The distances would not include offices, dwellings, or feed production facilities. (Sec. 1(k))

The bill also would modify current policy of allowing the Secretary of KDHE to reduce the separation distances under certain conditions. One of the current conditions is if the board of county commissioners of the county submits a written request to KDHE seeking a reduction

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Attachment 1*

of separation distances. Under new provisions of the bill, the county commission would no longer be able to make this request for a reduction of the separation distances for expansion or construction of new swine facilities of more than 4,500 animal units. Separation distances for all sizes of swine facilities would be permitted to be modified if the Secretary of KDHE determines that technological improvements exist to justify the modification of the separation distance. The Secretary could continue to reduce separation distances when no substantial objection from owners of habitable structures is received in response to the notice which is given. (Sec. 1(i)(2)(B) and (C))

The bill would require that the applicant for a swine permit give notice, by certified mail, to all owners of habitable structures within the separation distances. The operator of the facility or of the proposed facility would submit to KDHE evidence that the notice has been given. (Sec. 1(l))

Finally, current law would be amended to require that all plans and specification submitted to KDHE for new construction or new expansion of feeding facilities for any livestock would be certified by a licensed professional engineer. (Sec. 1(m))

The bill would enact a number of new sections of law dealing specifically with the regulations of confined feeding facilities for swine. The following is a section by section description of the major provisions of the remaining provisions of the bill, all of which only relate to confined feeding facilities for swine.

New Sec. 2 would establish a number of new definitions including the following: "best management practices for swine," "swine facility," "swine waste retention lagoon or pond," "swine waste management system," and "significant water pollution potential." The term "significant water pollution potential" would be defined to mean any potential for pollution of groundwater or surface water and defined by rules and regulations adopted by the Secretary. In addition, the Secretary would be directed to issue rules and regulations with respect to what constitutes an "animal waste management system."

New Sec. 3 would require KDHE to prepare and publish in the *Kansas Register*, certain items, after the receipt of an application for a permit or for expansion of an existing facility, including a document containing all the requirements with which the swine facility must comply and a factsheet containing information relating to the location of the facility, maps showing water wells located on the facility's property, and a description of the facility including the exterior perimeter of structures and lagoons which would include information of the facility's waste management system. Also required would be a nutrient application plan, including baseline soil tests, and a statement that the applicant will consult with the county extension agent, qualified soil scientist, or qualified agronomist, in order to ensure correct agronomic rates of application are used and records of those consultations will be maintained. (New Sec. 3(a))

The bill also would require there to be established by rules and regulations the form of public notice for a new swine facility or the expansion of an existing facility. The bill would require the notice to be by publication in a newspaper of general circulation in the county where the facility is or will be located, to residents in the vicinity, and to local government officials. The bill would require specific information to be provided in the public notification. (New Sec. 3(b) and (d))

The bill would require KDHE to hold a public meeting or hearing within 30 days after the conclusion of a required 30-day comment period. KDHE would not be permitted to make a

determination to approve a permit until the completion of the procedures of this section. In addition, the public hearings would be conducted only for the purpose of issues over which the Secretary of KDHE has authority. The bill also would provide that KDHE could disapprove, at any time, the issuance of a permit without completing the procedures as outlined in the bill. (New Sec. 3(e), (f), and (g))

New Sec. 4 of the bill would prohibit KDHE from approving a permit for the new construction or expansion of a swine facility unless the waste management system is located in the following manner:

1. in a place to prevent the impairment of surface water and groundwater;
2. outside any 100-year floodplain unless precautions are taken to flood-proof the facility;
3. the system is not less than 500 feet from any surface water if the swine facility has an animal unit capacity of 4,500 or more; the system is not less than 250 feet from any surface water if the facility has an animal unit capacity of 1,000 to 4,499; or if the system is not less than 100 feet from any surface water if the facility has a capacity of under 1,000 (none of these distances would apply if the surface water is owned by the operator);
4. the system is not less than 250 feet from any private drinking water well other than the operator's well (if the operator's well is less than 250 feet from the system and the facility has a capacity of greater than 4,500 animal units, it would have to be tested annually and the results reported to KDHE); and
5. the system is not less than 1,000 feet from any publicly-owned drinking water well that is in active use. (New Sec. 4(a))

The bill would provide that the distances from the waste management system outlined above would not apply in certain circumstances such as if the facility holds a valid permit, if the facility permit is pending on the effective date of the bill, or if there is a permit pending for the expansion of the facility on the effective date of the bill. (New Sec. 4(b))

The bill would require each applicant for a permit for construction or expansion of a swine facility with 1,000 or more animal units to submit with the application for a permit a manure management plan. In addition, each existing swine facility having a capacity of 1,000 animal units or more would be required to have a manure management plan submitted to KDHE within one year and comply with that plan as soon as practicable. The bill would require these facilities to also have a nutrient utilization plan if the methods of disposal of the manure and wastewater include land application. The bill would require that the manure management plan be maintained so that it is accessible to inspection by representatives of KDHE. (New Sec. 5(a), (b), (c), and (f))

