

Approved: 1-23-98  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson David Corbin at 8:15 a.m. on January 21, 1998 in Room 254-E of the Capitol.

All members were present except: Senator Karr, Senator Pugh and Senator Schraad

Committee staff present: Raney Gilliland, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:  
Al LeDoux, Director, Kansas Water Office  
Gary Mitchell, Secretary, Department of Health and Environment

Others attending: See attached list

Chairperson David Corbin opened the meeting to bill requests.

Al LeDoux requested the introduction of three bills. He said the bills would repeal statutes that were no longer necessary. The first related to the water resources board; second relates to the employees of the Kansas Water Office and repeals existing language regarding unclassified employees; and the last request would repeal language relating to acquisition of certain water supply storage capacity. Senator Goodwin, with a second from Senator Biggs moved to introduce the bills. The motion carried.

The minutes of January 13, 1998 meeting were approved as presented.

Secretary Gary Mitchell requested the introduction of a bill that would expand KDHE's authority to approve of certain waste disposal activities without requiring the person performing the activity to obtain a solid waste landfill permit. He gave an example of how in an emergency situation this legislation would be helpful for health and cleanup purposes. Senator Tyson, with a second from Senator Huelskamp moved to introduce the legislation. The motion carried.

Secretary Mitchell than presented an overview of the Department of Health and Environment. He said his philosophy for environmental issues is to follow the law, not to create problems and to work with the citizens to implement statutes and to solve problems. He touched on some of the expense and problems associated with year 2000.

He reviewed the solid waste program for the state. A request was made for the committee to schedule time for him to review the Solid Waste Program Report in detail before the committee.

An update on air quality was given, and Secretary Mitchell said Kansas had been drop from OTAG.

He briefly visited about water issues, and stated the law suit with the Sahara Club had been settled. He was sure the Special Commission on Water Quality appointed by the governor will have some recommendation on water.

The Legislative Post Audit Committee last year said the KDHE needed additional inspectors to monitor animal waste lagoons. Five additional inspectors have been added. Because of the influx of large operators and new regulations he intend to implement, he thought an additional inspector was needed.

Graphs of confined animal feeding operations throughout the state were passed around, and a graph showing the design of a lagoon. He reported on the work they have done in the field in response to the post audit report of last year. He discussed changes that were being made in their district offices. Responding to questions, he said Kansas State has been asked to make a study of lagoons and this information should be available at a future date. At the present time it is required they submit a "plan for closure" to be filed, so the state and the taxpayers won't be stuck with a costly cleanup, in the event the operation shuts down, for whatever reason (Attachment 1).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on January 21, 1998.

In closing, he encouraged the Legislature to monitor the needs of the migrant works health care issues, and the possibility that public health clinics might be needed in the future.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for January 22, 1998.

## SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: 1/21/98

NAME	REPRESENTING
Connie Fischer	KS Dept. of Commerce <sup>Ag. Division</sup> & Housing
Doug Wareham	KS Grain & Feed Assn. KS Fertilizer & Chemical Assn.
Jim Allen	Seaboard
DAVE HOLTHAUS	Western Resources
Rich McKee	KIA
Charles Benjamin	KS Natural Resource Council / KS Sierra Club
GARY MITCHELL	K. O. H. E.
Dennis Gros Intern	Sen. Huelskamp
Ken Behr	Raytheon
STEVE KEARNEY	WNYX
Jamie Glover Adams	Gov. Office
AT 1 <sup>st</sup> Joe	Ks Water Office
Wendy Morris	Ks App. Prod. Reser.
Mike	Ks Tox. Council
Don Thalmann	Natl. Audubon Soc.



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
**BILL GRAVES, GOVERNOR**  
**Gary R. Mitchell, Secretary**

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January 14, 1998

During the past month I have talked with several legislators about some of the infrastructure problems I found following my appointment as Secretary of the Kansas Department of Health and Environment in May of 1997. Before focusing on setting policy direction for Health and Environment, I have had to use my time and resources (dedicating staff and funds) to put KDHE's affairs in order. I have hired staff to facilitate my efforts to address the myriad of problems found, as well as complete the day-to-day functions of KDHE; these include Assistant Secretary/General Counsel Linda Fund, Assistant for Health Policy Carolyn Duwe, Assistant for Internal Management Barry Greis and Assistant for Fiscal Management Jim Murphy.

The following is a list of problems the Office of the Secretary has been addressing:

#### INVENTORY MANAGEMENT

The agency employees over 975 employees, has a \$160 million budget, is located in 12 sites (4 buildings in Shawnee County, 6 district and 2 satellite offices) and had no capital equipment inventory in 4 years.

Problems:      Equipment purchased and discarded without ever being inventoried  
                    Equipment purchased with Federal dollars - only Division of Environment had internally inventoried items (due to EPA funding)

Solutions:      Computer hardware/applications inventory initiated 7/97 [Year 2000 Project]  
                    Complete inventory initiated for all capital outlay acquisitions (1992 - 1997)

*Note: Some capital equipment has been discarded without being inventoried*

#### PAYMENT OF AGENCY BILLS

Example of Problems:

- Department of Administration has complained we take up to 150 days to pay our telecommunications bills;
- As of September 15, 1997, KDHE had not paid its June 1997 motor pool bill, inhibiting the Department of Administration from closing out the fiscal year;
- Secretary received notices from the Turnpike Authority for unpaid K-Tag bills (several months).

