

Approved: 4-8-99
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 11, 1999 in Room 423-S of the Capitol.

All members were present except: Rep. Henry Helgersen - excused

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

Conferees appearing before the committee: John Neal, Dry Cleaners Environmental Committee, Hutchinson, KS
Gene Leonard, 1606 Highland Drive, Concordia, KS 66901
Scott Shmalberg, President, Scotch Fabric Care Services, Topeka, KS
Kim Gulley, League of Kansas Municipalities, 300 SW 8th, Topeka, KS 66603
Larry Knoche, Director, Bureau Environmental Remediation, Forbes 740, Topeka, KS 66620-0001
Walter Greer, KS Cement Council, Ashgrove Cement Company, PO Box 25900, Overland Park, KS 66225
Paul Peters, KS Cement Council, Lafarge Corporation, S Cement Rd. Box 479, Fredonia, KS 66736
Bill Bider, Director, Bureau Waste Management, KDHE Forbes 740, Topeka, KS 66620-0001
Ron Hein, Safety-Kleen, 5845 SW 29th, Topeka, KS 66614
Ken Peterson, KS Petroleum Council, 800 SW Jackson, Ste 1005, Topeka, KS 66612-1216
David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture, 901 S. Kansas, 2nd Floor, Topeka, KS 66612-1283

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She asked if there was a motion to approve the minutes of February 4, 9, 11, and 16 meetings.

Rep. Tom Sloan made a motion the minutes be approved. Rep. Becky Hutchins seconded the motion. Motion carried.

The Chairperson reviewed the committee agenda for next week. Tuesday, March 16, there will be possible action on bills previously heard and hearings on **SB287** and **HB2518**. On Thursday, March 18, there will be possible action on bills previously heard and hearings on **HB2387** and **HB2484**. She opened the hearing on:

SB132: An act concerning drycleaners; amending the Kansas drycleaner environmental response act; amending K.S.A. 1998 Supp. 65-34,144, 65-34,146, 65-34,148, 65-34,151, 65-34,152, and 65-34,153 and repealing the existing sections.

Chairperson Freeborn welcomed John Neal, Ineeda Laundry and Dry Cleaners, Inc., Hutchinson, KS. He appeared in support, and requested amendments, to the bill (See page 3, attachment 1) This bill would amend the Kansas Drycleaner Environmental Response Act, passed by the Legislature in 1995. (See attachment 1) He also distributed four letters from supporters of the bill, Jeffrey A. Roberts, Mayor, City of Hutchinson (See attachment 2); Ronald E. Pickman, City Manager, City of Goodland, KS (See attachment 3); City of Wichita (See attachment 4) and Lee E. Rose, III, President, Pride Cleaners, Kansas City, Mo. (See attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 423-S Statehouse, at 3:30 p.m. on March 11, 1999.

The Chairperson welcomed Gene Leonard, Concordia, KS, to the committee. He appeared in support of the bill. Before selling his business Mr. Leonard was a dry cleaner for 29 years. In 1989, KDHE informed him that perchlorethylene had contaminated the groundwater and he was required to clean it up and suffered extreme financial difficulties. Thankfully, Kansas has DERA (Drycleaner Environmental Response Act), and with it he believes no other cleaner will suffer the financial and emotional hardships he experienced. (See attachment 6)

The Chairperson welcomed Scott E. Shmalberg, President, Scotch Fabric Care Services of Lawrence and Topeka, and Select Dry Cleaner of Kansas City, KS. He appeared in support of the bill and believes the vast majority of funds spent today on remediation have gone to clean and protect public water systems in Kansas. Without the existing fund the cities or state would have borne the costs with little or no recourse against current or previous owners. This program has been immensely beneficial to the state but has become limited by its funding, he encourages the committee to support this bill to provide KDHE with the resources necessary to protect the waters and soils of our state. (See attachment 7)

Kim Gulley, Kansas League of Municipalities, was welcomed. The League supports the bills' efforts to establish a process for the collection and enforcement of the Drycleaner Environmental Response Act and encourages the committee to consider increasing the available financing sources for the remediation fund. (See attachment 8)

Larry Knoche, Bureau Director, Environment Remediation, KDHE, was welcomed to the committee. KDHE supports the bill as amended. The department also supports the efforts by the drycleaning industry to supply additional resources to the Drycleaning Facility Release Trust Fund. The additional resources will allow additional contaminated sites to be addressed and could potentially accelerate the cleanup process of contaminated sites presently being remediated. (See attachment 9) Questions and discussion followed.

Patricia Casey, Legal Council, KDHE, in attendance, answered questions concerning penalties.

Chairperson Freeborn assigned a sub-committee to look into **SB132**, Rep. Becky Hutchins, Chairperson; Rep. Bill Light; and Rep. Tim Tedder. She closed the hearing on **SB132**.

The Chairperson opened hearing and possible action on **SB296**:

SB296: An act concerning hazardous waste; amending K.S.A. 65-3444 and K.S.A. 1998 Supp. 65-3431 and repealing the existing sections.