The bill would require that if the operator of the facility does not own the swine at the facility, the operator would be required to execute with the owner of the swine a contract that specifies the responsibility for the management of the manure and wastewater. (New Sec. 5(g))

The bill also would require that whenever manure and wastewater generated at the facility is sold or given to a person who is not employed by the facility and is to be disposed of by means other than land application on the areas covered by the nutrient utilization plan, then the operators of the facility are to maintain a log of each person to whom the manure and wastewater are sold or given, the hauler, and the date and volume of removal. (New Sec. 5(h))

The bill, further, would establish new requirements for the construction of any new waste retention lagoon or pond where the groundwater is 25 feet or less under the surface of the lagoon or pond and is utilized by a facility with an animal unit capacity of 4,500 or more. Under these conditions, the bill would require the lagoon or ponds to be lined with a synthetic liner of 40 mil thickness with an underlying compacted soil liner with a seepage standard of 1/4 inch per day or by a compacted soil liner with an 1/8 inch per day standard. Operators of existing ponds or lagoons with these conditions would not be required to have this kind of liner or meet the seepage rate but, where the groundwater is at a depth of 150 feet or more, would be required to install one upstream and two downstream groundwater monitoring wells or employ equivalent technology by January 1, 2000. If the soil compaction requirements outlined above cannot be met and the facility has a 4,500 or greater animal unit facility, then the sides and bottom of the lagoons or ponds would have to have a 40 mil liner with soil compacted to the extent possible. If these conditions exist and the groundwater is at a depth of 150 feet or more, the operator would be required to install not fewer than one upstream and two downstream groundwater monitoring wells or employ equivalent technology as provided by rules and regulations of the Secretary of KDHE. (New Sec. 5(ii))

After January 1, 2000, if the Secretary determines, on a scientific basis, that the waste retention lagoons and ponds lined with compacted soil provide sufficient protection of the groundwater, the Secretary would be permitted to increase the animal unit capacity at which a synthetic liner or the 1/8 inch seepage rate standard is required. (New Sec. 5(i))

Further, the bill would give authority to the Secretary to require the installation and sampling of groundwater monitoring wells, the planting of trees to provide vegetative screening to control odor, and the adoption of any other rule and regulation concerning the location and construction of waste retention lagoons and ponds for swine facilities to protect the waters and the soils of the state and the public health if the facility has 1,000 animal units of swine or more. (New Sec. 5(j), (k), and (l))

Sec. 6 of the bill would prescribe the conditions under which manure and wastewater from swine facilities with animal unit capacities of more than 1,000 swine could be applied to land. The section would require the development of a nutrient utilization plan if the manure management plan contains provisions for the land application of manure and wastewater. The bill would prescribe the contents of any nutrient utilization plan, which must be approved by the Secretary of Agriculture. Among other things, the bill would require that these plans contain a site map of land application areas, crop rotations, records of soil tests, frequency and timing of applications, the amounts of nitrogen and phosphorous applied, precipitation records, and names of employees and contractors whom the operator of the facility has identified to supervise the transfer of manure and wastewater to land application, and records of training of all personnel who supervise and conduct land application of manure or wastewater. Each swine facility required to have a nutrient utilization plan would be required to file the plan with KDHE and KDHE would forward a copy of it to the Kansas Department of Agriculture for approval or disapproval. (New Sec. 6(a)(b))

A provision of the bill also would require that each manure management plan contain certain provisions for the testing of the soil for nitrogen, phosphates, chlorides, copper, and zinc on land to which manure and wastewater are to be applied. (New Sec. 6(c))

The bill would mandate that operators of swine facilities conduct soil tests and manure nutrient analyses to calculate needed fertility and application rates. If the soil tests demonstrate that phosphorous levels exceed or are projected to exceed within five years the phosphorous holding capacity of the soil, then the manure and wastewater must be applied with the agronomic phosphorous needs of the crops or pasture where applied. If the holding capacity for any soils in the facility's land application areas is expected to exceed the phosphorous holding capacity within five years, then the operator of the facility would be required to initiate the process of obtaining access to additional land application areas as needed. (New Sec. 6(c), (d), and (e))

The bill would require that a swine facility that applies manure or wastewater not apply, other than by incorporation into the soil during the same day, within 1,000 feet of any habitable structure; county, state, or federal park; or wildlife refuge. The bill would provide exceptions to this prohibition, including when the manure and wastewater have been subjected to physical or biological treatment for odor reduction approved by KDHE; the manure and wastewater are applied with innovative treatment or the application of best management practices, best available technology, or other technology approved by KDHE; or the owner of the structure has provided a written waiver. (New Sec. 6(f))