#### REPORTS

Most Federal grants require a Financial Status Report (FSR) of how the money was spent; FSRs are due within 90 days of the close of the Federal Fiscal Year.

- FSRs on environment for Federal Fiscal Year 1996 were finalized this month (over a year late). The FSRs which were due December 1997 are not yet completed. The Regional EPA office initiated an audit of KDHE and is working with KDHE in an effort to avoid a full audit by the Inspector General.
- Failure to timely file the Air Quality FSR with EPA resulted in the loss of KDHE's ability to carry over \$90,000 and not allowing KDHE access this federal fiscal year's grant money which would have inflicted a hardship on Shawnee and Johnson County and prohibited their immediate access to \$76,000 of grant money due this year.

*Note: This FSR has now been filed.*

#### MISJUDGEMENT RE: YEAR 2000 COMPUTER ASSESSMENT AND REPAIR COSTS

Assistant Secretary/General Counsel Linda Fund has been given supervision of the Information Systems (IS) section of KDHE. Problems prior to her leadership of IS:

- Director of IS alienated DISC, failed to follow the CIA's requests and KIRC policies and was an obstruction to acceptance of new technology.
- Department of Administration asked IS Director to request enough money last year to assess and repair Year 2000 computer software applications and computer system problems.
- Requested was only \$180,000: \$70,000 short of the amount needed simply to assess computer systems and applications.
- Estimates now indicate KDHE may need \$2.6 million to repair or replace systems which are not Year 2000 compliant.
- KDHE did not request that money last legislative session when given opportunity to "piggy-back" on DISC's request.

*Note: Director of IS responsible for these problems and the budget director who supervised him are no longer serving in these roles.*

#### AGENCY ACCOUNTS RECEIVABLES

Example of Problems:

- Takes agency up to 90 days deposit checks
- Under K.S.A. 65-2409a(e) KDHE is required to collect a \$4 birth registration fee. Since 1994 KDHE collected \$15,200 - \$35,600 per year (Owed approximately \$92,500 - \$109,500 per year)

Solutions for Payments and Accounts Receivables:

- Full review of internal controls by an outside audit firm may be necessary.
- KQM team initiated to review our check handling policies.
- General Services has been decentralized, and is now under the direct supervision of my new Assistant for Internal Management, Barry Greis.



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Gary R. Mitchell, Secretary

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For Immediate Release  
November 10, 1997  
Contact: Don Brown  
(785) 296-1529

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NOV 12 1997

**SECRETARY OF  
DEPT. of HEALTH & ENVIRONMENT**

**Secretary Announces Reorganization at KDHE**

As part of a renewed effort to improve efficiency at the Kansas Department of Health and Environment (KDHE), Secretary Gary R. Mitchell has announced several organizational improvements. The changes are designed to enhance customer service.

“Some of these changes come as a result of input from the Kansas Legislature,” Mitchell said. “All of the changes represent the Graves Administration’s vision for a better, more responsive, and user-friendly Kansas Department of Health and Environment.”

A reorganization is underway in the Division of Environment. The Office of Science and Support will merge with the Bureau of District Operations to become the new Bureau of Environmental Field Services. Water quality certification activities formerly handled by the Office of Science and Support will be transferred to the Bureau of Water. And finally, a planning and communication unit will be created in the Division of Environment to enhance planning and to provide assistance to the various programs within the division.

“I believe these changes will improve the efficiency of our Division of Environment,” Mitchell said. “As we implement the new organizational structure, we have a goal of improving our service to both the general public and the regulated communities we serve.”

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The Office of the Secretary at KDHE is also changing. The 1997 Kansas Legislature authorized Mitchell to transfer up to four existing positions to the secretary's office. As a result, Mitchell has hired three assistants to help him in the day to day management and operation of the agency. Carolyn Duwe is the Assistant to the Secretary for Health Policy. Barry Greis is the Assistant to the Secretary for Internal Management. And Jim Murphy joins the team as Assistant to the Secretary for Fiscal Management.

"With an agency as diverse as KDHE, it's important to have a strong management team in place," Mitchell said. "These new assistants will help me and Assistant Secretary/General Counsel Linda Fund make sure KDHE is working in the best interests of the people of Kansas."

With a renewed focus on customer service and a strong leadership team at the helm, Mitchell is committed to continued improvements at KDHE. "We are a regulatory agency dealing with thousands of customers daily. The decisions we make can literally affect millions of people. I will constantly review and, if necessary, revise the way we do business to make sure KDHE is efficient and effective."



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Gary R. Mitchell, Secretary

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Division of Environment Reorganization  
October 10, 1997

The Division of Environment will be restructured in a number of ways to improve operation. This reorganization includes:

1. Assignment of water quality certification activities to the Bureau of Water (BOW)
2. A minor internal restructuring within BOW
3. Consolidation of Office of Science and Support and Bureau of District Operations
4. Creation of a planning and communication group within the Division Director's office

Duties in water quality certification, development and adoption of water quality standards and public participation in these activities have been assigned to the Technical Services Section of the Bureau of Water. Three positions have been transferred to the bureau to perform these functions. This transfer will place the responsibilities for water quality certification in the same administrative structure as the NPDES permitting and nonpoint pollution programs. In addition, the bureau will be internally reorganized with the establishment of a unit to handle the bureau's responsibilities for the fiscal activities associated with the wastewater and drinking water revolving loan funds, and the management of the bureau's budget. This unit will answer directly to the Director, Bureau of Water. In addition, one additional position will be transferred from within the bureau to the confined animal feeding operations (CAFO) program.