These setback requirements for application would not apply to any structure constructed or park designated after the effective date of the bill, for swine facilities in existence on the effective date of the bill, or to any habitable structure constructed (or state, federal, or county park) after submission of an application for a permit for a new swine facility or expansion of an existing facility. (New Sec. 6(f)(2))

The bill would prohibit the application of manure or wastewater to highly erodible land except under special conditions, during rain storms except under special conditions, or to frozen or saturated soil except under special conditions. (New Sec. 6(f)(3))

This section also would establish the requirements for the application of manure and wastewater from swine facilities through an irrigation system. The bill would require that: irrigation occur only when soil moisture is suitable to allow all wastewater to soak into the soil and that when applied procedures are used that avoid spray drift from the irrigation so that it does not result in application to roads, ditches, or adjacent property. The bill would require that equipment used in any land application process be properly maintained and calibrated so that any malfunction is detected. (New Sec. 6(f))

Provisions of the bill would require that the operator of each swine facility that applies manure or wastewater identify, train and keep current the training of each employee and contractor who supervises the transfer of manure and wastewater to land application equipment and the conducting of land application activities. (New Sec. 6(f))

The bill would require the Secretary of KDHE to adopt rules and regulations with respect to standards for training and certifying, and for periodic continuing education or recertification of operators of swine facilities maintaining or supervising the waste management system of a swine facility. The Secretary also would be required to adopt procedures for notifying KDHE

of any failure of a waste retention lagoon or pond or any unplanned release of animal waste. (New Sec. 7)

Sec. 8 of the bill would require KDHE to establish rules and regulations with respect to the establishment of an emergency response plan. Emergency response plans would have to be kept in a readily accessible location and would require that employees be trained to be responsible for implementing the emergency response plan. The bill would require the plan be amended whenever warranted by changes in the facility or other condition impacting the facility. (New Sec. 8)

Sec. 9 would require the operator of the facility to keep all records and plans required by the bill at the facility's office in an accessible place. The records would be subject to inspection by authorized representatives of KDHE. The bill would require that the records be kept for three years. (New Sec. 9)

The bill would require the operator of a facility to be certified by KDHE or by a third party approved by KDHE. The certified operator would be knowledgeable in management of manure and wastewater, nutrient utilization planning and implementation, emergency response planning and implementation, and other requirements of the bill, including the training of employees in land application and in emergency response. The bill would allow KDHE to approve a facility without the operator certificate under certain conditions and would require that the operator obtain the certification within six months. The operator of each swine facility would be responsible for the training of employees or contractors for supervision of land application of manure or wastewater, the persons who actually conduct the land application, and for the persons who are responsible for implementing the emergency response plan. (New Sec. 10)

The bill would require as a condition of the issuance of a permit the submission of a plan for odor control. This requirement would apply to:

1. a permit for construction or expansion of a swine facility that has an animal unit capacity of 4,500 or more;
2. a permit for expansion of a swine facility that would have a capacity of 4,500 or more; or
3. renewal of a permit for a swine facility that has a capacity of 4,500 or more. (New Sec. 11)

Sec. 12 of the bill would require a closure plan for any swine facility which has or will have more than 4,500 animal units. The operator of a swine facility with more than 4,500 animal units would be required to demonstrate annually to KDHE that the operation has financial ability to cover the cost of closure of the facility. (New Sec. 12)

The bill would establish the conditions under which KDHE would certify that a swine retention lagoon or pond has fully complied with closure procedures. The bill would require the Secretary of KDHE to establish rules and regulations for demolition of any waste retention lagoon or pond, or conversion of the lagoon or pond to another use. Rules and regulations would establish standard maximum periods for completion of all closure activities from the date of cessation of operation to the date of compliance with all closure requirements. (New Sec. 13)

The bill also would require that on and after July 1, 2000, each swine facility that has a capacity of 4,500 animal units or more and that has a waste retention lagoon or pond constructed or expanded after the effective date of the bill demonstrate annually to KDHE evidence of financial ability to cover the cost of closure of the lagoons or ponds. If a facility having a capacity of 4,500 animal units or more is sold, the new operator would be required to establish and maintain the evidence of financial responsibility to cover the cost of closure of the lagoons or ponds. (New Sec. 13)

The bill would require periodic inspections of the facilities and review of their records. The inspection and review would occur:

1. every 12 months for swine facilities with a capacity of 4,500 or more animal units;
2. every 18 months for swine facilities with a capacity of 1,000 to 4,499 animal units;
3. every 36 months for swine facilities with a capacity of 300 to 999 animal units; and
4. every six months for swine facilities regardless of size, if identified as having a specific water pollution problem.

Operators would be required to grant access to facilities, with appropriate safeguards for the protection of the health of the animals. Costs associated with the inspection would not be assessed to the facility except in an emergency that results in the discharge of manure or wastewater to surface water or groundwater or if the operator engages in a course of conduct that results in repeated, material violations of the bill. (New Sec. 14(b) and (d))

The bill would allow the Secretary to contract with persons or entities to conduct inspections and review of records as required by the bill. (New Sec. 14(c))

The bill would provide that the setbacks do not apply to new habitable structures or county, state, or federal parks that are established after existing swine facilities. Also the bill would establish the presumption that owners of the habitable structure or parks know that they will be subject to agricultural sights, sounds, odors, or other farm characteristics. (New Sec. 15)

The bill would provide that if a swine facility is in compliance with all applicable requirements of this bill and any other environmental law the facility would presumed not to be a nuisance under K.S.A. 2-3202 (the right-to-farm legislation). (New Sec. 15)

The bill would permit the Secretary of KDHE to deny an application for any permit or suspend or revoke any permit for a swine facility, if the applicant, or any officer, director, partner, or resident manager of the applicant has intentionally misrepresented a material fact; habitually and intentionally violated environmental laws of this or any other state or the United States where the violation has caused significant and material environmental damage; or had any permit revoked under the environmental laws of this or any other state or of the United States. Before suspension or revocation the Secretary would have to give notice and

opportunity for hearing in accordance with the Kansas Administrative Procedures Act. (New Sec. 16)

The bill would require that every swine facility with a capacity of 1,000 or more animal units file with KDHE a plan for handling of dead swine. The Secretary would adopt rules and regulations establishing minimum standards, with the requirement that no dead animal would be left where visible from roads or habitable structures and that the carcasses would be picked up within 48 hours under normal circumstances. (New Sec. 17)

The bill would require Kansas State University (KSU), to cooperate with KDHE, other agencies and owners, and operators of swine facilities to determine best available technology and best management practices. Best management practices for swine facilities would be defined to mean those schedules of activities, maintenance procedures, and other management practices of a swine facility that are designed to minimize or prevent pollution of the air, water, or soil or to control odor, flies, rodents, or other pests as determined by KDHE in consultation with KSU and swine producers. (New Secs. 2 and 18)

The bill also would require KSU, within the limitations therefor, to conduct nutrient management testing of land where swine waste is applied, including deep soil sampling. This testing would be in conjunction with KSU's current lagoon study and would be for the purpose of identifying potential risk of groundwater pollution. The bill would require annual reporting of the University's findings to the House and Senate Agriculture Committees, to the House Environment Committee, to the Senate Energy and Natural Resources Committee, and to the Governor. (New Sec. 18)

The bill would make it clear that the adoption or authorization of standards and requirements for swine facilities in this bill would not prohibit or limit the authority of the Secretary of KDHE to adopt rules and regulations for facilities for livestock other than swine. (New Sec. 19)

The bill would add new definitions to the Kansas Chemigation Act with respect to "agronomic application rates" and "chemicals." "Agronomic application rates" would mean the method and amount of swine waste that, in the Secretary's discretion, best protects the environment, including consideration of the crops or soil to which swine waste may be applied and the economic impact associated with the application of swine waste. (New Sec. 20)

The bill would require that regardless of whether irrigation water is added or not, that whenever swine waste is applied to crops or land, the Secretary of Agriculture would be authorized to investigate, inspect, or conduct examinations or reviews of the application of the waste. No swine waste would be applied to crops or land in excess of agronomic application rates. The Secretary of Agriculture would be required to review and approve all nutrient utilization plans for the application of swine waste to crops or land. The Secretary of Agriculture would notify the Secretary of KDHE when a nutrient utilization plan has been approved. Soil testing would be paid for by the swine facility. (New Sec. 21)

The bill would amend the Kansas Chemigation Act to allow the Secretary of Agriculture to adopt criteria which follows the latest scientific knowledge and technology which is designed to protect groundwater and surface water of the state. This criteria would be used to regulate the functional anti-pollution devices used in the chemigation process to protect water sources from pollution. (Sec. 22)

This section would give authority to the Secretary of Agriculture to enter premises to enforce the provisions of this bill relating to the application of swine waste under the Kansas Chemigation Act. (Sec. 23)

Sec. 24 of the bill would allow there to be an additional means to dispose of dead animals. New Sec. 35 of the bill would allow the Secretary of KDHE to adopt rules and regulations establishing standards and procedures for composting livestock, including chickens and turkeys.