The Office of Science and Support will be combined with the Bureau of District Operations to become the Bureau of Environmental Field Services (BEFS). Three positions will be transferred from BEFS to Bureau of Water for the water quality activities outlined above. The BEFS will continue to conduct the surface and groundwater monitoring programs as well as the field duties previously performed by the district office staff. The monitoring, science and data management functions will be modified to provide more service and science consultations for the rest of the division's programs. Although the structure of the district office staff within the respective offices will not be changed with this reorganization, operations of the entire Bureau of Environmental Field Services will be reexamined and modified to improve customer service internally and externally.



A new organizational unit will be created in the Division of Environment to perform planning, assessment and public outreach. This unit will begin the development of a division wide strategic planning process. In addition the unit will provide assistance to the programs of the division in developing and presenting new programs, regulations and other activities for which public participation is vital. This unit will also work with the division's programs to identify and implement innovations to improve customer service across the division. This unit will also provide support for several new advisory committees to be appointed by the Secretary and Division Director. These committees will include an operations advisory committee and a science advisory committee. All resources for this unit will be reallocated within the Division of Environment. This unit will be located administratively within the director's office.

Prepared by Ronald F. Hammerschmidt, Ph.D.  
Director, Division of Environment  
October 10, 1997



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Gary R. Mitchell, Secretary

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For Immediate Release  
December 12, 1997  
Contact: Don Brown  
(785) 296-1529

### **Monfort Inc. Fined \$200,000**

The Kansas Department of Health and Environment (KDHE) has issued an administrative order assessing a \$200,000 fine against Monfort Inc., for violating conditions of the company's Water Pollution Control Permit at its Garden City meat packing facility.

Based upon inspection records at KDHE and communications with Monfort Inc., the Secretary of Health and Environment has determined that the facility violated terms and conditions of the permit by,

- 1) failing to comply with a schedule of compliance to clean an anaerobic lagoon;
- 2) failing to maintain adequate freeboard in the wastewater lagoons;
- 3) applying wastewater to farm land in excess of agronomic plant nutrient requirements;
- 4) failing to maintain records as required by the permit.

The department determined that conditions at the facility posed a risk to the environment and public health. Under these circumstances, state law authorizes the department to issue civil penalties.

KDHE inspectors continue to monitor the facility to ensure compliance with the permit. The order is subject to appeal to the Secretary of Health and Environment.

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Note to reporters: A copy of the administrative order is enclosed.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:

CASE NO. 97-E-0064

CON AGRA d.b.a.

MONFORT, INC. - GARDEN CITY, KS

KANSAS WATER POLLUTION CONTROL PERMIT NO. I-UA14-NP04

PROCEEDING UNDER K.S.A. 65-164 AND 65-170d

ADMINISTRATIVE ORDER

The following FINDINGS are made and ADMINISTRATIVE ORDER (Order) issued pursuant to the authority vested in the Secretary of the Kansas Department of Health and Environment (KDHE) and the Director of the Division of Environment (Director) by the above-referenced statutes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Kansas Department of Health and Environment, KDHE, issued Kansas Water Pollution Control Permit Number I-UA14-NP04 (Permit) to Con Agra, d.b.a. Monfort, Inc. (Permittee), P. O. Box G, Greeley, Colorado 80632, for water pollution control facilities located at Garden City, Kansas. The Permit has an effective date of April 1, 1996 and an expiration date of January 31, 2001.

Anaerobic Lagoons

2. The Permit contains a Schedule of Compliance which states, in part,

"A. Supplemental Condition B.6

1. The removal of sludge from the north anaerobic cell (Cell 1A) shall be completed by December 31, 1996.

2. The removal of sludge from the south anaerobic cell (Cell 1B) shall be completed by December 31, 1998."

3. In a December 4, 1996 letter to Karl Mueldener, Director, Bureau of Water, KDHE, Doug Pageler, Plant Manager, Monfort, Inc.- Garden City wrote:

"Due to circumstances and events beyond the control of Monfort, Monfort requests the replacement of language in items A.1. and A.2 in the compliance schedule with the following:

A. 1. Sludge and grease shall be removed from the north anaerobic lagoon as necessary within 365 days following final KDHE approval of the Land Application Plan and land application sites or disposal sites.

B. 2. Sludge and grease will be removed from the south anaerobic lagoon as necessary within 365 days following final KDHE approval of the Land Application Plan and land application sites or disposal sites."

Monfort cited, "1. Difficulties in obtaining KDHE approval of the Land Application Plan. 2. Limited access to agricultural land due to crop production and weather conditions.", as the circumstances and events beyond the control of Monfort.