The bill would permit a tax credit against the tax liability of a taxpayer under the Kansas Income Tax Act in an amount equal to not more than 50 percent of the costs incurred by the taxpayer for required improvements to a "qualified family farm swine facility." The bill would define "required improvements" to mean capital improvements that the Secretary of KDHE certifies to the Director of Taxation that are required to comply with the standards and requirements established by the bill but not required because of expansion. The term "qualified farm swine facility" would mean a swine facility that is owned and operated by a sole proprietorship or partnership or by a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust, or testamentary trust as defined by K.S.A. 17-5903 and is utilizing its swine waste management system on January 1, 1998. (New Sec. 25)

The bill would prevent a taxpayer from claiming the tax credit and also deducting the expenses in computing taxable income. (Sec. 26)

The bill would require that on or before the first day of the 1999 and 2000 Legislative Sessions that the Secretary of KDHE submit a report regarding the implementation of the provisions of the bill to the House and Senate Agriculture Committees, the Senate Energy and Natural Resources Committee, and to the House Committee on Environment. (New Sec. 27)

The provisions of the bill would expire upon the enactment of any law during the 1998 Legislative Session prohibiting the Secretary from issuing any permit for a new swine breeding, farrowing, feeding, or finishing facility, or any combination thereof, regardless of size. (New Sec. 28)

Secs. 29 through 34 and Section 36 of the bill would restore amended provisions of current law to their existing status if a bill is passed during the 1998 Legislative Session which prohibits the Secretary of KDHE from issuing any permit for a new swine breeding, farrowing, feeding, or finishing facility, or any combination thereof.

The last provision of the bill is the effective date which is upon publication in the *Kansas Register*.

March 4, 1998



Testimony to House Environment Committee

Qualified Support of HB 2950

Prepared by Mike Jensen, Executive Vice President

The KPPC is a qualified proponent of this bill. The reason for that "qualification" is our concern of any amendments to the bill which would change its status as carefully-crafted legislation based on sound, scientific principles.

Please remember, the starting point for H.B. 2950 was a document created by the National Environmental Dialogue on Pork Production after nearly a year of meetings where testimony was heard from hundreds of national and international experts on our industry. Then, the sub-committee spent nearly 100 hours hearing testimony from expert witnesses.

The KPPC firmly supports reasonable environmental guidelines. In fact, the KPPC has sponsored our Environmental Assurance Program for the past two years to help train our producers in their environmental practices. Also, beginning this spring, our association will be sponsoring "On-farm environmental audits". This program will be offered free of charge to any producer. Each farm participating will have a team of engineers and/or technicians visit their farm and offer a written assessment of that farm's environmental program. A third party verifier will overview the audit and participate in some of the audits.

These types of programs, developed with producer checkoff funds, show that pork producers are willing to accept change in their operations. In fact, when considering the rapid changes in technology occurring in our industry, it is very possible these might well outpace any “statutory” language. The protection of the environment may be best served by allowing the agencies involved to utilize their rule and regulation authority to address any remaining concerns.

We would strongly remind the committee that this bill, in its present form, is at the point of a very fragile balancing act. Every shall, may, and, or and date was carefully discussed to balance the protection of the environment and the economic impact on the swine industry. I would go so far as to infer that any change in this bill could have untold negative impacts on our industry.

In closing, I again want to stress that the Kansas Pork Industry is willing to accept *reasonable* environmental oversight and we believe that this bill, as it stands today, fits that standard.

Thank you for your consideration.

Kansas Pork Industry Facts

- Kansas pork producers generate enough Pork, The Other White Meat® to feed over 10 million people both in the U.S. and abroad.
- There are 3,600 hog farms in Kansas. Of these operations, 550 produce 87% of the state's pork.
- Nearly 1,000 pork producers have registered with the Kansas Department of Health and Environment and obtained the required documentation for their size of operation. This includes: 104 producers with NPDES permits, 810 producers with state permits and 79 producers with certifications.
- KDHE requires pork producers to control enough land to sustainably utilize the nutrients generated by the pork operation. About 80 acres of cropland is needed to utilize the nutrients from a 500 Animal Unit pork operation.
- Kansas is the number 10 state in hog and pig inventory, which is less than 3 percent of the nation's total.
- In 1997, Kansas producers marketed 2,572,092 hogs with a gross market value of \$356,414,323. These hogs produced over 460,000,000 pounds of Pork, The Other White Meat®.
- Kansas pork operations consume nearly 30 million bushels of grain. Primarily, these operations utilize Kansas-grown dryland milo, but they also feed significant amounts of corn and soybean products.
- The Kansas swine industry annually spends about:

\$200 million for feed grains	\$10 million for utilities
\$35 million in construction	(gas, propane & electric)
\$20 million in supplies	\$10 million for trucking costs
\$8 million in interest	(hog marketing only, no grain)
\$8 million for veterinary care	

For more information, contact:

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Numbers as of January 1, 1998

Animal Units

The term animal unit (AU) is utilized by the Environmental Protection Agency (EPA) to standardize effluent guidelines for all livestock species.



For the purpose of determining animal units for the swine industry:

1 AU = 2.5 pigs above 55 pounds



1 AU = 10 pigs below 55 pounds



When converting **animal units to pigs** on a farm,

- multiply number of pigs above 55 pounds by 2.5
- multiply number of pigs under 55 pounds by 10
- Add the totals

When converting **pigs to animal units**,

- multiply number of pigs over 55 pounds by .4
- multiply number of pigs under 55 pounds by .1
- Add the totals

Examples:

- A wean-to-finish unit with a 1,000 pig capacity -- $1,000 \times .4 = 400$ AU.
- An off-site nursery with 1,000 pig capacity -- $1,000 \times .1 = 100$ AU.
- A 100-sow farrow-to-finish operation.

At any given time, there is approximately two generations on the farm.

100 sows x .4 =	40 AU
375 pigs under 55 pounds x .1 =	37.5 AU
650 pigs over 55 pounds x .4 =	260 AU
5 breeding males x .4 =	2 AU
10 replacement females x .4 =	4 AU
	<hr/>

Total animal units = 343.5 AU

For more information, contact Mike Jensen, Executive Vice President, at 785-224-0374.

March 4, 1998

Testimony to House Environment Committee

Support of House Bill 2950

Presented by Doug Claassen, Whitewater



Hello, my name is Doug Claassen. I am a pork producer from Whitewater.

My father, two brothers and I operate a diversified farm including about 2,500 acres of cropland and a cattle-feeding operation. My responsibilities include the management of our 650-sow swine facility.

Pork production has been important to my family for generations. My great, great grandfather came from Prussia with a background in the swine industry. Hogs have been grown continuously on the land he bought in 1876.

I am here today representing the 500 members of the Kansas Pork Producers Council. I would like to thank Chairman Freeborn for appointing the sub-committee and giving them time to research our industry. I would also like to thank the members of the sub-committee for their time and diligence. As an elected producer representative, I can understand the anxiety that occurs when trying to please all your constituents.

The legislation before you was crafted after the sub-committee heard weeks of testimony about the pork industry. The members have sorted through this information and written a bill they believe will protect the environment.

As a father of four, I appreciate the importance of sustaining our farm's natural resources, including the water and air quality. I want to leave my children a legacy of doing things correctly.

As a conservationist, hunter, fisherman, host for the Governor's One Shot Turkey Hunt, and Sponsor member of the Rocky Mountain Elk Foundation. I understand the responsibility we have to be good stewards of the land.

However, as a businessman, I also understand that economics plays a role in determining the level of environmental safeguards a farm can sustain. Farms such as ours regularly use outside consultants for swine health and nutrition. We utilize agricultural engineers to ensure that our buildings and waste management systems are constructed with the latest technology available. We also have agronomy consultants sample the soil and crop tissues to ensure we are applying nutrients at the correct levels.

Agriculture is just beginning an era of technological advances. Some of these advancements may have a direct impact on several of the issues this bill addresses. Global positioning systems aligned with variable rate application devices may soon economically pinpoint the amount of nutrients needed in that section of a field. Crop varieties derived through advances in biotechnology may soon significantly alleviate concerns of excess nutrients produced by our industry.

Please be careful about adding specific restrictions to this bill which may, in effect, tie the hands of the state's producers in adopting new technology.

I believe this bill sets environmental standards that pork producers can achieve without unduly straining the ability of their operation to survive. In my opinion, the present bill is a workable compromise that helps protect the environment for the next generation of Claassens, yet allows our operation to grow as members of our family enter the business.

Testimony on House Bill 2950
House Comm. on Environment
March 4, 1998

I am Dwight F. Metzler, and my life has been spent managing public health, environmental and water resource programs. Thirty years were in Kansas, and eight managing the environmental programs for the state of New York. I hope that my views may be of some assistance to you.

I especially want to thank Rep. Kent Glasscock for listening to many views, and his many hours of work to draft a bill responsive to hog feeders and to protection of the environment.

I earlier expressed my concerns to the subcommittee. They are reviewed here as a backdrop for suggestions I have for making the bill an even better one. I believe that hog factory supporters want the Legislature to move too fast in southwestern Kansas. Enough facilities are in place to evaluate their performance. I suggest a stop to expansion, five years would be better than two, since that length of time will be needed to measure the effect on fresh ground water. Here are my concerns:

Ground Water

Ground water is the life blood of southwest Kansas. Hog waste must not be allowed to seep into the fresh ground water as proposed by the interim report from K-State. Present KDHE regulations set a maximum seepage of 7½ feet or 250,000 gallons/acre/year. I believe that any hog wastes into the ground water represent a huge threat. You should consider pollution of the ground water as comparable to a disaster such as the dust bowl.