4. In a February 27, 1997 letter to Monfort, KDHE denied Monfort's requested changes in the schedule of compliance. A review of KDHE's Monfort files show that the primary reason for the failure of Monfort to comply with the schedule of compliance was the failure of Monfort to start the project in a timely manner, adequately and timely address KDHE objections to the initial land application plan and to proceed with the project when KDHE approval was provided. The KDHE files show:
- A. Monfort first proposed a December 1996 deadline for cleaning the south anaerobic lagoon in a June 27, 1995 letter to KDHE. In a December 14, 1995 letter to KDHE, Monfort proposed to change the requirement to the north anaerobic lagoon being cleaned by December 31, 1996 and the south lagoon being cleaned by December 31, 1998. The current Permit, issued March 18, 1996, included the requested changes.
  - B. In the Quarterly Summary Report dated July 15, 1996, Monfort stated, "A report prepared by Innovative Management Systems regarding the waste material and disposal of grease from the anaerobic lagoons at the plant has been prepared and will be presented to KDHE for comment on July 15, 1996. Monfort Inc. intends to meet the permit requirements for cleaning the anaerobic lagoons as required by the supplemental conditions of the permit."
  - C. The report, prepared by Innovative Management Systems (IMS) for Monfort, consisted of a one page preliminary plan for land application of grease only. At the July 15, 1996 meeting (as provided in a July 22, 1996 KDHE memorandum to file), KDHE indicated that previous attempts to land apply only grease have not been successful. Also, KDHE expressed concern about the upcoming December 31, 1996 deadline. Monfort indicated IMS had informed Monfort the grease could be removed in 30 working days. Bill McAllister, Bolton & Menk, Inc., consultant to Monfort, stated a plan would be submitted to KDHE before September 1, 1996, hopefully in mid-August.
  - D. In an August 5, 1996 certified letter from KDHE to Doug Pageler, KDHE stated:  
  
"KDHE remains very concerned about the slow progress Monfort is making in correcting the problems with the wastewater treatment system. **KDHE expects Monfort to meet all Schedule of Compliance deadlines in the current permit.**"

E. In an August 22, 1996 letter to KDHE from Monfort, Doug Pageler stated:

"5. Anaerobic Lagoons' Sludge and Grease Removal

Monfort management is now working directly with a consultant, Brown & Caldwell, to complete the plan for land application of grease and sludge solids. This plan will propose to land apply a mixture of lagoon grease and sludge..... According to our consultant, the updated schedule for submittal of this plan to KDHE is September 17, 1996.

F. In the October 15, 1996 Quarterly Summary Report, Monfort discussed delays in completing the anaerobic lagoon's grease/sludge removal report due to "contractual differences between IMS and Brown & Caldwell".

G. A Land Application Plan for anaerobic sludge was submitted to KDHE by Monfort on October 23, 1996.

H. In a November 20, 1996 letter to Monfort, KDHE conditionally approved Monfort's October 23, 1996 plan for land application of anaerobic sludge. The approval letter stated, "The plan is deficient in several areas. However, in an effort to expedite Monfort's cleaning of the anaerobic lagoon, KDHE is providing **conditional approval** of the plan. Attachment I lists the additional requirements that Monfort must meet during the implementation of the Land Application Plan."

I. In the January 13, 1997 Quarterly Summary Report, Monfort provided the following information:

"1. Anaerobic Lagoons' Grease/Sludge Removal

Brown & Caldwell submitted the Land Application Plan (dated October 22, 1996) to KDHE staff during an October 23, 1996 meeting. Based on preliminary comments from KDHE during the October 23 meeting, Brown & Caldwell submitted an Addendum (dated November 6, 1996) to the Land Application Plan. On November 20, 1996, KDHE issued a conditional approval of the Land Application Plan provided that Monfort meet additional requirements that were contained in the November 20, 1996 letter.

.....The [KDHE] December 9, 1996 letter indicates KDHE provided verbal [approval] of the Land Application Plan in a December 3, 1996 telephone conversation. Since receiving the conditional approval of the Land Application Plan, Monfort notified KDHE of its intent to commence activities in connection with the Land Application Plan."

The Quarterly Summary Report also stated, ".....Based on current projections,

Monfort expects to complete sludge and grease removal from the north anaerobic lagoon and related land application during Spring 1997."

- J. In a July 2, 1997, Quarterly Summary Report from Monfort to Iona Branscum, Monfort wrote:

"7. Cleaning of North Anaerobic Lagoon

....The cleaning [of the North Anaerobic Lagoon] has ceased due [to] availability of crop ground of application. It was determined by Al Guernsey that the lagoon was not sufficiently cleaned."

- K. On November 20, 1997, another consultant, Horizon Technology, Inc., submitted a new land application plan for Monfort to desludge the north and south anaerobic lagoons. The new plan proposed to apply up to 50 tons/acre of grease and sludge which is well in excess of agronomic rates. The proposed application rate is not acceptable to KDHE.
5. As of December 10, 1997, the north anaerobic cell had not been desludged as required by the Permit. The Director and Secretary find that the Permittee has violated the schedule of compliance in the Permit which required the removal of the sludge by December 31, 1996.