Disease Transmission

Disease transmission to man is a threat as well. The Topeka Capital-Journal recently printed a letter from Ellen Verell, M.D. who writes, "When broiler and egg factories were spreading poultry-borne disease throughout the Mississippi River Valley, San Joaquin Valley, and other places, they created areas that will be forever endemic for those diseases. The excuse was, 'We didn't know it would stay in soil and water.' *Now we know.*"

Raw sewage from the hog lagoons is laced with parasites, viruses, and bacteria. Dr. Verell says that anthrax, brucellosis, cholera, coccidiosis, swine influenza, rabies, and other hog diseases can infect humans, and cause both illness and death. She also noted that once harmless bacteria are now harmful. Veterinarians at Kansas State, epidemiologists at KDHE, and researchers at the K. U. Medical Center should be asked to respond to the extent of the threat when the waste is in the ground or the water. So far as I know, this question has not been asked.

Odor

Everyone agrees that hog wastes smell. The odors caused the closing of a large hog-feeding operation northwest of Salina over two decades ago.

Regulation

The KDHE needs more adequate staffing for its livestock supervision. Engineers who review the plans and issue the permits need to be licensed, as well as having special training. The field inspection staff should be increased, trained, and directed by a licensed professional. I am convinced that two of the new lagoons, and probably more, were not built in accordance with approved plans. This would not have happened if licensed professional engineers had drawn up the plans. I applaud correction of last year's mistake by requiring plans be prepared by a professional engineer, as HB 2950 is worded.

Do you want western Kansas to become the home for huge hog factories? Let's get some questions answered first.

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I propose these additions to HB 2950:

1) No seepage of hog wastes into the ground or fresh water will be allowed. Stop the free ride of hog factories. Any other industry moving into the state would be required to provide concrete structures complete with clarifiers, aeration, sludge digestors and chlorination. They should have a choice of that or dry handling the manure and destruction with incineration.

If lagoons are approved for holding the wastes, legislate that they be water tight. This will require liners. Even liners leak, as we have found many times with attempts to store oil wastes in surface ponds and waste containment at Furley.

2) Provide a fee-financed system to finance adequate regulation and supervision. Tough standards will require more trained staff to enforce. Be sure that KDHE has it.

3) HB2913 proposes a two-year moratorium on building additional hog farms. This is a good idea, but why not ask the feeders to stop until K-State can make its studies? If K-State finds that present methods are inadequate, correction measures will be costly. I propose an agreement rather than a moratorium.

4) Assure cleanup as proposed in SB 524. Visit the abandoned chicken farm near Maple Hill if you doubt the need.

Thank you for this opportunity to state my views.

Dwight F. Metzler, P.E.



KANSAS AGRICULTURAL ALLIANCE

STATEMENT OF THE
KANSAS AGRICULTURAL ALLIANCE
BEFORE THE
HOUSE ENVIRONMENT COMMITTEE
JOANN FREEBORN, ACTING CHAIRMAN
REGARDING SUB. H.B. 2950

The Kansas Agricultural Alliance (KAA) is a coalition of 22 statewide agribusiness organizations that spans the spectrum of Kansas agriculture, including crop, livestock and horticultural production, suppliers, allied industries and professions.

The members of the Alliance, many of whom will be testifying today, have watched the development of Sub. H.B. 2950 with great interest. Alliance members have worked very hard to safeguard the environment of Kansas while, at the same time, providing an affordable and abundant food supply not only to the state and nation, but to the world. The Alliance fully supports the goal of protecting the environment to the extent it is practical and desirable to do so and applauds the Committee for its work in attempting to strengthen environmental protections for the people of Kansas.

Members of the Alliance are concerned, however, about the imposition of new and more stringent regulations on confined animal feeding operations. We would ask the Committee to carefully consider these new standards, particularly in light of the lack of a demonstrable imminent hazard to the environment of the state. Agriculture is a precarious enterprise, subject to the whims of the forces of economics and nature. The added expense of complying with new standards, even if only applied to new or expanded facilities of a particular size, may stifle growth. The new standards may have the unintended effect of preventing Kansas family farmers from expanding and developing successful animal feeding ventures. We hope the Committee will closely weigh the benefits of the new standards.

The members of the Kansas Agricultural Alliance are committed to and stand ready to assist in the protection the environment of the state of Kansas. Thank you for your attention.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENVIRONMENT

RE: Sub. for HB 2950 – Establishing regulations and income tax credits for confined swine operations.

**March 4, 1998
Topeka, Kansas Farm Bureau**

**Presented by:
Gary Hall, President
Kansas Farm Bureau**

Representative Freeborn and members of the House Committee on Environment, my name is Gary Hall. I serve as President of Kansas Farm Bureau.

The rapid growth of large swine confinement facilities in recent years has created a very emotional and volatile issue in the State of Kansas. This same debate is going on in a number of other states. Many see large confined swine operations as an economic benefit for their communities and their own farming operations. Others question the commitment to the community and see them as a danger to the quality of life.

This debate, charged with high emotion on both sides, has become possibly the biggest issue the 1998 Legislature is asked to resolve. Fourteen bills have been introduced that are directed at livestock production in Kansas. The proposals include moratoriums on the

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construction of facilities, increasing permit fees, changing the corporate farm law, authorizing county commissioners to establish the maximum number of hogs allowed in the county and requiring a county vote each time a facility is constructed. We believe you now have the bill that addresses the concerns of most Kansans. Sub. for HB 2950 is a strong pro-environment bill.