Freeboard Requirements

6. Supplemental Condition B.1 states, "All wastewater ponds and irrigation ponds shall maintain a minimum of three feet of freeboard."
7. On November 25, 1996, KDHE conducted a follow-up inspection of Monfort's wastewater treatment system. A December 5, 1996 memorandum to the KDHE file documents the following freeboard:

North anaerobic lagoon - "...was full, similar to conditions observed during my last visit"

South anaerobic lagoon - "...about 2 feet of freeboard."

Largest aerobic lagoon - "...slightly more than one foot of freeboard. However, the rip rap on the southern edge was iced over, indicating that previous wave action had caused wastewater to spill onto the dike."

Triangular, aerobic lagoon - "...about nine inches of freeboard."

In addition to the above, the December 5, 1996 memo states, "Both irrigation storage ponds were nearly brim full."

8. In a January 30, 1997 letter to Doug Pageler, Al Guernsey, KDHE Dodge City office, wrote:

"On January 17, 199[7] and subsequently on January 30, 1997, I reviewed the north aerobic lagoon at the plant site and the two wastewater storage reservoirs from which effluent is utilized for irrigation activities. Based upon these observations the nondischarge system is severely surcharged with less than 12 inches of freeboard present."

"The chronic noncompliance and surcharged condition impacts the integrity of the dikes. The potential for eminent release/discharge from the wastewater control system necessitates immediate action."

During a March 18, 1997 telephone conversation with Al Guernsey, Doug Pageler reported the lagoons freeboard levels were: Lagoon 1 @ 38", Lagoon 2 @ 24", Lagoon 3 @ 22", Lagoon 4 @ 14", Brookover East Storage @ 28" and Brookover West Storage @ 23".

In an August 20, 1997 memorandum from Susan Turner, KDHE Ulysses office, concerning an August 19, 1997 visit to Monfort, Ms. Turner provided the following lagoon freeboards: Lagoon 1 @ 45", Lagoon 2 @ 33", Lagoon 3 @ 49", Lagoon 4 @ 23", Brookover East Storage @ 31" and Brookover West Storage @ 41".

9. The Director and Secretary find that the Permittee has violated terms and conditions of the Permit by not maintaining adequate freeboard in the wastewater retention structures.

#### Over Application of Nutrients at Brookover Farms Sites

10. Supplemental Condition C.2 states in part, "Application rates shall not exceed the agronomical loadings for plant nutrient needs of agricultural farmland as specified in the Minimum Standards unless approved by KDHE."
11. Data from the Management Plans, submitted by Monfort, indicate wastewater and fertilizer are being, and have been, land applied at rates above the nutrient needs of the crops. Furthermore, the Management Plans have failed to outline how Monfort will come into compliance with the requirements of Supplemental Condition C.2.
12. The Director and Secretary find that the Permittee has violated terms and conditions of the Permit by applying nutrient loadings in excess of the agronomic needs of the crops being produced.

#### General Land Application Management Plan

13. Supplemental Condition D. states in part, "By July 28, 1996 the permittee shall submit to KDHE for approval a comprehensive land application management plan for the years 1996, 1997, 1998, 1999 and 2000. The plan shall address the handling practices of paunch

manure, process solids, sludges, holding pen manure and wastewater irrigation that are/will be implemented to prevent crop or soil damage, groundwater, stormwater or surface water contamination, and nuisance conditions (which include odor and insect propagation). The plan shall ensure the permittee has adequate land and application equipment to land apply the quality and quantity of wastewater and solids generated at this facility at agronomic rates.

14. The Director and Secretary find that Monfort has failed to provide an acceptable General Land Application Management Plan based upon the following:

A. Monfort submitted a Land Application Management Plan for wastewater and solids to KDHE on July 29, 1996.

B. In an August 5, 1996 certified letter to Doug Pageler, KDHE stated:

"Based upon my preliminary review of the plan, only about one third of the wastewater currently being generated by your facility can be applied to the identified land when considering the agronomical rate for nitrogen. Monfort must provide complete agronomical rate calculations for all parameters of concern to show that sufficient land is available based upon the quantity and quality of irrigation wastewater currently being generated. KDHE reminds Monfort that their Kansas Water Pollution Control Permit does not allow application rates above agronomical rates."

In addition, on August 8, 1996, Iona Branscum, KDHE, contacted Wes Potter, Con Agra, to provide verbal comments on the deficiencies of Monfort's Land Application Management Plan for wastewater and solids. (Ref: August 15, 1996 KDHE memo to file)

C. On September 27, 1996, Monfort resubmitted their Land Application Management Plan for wastewater and solids.

D. In an October 15, 1996 certified letter to Doug Pageler, KDHE stated:

"The Kansas Department of Health and Environment (KDHE) has received Monfort's second submittal of the Land Application Management Plan dated September 27, 1996. The body of the report has changed little from the original, unsatisfactory submittal on July 28, 1996.

Monfort's past efforts to come into compliance with the terms of the permit which was issued in March, 1996 have been unsatisfactory. Although Monfort has submitted reports and/or plans by the dates stated in the permit, the documents have failed to meet the requirements of the permit. **KDHE expects Monfort to meet all upcoming Schedule of Compliance deadlines in the current permit and expeditiously correct all unacceptable submittals to come into compliance with**



**the permit."**

- E. On November 27, 1996, Monfort resubmitted their Land Application Management Plan for wastewater and solids.
  - F. In a February 27, 1997 letter, KDHE provided comments on Monfort's Land Application Management Plan. The letter states, "KDHE can not approve of the Plan. A significant deficiency of the Plan is the anticipated total potential contributions of nutrients .... applied to the majority of land application sites exceeds the estimated crop nutrient requirements .... of those sites."
15. In a September 22, 1997, document entitled "Engineering Report on Proposed Wastewater Irrigation Areas, dated September 19, 1997, Monfort proposed 5 additional sites on the Garden City packing plant property for irrigation consisting of approximately 100 acres. In a December 10, 1997 letter, KDHE disapproved these sites due to the shallow depth to groundwater, potential impact on existing contaminated groundwater and the monitoring well network plus incompatibility of this proposed land use with a nearby residential subdivision.

Wastewater Irrigation Records

16. Supplemental Condition D.6. states: "As part of the Land Application Plan/Annual Update Report, the permittee shall maintain records of the quantity of wastewater effluent, process solids, paunch manure, holding pen wastes and/or sludges applied to each land application site. This information shall include the date, application site and the type and quantity applied. These data shall be submitted annually to KDHE as outlined in Supplemental Condition A.2."
17. Monfort's quarterly status report dated January 13, 1997 stated, "During a November 14, 1996 meeting with Brookover Farms management, BMI [Bolton & Menk, Inc., Monfort's consultant] and Monfort discovered that the facilities at Brookover Farms are not adequate for monitoring the wastewater quantity to each existing irrigation site. Monfort management has received funding approval to install a flowmeter at each irrigation site that allows monitoring of each irrigation site. Monfort expects to install these flowmeters within 30 days." Installation should have been completed by February 13, 1997.
18. Monfort's quarterly status report dated June 17, 1997 stated, "By April 7, 1997, the water meters that had been ordered had arrived and been installed on each of the existing pivots at Brookover Farms."

Based upon these statements, the Director and Secretary find that Monfort is in violation of Supplemental Condition D.6 of the Permit, can not provide the information for the time period April 1, 1996 through June 1996 and will not be able to provide the required data from July 1996 - March 1997.

Brine Storage Ponds

19. Schedule of Compliance, Item C, Page 3 of the Permit states in part:

[Permittee shall] "Complete closure of both brine ponds and the concrete settling basin one year and six months after the effective date of this permit."

The Permittee did not meet the October 1, 1997 closure date required by the Permit. However, test results on the sludge in the brine ponds indicate the sludge may be hazardous. KDHE continues to work with the permittee concerning closure of these ponds. Because of the complications created by the potentially hazardous materials determination, penalty action on this requirement is not being pursued in this Order.

Findings

20. Based upon the above, the Secretary and Director find that the Permittee has violated terms and conditions of the Permit by 1) failing to comply with the schedule of compliance to clean the north anaerobic lagoon, 2) failing to maintain adequate freeboard in the wastewater lagoons, 3) applying wastewater such that the agronomic plant nutrient requirements were exceeded and repeatedly failing to provide a Land Application Management Plan approvable by KDHE, and 4) failing to maintain records as required by the Permit.
21. K.S.A. 65-170d states in pertinent part: "Any person who violates: (1) Any term or condition of any sewage discharge permit issued pursuant to K.S.A. 65-165 and amendments thereto; . . . shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$10,000 for every violation, every day such violation continues shall, for the purpose of this act, be deemed a separate violation.
- (b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a) may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed."
22. Nothing in this Order shall be construed as a waiver of the State's right to seek injunctive and/or any other relief prescribed by law.

PROPOSED ORDER

Based upon the above referenced Findings and pursuant to the authority vested in the Secretary, Kansas Department of Health and Environment under K.S.A. 65-164(d), it is hereby ordered:

A. Anaerobic Lagoons

By May 1, 1998, Permittee shall remove the grease and sludge from the north anaerobic lagoon according to the KDHE conditionally approved Land Application Plan for anaerobic sludge.

B. Freeboard Requirements

1. By May 1, 1998, Monfort shall consistently maintain a minimum of two feet of freeboard in all wastewater lagoons and irrigation storage ponds.

2. By December 31, 1998 and continuing thereafter, Monfort shall maintain a minimum of three feet of freeboard in all wastewater lagoons and irrigation storage ponds.

C. Groundwater Study at the Six Original Brookover Sites

Permittee shall complete a project to monitor the groundwater in and immediately around the six original Brookover Land Application Sites as identified in the Land Application Management Plan.

1. By February 1, 1998, Permittee shall obtain the services of an independent consultant knowledgeable and experienced in groundwater monitoring and in the design and construction of groundwater monitoring wells. Said consultant shall be engaged to review existing groundwater quality, flow data, location of existing wells and other available information to formulate a groundwater monitoring study.

2. By April 1, 1998, Permittee's consultant shall provide KDHE-BOW personnel a preliminary plan to meet the requirements of a groundwater monitoring study.

3. By June 1, 1998 or within 30 days following KDHE's written response to the preliminary plan, whichever is later, Permittee's consultant shall provide the final plan for the groundwater monitoring study to KDHE for KDHE's approval.