We are here today in support of the concepts outlined in the proposal developed by the subcommittee and advanced to the full House Committee on Environment. This comes after extensive review of Sub. for HB 2950 by our Swine Advisory Committee and a recommendation to the Kansas Farm Bureau Board of Directors.

Rep. Freeborn, we appreciate your leadership and vision as acting Chair of this Committee in appointing a capable and dedicated Subcommittee to examine the issues and develop a bill. Members of the Subcommittee, we thank each of you: Rep. Kent Glasscock, Rep. Tom Sloan, Rep. Sharon Schwartz, Rep. Laura McClure and Rep. Vaughn Flora. The weeks of hearings and the long hours of hard work have resulted in a bill that is more acceptable than any of the other bills introduced this session.

Sub. for HB 2950 places a number of new responsibilities on swine facilities that will cost owners additional time and dollars. The legislation will impact many of our members. It is important to know that the farm and ranch members of Farm Bureau have long-standing concern about the environment, and are becoming even more involved with activities that protect natural resources. This awareness and willingness is demonstrated by Farm Bureau policy.

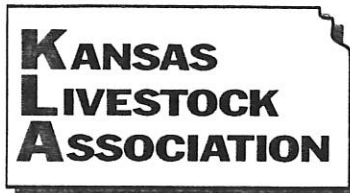
Sub. for HB 2950 contains a number of provisions aimed at protecting water quality. Farm Bureau policy includes these statements:

- “We encourage additional efforts to prevent contamination of ground water and surface water in Kansas.”
- “An increased focus and allocation of resources should be directed at developing crop and livestock management practices, which protect natural resources, the agricultural economy...”
- “Farmers and ranchers realize proper handling of waste materials is essential in protecting water quality and the environment.”
- “Regulation of wastes produced in confined livestock facilities should be consistent and economically viable. Any construction requirements must be reasonable.”

We strongly support New Section 25 allowing income tax credits for capital improvements that are required as a result of this legislation. This will reduce the financial burden on some of the family farmers. We ask you to consider increasing the tax credit closer to the actual cost of the improvement.

As we stated before, we believe this bill addresses the environmental issues. Approving additional legislation that places further restrictions and burdens on the pork industry in Kansas is unacceptable.

In closing, we encourage all corporate entities to accept the responsibility that comes with residency in Kansas. And we express our appreciation to you Representative Freeborn and Members of the Committee, for this opportunity to express Kansas Farm Bureau’s support for the concepts outlined in this bill. We ask you to keep this bill viable and in a form our pork producers can live with. Thank you!



Since 1894

Testimony

presented by

Rich McKee

Executive Secretary, Feedlot Division

regarding

Substitute for House Bill 2950

before the

House Environment Committee

March 4, 1998

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 7,500 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 \$7.8 billion, with nearly sixty percent of that coming from the sale of livestock. Cattle represent the largest share of cash receipts, representing approximately ninety percent of the livestock and poultry marketings.

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

The Kansas Livestock Association supports Substitute for House Bill 2950. This proposal would "raise the bar" with regard to Kansas environmental regulations for swine operations. Please keep in mind, Kansas already has some of the toughest environmental requirements in the country.

When the sub-committee responsible for drafting this legislation first met, they told us several things. First, they said everyone would have an opportunity to be heard. Secondly, the sub-committee indicated they would leave no stone unturned with regard to environmental issues surrounding swine facilities. Finally, the sub-committee told us when finished, they would produce a bill that no one would agree with 100 percent. In our view, the sub-committee did exactly what they said they would do.

There are a number of issues surrounding the potential growth of the swine industry in Kansas. There are environmental concerns, philosophical differences of opinion regarding who should be able to own livestock in Kansas and the question of whether state government should limit how many livestock one entity can own. We believe this bill is a sincere and progressive effort to address every environmental issue raised in this debate.

I can not recall an issue in the last 15 years that has received such intense scrutiny by a sub-committee. This sub-committee held countless meetings over the lunch hour and into the evening. Numerous environmental issues were hashed and re-hashed. No member of this sub-committee got everything they wanted and certainly every reasonable organization has had to compromise. The result, is a finely crafted bill. We commend the sub-committee for their tireless effort.

The Kansas Livestock Association is willing to support Substitute for House Bill 2950 as currently written. We believe this bill will allow the swine industry to grow in Kansas under some of the most restrictive

environmental regulations in the country. There are provisions contained in this proposal that we find objectionable but are willing to accept in the spirit of compromise. We caution the committee from making additional substantive amendments that could change the delicate balance struck by the sub-committee.

Thank you for considering the position of the Kansas Livestock Association.