4. By June 1, 1998, Permittee shall advise KDHE of the name of the KDHE-licensed water well contractor hired to construct any monitoring wells contemplated by the final plan. The water well contractor shall be knowledgeable and experienced in the installation of groundwater monitoring wells. The wells shall be constructed in accordance with KDHE's "Standard Monitoring Well Design - KDHE 5/89".

5. By June 1, 1998, Permittee shall advise KDHE of the name of the independent contractor hired to sample the monitoring wells and other such wells as the final plan may consider. The independent contractor shall be knowledgeable and experienced in the sampling procedures used for obtaining samples from monitoring

wells, shall use KDHE-certified laboratories for the analyses and provide the Permittee and KDHE the test results within 30 days of sampling.

6. Testing shall be for ammonia (0.2 mg/l), nitrate (0.2 mg/l), nitrite (0.2 mg/l), chloride (10 mg/l) and sulfate (10 mg/l). Numbers in parentheses are minimum reportable detection limits acceptable to KDHE.

7. By August 1, 1998, the monitoring wells shall be properly constructed.

8. By September 1, 1998, Permittee's independent monitoring contractor shall have obtained the first set of samples. Sampling and analyses shall be conducted quarterly in 1998 (2 sampling events), quarterly in 1999, and semi-annually in 2000 - 2002.

9. By August 1, 1999, if the groundwater analyses from 1998 and the first two quarters of 1999 show excess nutrients have migrated into the water table; or if the soil analyses show the land application site(s) to contain excess nutrients more than twice the reasonably expected 1998 crop requirements, Permittee shall provide KDHE a short-term plan to immediately reduce the application of nutrients on the site(s) and a long-term plan to remove the excess nutrients through crop management including the possibility of the temporary abandonment of the land application site(s) for waste and wastewater disposal/re-use.

10. Within six months of completion of this study, Permittee shall provide KDHE prior notice of intent to abandon the monitoring wells, request abandonment procedures then in effect and, with KDHE approval, properly abandon the monitoring wells. Alternatively, KDHE and the Permittee may mutually agree to leave the monitoring wells in place.

11. The applicable portions of Paragraphs C1-10, above, shall be placed in wastewater treatment permit I-UA14-NP04, its successor(s) or another enforceable document, as necessary, and these requirements shall be enforceable under the conditions of the successor document after termination of this Order.

D. General Land Application Management Plan

1. By July 1, 1998, Permittee shall provide KDHE a KDHE-approvable General Land Application Management Plan that clearly shows, using reasonable assumptions, disposal/re-use of irrigation wastewater and solids at agronomical rates as required by Supplemental Condition C of the Permit. The Plan shall show compliance with agronomical application rates as soon as possible but not later than by December 31, 1998.

2. At an April 9, 1997 meeting, Monfort provided KDHE a plan to construct a new wastewater treatment facility that would upgrade the effluent to meet Kansas Surface Water Quality Standards for discharges to surface waters of the state. In an April 10, 1997 FAX, Stanley Wilkins, attorney for Monfort relayed to KDHE details of the proposed wastewater treatment facility. In a July 15, 1997 FAX, Stanley Wilkins requested the completion date for the new wastewater treatment facility be delayed to September 1, 1998. Monfort has provided KDHE various documents supporting the construction of a new wastewater treatment facility including a facility plan dated May 29, 1997, an engineering study data June 30, 1997, wastewater treatment design documents dated July 16 and August 14, 1997 and structural plans dated September 19, 1997. KDHE provided approval with comments of the design and structural plan documents in September 2, 1997 and October 2, 1997 letters, respectively. If Monfort chooses to construct a new wastewater treatment facility to resolve the wastewater disposal/storage problems discussed herein, Monfort shall comply with the following schedule:

New Wastewater Treatment Facility

1. Monfort has submitted to KDHE an application for a Kansas/NPDES wastewater treatment permit to discharge treated wastewater to waters of the state. KDHE does not agree to issue any permits, certifications or other approvals required for plant construction, operation or wastewater discharge unless all statutory and regulatory requirements for such actions are met by Monfort.
2. By February 1, 1998, Monfort shall provide KDHE with a schedule for construction and operation of a new 2.5 MGD (design) Sequencing Batch Reactor (SBR) system to treat the wastewater from the packing house plant. The facility shall be substantially complete and on-line by September 1, 1998.
3. KDHE understands at least three of the existing lagoons are to be used with the new facility. By February 1, 1998, Monfort shall provide KDHE a substantially complete plan and schedule for preparation and use of the portions of the existing wastewater treatment facility that will be tied in to the new facility.
4. Monfort shall provide KDHE quarterly reports describing the status of the Sequencing Batch Reactor project. The first report is due January 15, 1998 for the time period October 1-December 31, 1997. Subsequent reports are due April 15, 1998, July 15, 1998 and October 15, 1998 for the previous calendar quarter. Reports are to be sent to the Kansas Department of Health and Environment, Industrial Programs Section, Forbes Field-Bldg 283, Topeka, KS 66620.

E. Brine Ponds

By February 1, 1998, Permittee shall provide to KDHE a new KDHE-approvable Schedule of Compliance to complete closure of the Brine Ponds.

F. Interim Agreement to Initiate a Site Characterization of Potential Environmental Contamination of Soil and Groundwater at the Garden City, Kansas Site

Nothing in this Order shall interfere with nor delay the implementation of the Interim Agreement for Site Characterization signed by Monfort on September, 3, 1996.

**PENALTY**

Based upon the above-referenced Findings of Facts and Conclusions of Law and pursuant to the authority vested in the Director, Division of Environment of the Kansas Department of Health and Environment under K.S.A. 65-170d, it is hereby ordered:

- A. That within 30 days of the date of service of this order, Permittee shall remit to the State of Kansas a civil penalty of \$200,000 for violations of the Permit conditions as cited in paragraph 20.
- B. The civil penalty shall be paid by cashier's check or money order and sent to the Secretary, Kansas Department of Health and Environment, 900 SW Jackson, Suite 904, Topeka, Kansas 66612-1290.

**OPPORTUNITY FOR A HEARING**

The Permittee may appeal the Order and Penalty by stating specifically in what way the Order and Penalty are unlawful or unreasonable, and by sending a written notice of appeal and request for a hearing to Susan Vogel, Administrative Appeals Coordinator, Kansas Department of Health and Environment, Mills Building, Suite 400D, 109 SW 9th Street, Topeka, Kansas 66612-1215.

**Notice of appeal must be received at KDHE within 30 days following the service of this Order. Service is effective upon mailing.**

**Failure to submit a timely notice of appeal will result in a waiver of the Permittee's right to a hearing and the Order and Penalty will become a Final Order and Penalty without further proceedings.**

# The Wichita Eagle

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## COMMENTARY & LETTERS

# Times are changing for Kansas

By Gary Mitchell

Special to The Wichita Eagle

If there is one certainty about life, it's that times change. In Kansas and other Midwest states, we find ourselves smack in the middle of one of those changes. An expanding world market for pork, beef and dairy products is increasing production demand. That is fueling intense public debate. When changes of this magnitude occur in any industry, there are always initially more questions than there are answers.

I have had the pleasure of serving as secretary of the Kansas Department of Health and Environment for seven months. I have spent a good portion of my time trying to answer questions, and respond and adapt to those ever-present changes. That means implementing the laws passed by Congress and the state Legislature.

When it comes to confined animal feeding operations, KDHE's challenge is to regulate only what we are in charge of — environmental issues — and to let others determine whether corporate hog farming and the issues that surround it are good for Kansas.

In an effort to ensure that the agency is fulfilling its mission, I have taken the following steps since my appointment by Gov. Bill Graves.

### Additional inspectors

The Legislative Post Audit Committee last year said the KDHE needed additional inspectors to monitor animal waste lagoons. The governor asked for nine additional bodies to do the work. The Legislature authorized three inspectors. As secretary, I have restructured internally, and have been able to add two more. That means we now have five additional inspectors — one more than the Legislative Post Audit Committee said we needed. But with the influx of large operators and new regulations I intend to implement, I believe an additional inspector is needed.

### New regulations

Kansas has had regulations on the books regulating pollution from feedlots since 1967. These regulations came about as a result of the growth of the cattle feeding industry in western Kansas.



File art

KDHE has also developed a Design Standards manual that spells out in detail how a waste lagoon should be sized, built and managed. The Legislature also has spelled out in law specific requirements detailing the proximity of these facilities from homes or businesses.

As secretary, it didn't take me long to realize that our regulations, while comprehensive, needed to be updated and compiled in one place so that the animal feeding industry and the citizens of Kansas could see what it took to operate an animal waste lagoon. I have proposed what I consider to be logical, common-sense regulations designed specifically to address safety and environmental concerns. These proposals have been published in the "Kansas Register," the state's official publication for the dissemination of public information, available for public review in your county clerk's office. To save readers the trip to the courthouse, I offer a few highlights here:

For large operators (1,000 or more animals), KDHE will require they be schooled in proper waste-management techniques and become licensed and certified waste managers, just like municipal waste-lagoon managers.

The secretary of KDHE will have clear authority to require groundwater monitoring wells within proximity to lagoons or land application area.

The secretary of KDHE can deny a permit based on previous repeated environmental violations.

The secretary will require a "plan of closure" to be filed, so the state and the taxpayers won't be stuck with a costly cleanup, in the event the operation shuts down, for whatever reason.

For the first time, KDHE defines in regulation, a "potential to pollute." This will help small producers access federal funds to address water quality issues.

KDHE will require as a condition for a permit that farmers and ranchers test their soil for nutrient overload and build-up of harmful contaminants where they are continually applying animal wastes to the same parcel of land.

### Improved management

We have added new inspectors and are updating our safety and environmental regulations. By February, I will have revamped the agency's system for permitting confined animal feeding operations. That revamped system includes a new CAFO manager in the state office in Topeka to ensure permit applicants comply with the law and regulations.

In addition, we will require annual certification from producers to ensure compliance with their management plans, annual inspections for new and existing permit holders for large facilities and scientifically valid random audits of new and existing permit holders for small facilities. Each of KDHE's district officers will be assigned a workload of inspections. Their annual performance reviews, salaries and promotions will be based on meeting that workload.

At KDHE, we are committed to working in the interests of all Kansans to implement and enforce sensible, practical and effective environmental regulations, while keeping in mind our state's historic and economic dependence on animal agriculture.

**Gary Mitchell is secretary of the Kansas Department of Health and Environment.**