Raney Gilliland, Legislative Research Department explained the bill.

The Chairperson welcomed Walter Greer, Vice President of Environmental Affairs for Ash Grove Cement Company of Overland Park, representing the Kansas Cement Council. He appeared in support of the bill and believes the passage of this bill would result in the application of a substantial portion of the fees collected as a result of hazardous waste management in the state to the regulation of that activity. Approval of the bill would tend to reduce or eliminate fee increases in the immediate future. (See attachment 10)

Paul Peters, Lafarge Corporation, Fredonia, KS, was welcomed to the committee. He appeared in support of the bill. Lafarge Corporation believes they pay their fair share of taxes to the general fund. Above and beyond this, they also pay substantial fees to KDHE. They believe these fees should be viewed as user fees to be used in support of an efficient and professional Hazardous Waste Section. To this end, they support the establishment of a dedicated fee fund to be used for support of the hazardous waste program in Kansas. (See attachment 11)

Bill Bider, Director, Bureau of Waste Management, KDHE, appeared in support of the bill. The purpose of this bill, which was introduced by private companies in Kansas, is to ensure that the fees paid by businesses, local governments, or other handlers of hazardous waste are used to support the state hazardous waste regulatory program rather than other unrelated state programs. (See attachment 12)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 423-S Statehouse, at 3:30 p.m. on March 11, 1999.

Ron Hein appeared on behalf of Safety-Kleen, Coffeyville, Kansas. They support the bill and believe it would allow KDHE to utilize all of the monies which are paid into the Department for fees under the various statutes indicated. These fees are assessed pursuant to statutes regulating their business, and other businesses as well. They believe that the fees they pay, as opposed to taxes, should be used to support the programs contemplated by the statutory fees. (See attachment 13) Questions and discussion followed.

Dr. Ronald Hammerschmidt, Director, Division of Environment, KDHE, in attendance, answered questions concerning fee funds.

The Chairperson closed the hearing on **SB296** and opened the bill for discussion and possible action.

Rep. Sharon Schwartz made a motion the bill be passed favorably. Rep. Gerry Ray seconded the motion. Motion carried.

The Chairperson opened the hearing on **SB246**:

SB246: An act concerning solid waste; amending K.S.A. 65-3430 and repealing the existing section.

Raney Gilliland, Legislative Research Department, explained the bill and stated that "solid" waste was in appropriate and should be changed to "hazardous" waste.

The Chairperson welcomed Bill Bider, Director, Bureau Waste Management, KDHE. He appeared in support of the bill and believes this bill as passed by the Senate, would amend the hazardous waste statutes to provide a mechanism to update the definitions of two terms in Kansas law whenever the United States Environmental Protection Agency updates the definitions in the federal regulations. The updates would not become effective unless the Secretary adopts the revised federal regulations. The two terms are "hazardous waste" and "acutely hazardous waste". (See attachment 14) Mr. Bider also provided a balloon to the bill. (See attachment 15)

The Chairperson closed the hearing on **SB246** and opened it for discussion and possible action.

Rep. Gerry Ray made a motion to amend HB2264 with SB246. Rep. Bill Light seconded the motion. Motion carried.

Rep. Laura McClure moved to amend SB246. Rep. Tom Sloan seconded the motion. Motion failed. A division was requested. Motion failed.

Rep. Tom Sloan made a motion to pass the bill. Rep. Lisa Benlon seconded the motion. Motion carried.

Chairperson Freeborn opened the hearing on **SCR1611**:

SCR1611: A concurrent resolution encouraging the United States Environmental Protection Agency to take certain actions relating to sulfur levels in gasoline.

Raney Gilliland, Legislative Research Department, explained the bill.

The Chairperson welcomed Ken Peterson, Kansas Petroleum Council to the committee. He appeared in support of the resolution. He believes everyone wants and expects clean air, but at a reasonable cost for the benefits received. Recognizing that air quality varies across regions of the United States, the petroleum industry has brought forth a targeted proposal that would reduce sulfur in all gasoline year round, but would provide greater reductions in areas of the country that have more significant air quality needs. (See attachment 16)

The Chairperson closed the hearing on **SCR1611** and opened it for discussion and possible action.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 423-S Statehouse, at 3:30 p.m. on March 11, 1999.

Rep. Ted Powers made a motion the resolution be passed. Rep. Melvin Minor seconded the motion. Motion carried.

The Chairperson welcomed David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture, to the committee. He continued briefing the committee on **SB287** and **HB2518** in preparation for hearings. He provided additional information requested by the Senate Agriculture Committee. (See attachment 17)

The Chairperson thanked Mr. Pope for his presentation.

The meeting adjourned at 6:00 p.m.

The next meeting is scheduled for March 16, 1999.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 11, 1999

NAME	REPRESENTING
Wendy Harms	KS Ready Mixed Concrete Assn.
WALTER GREER	ASH GROVE CEMENT CO.
Barbara Hodgson	Ash Grove Cement Co.
Kim Gullett	LKM
John Mitchell	KDHE
Bill Bider	KDHE
Pat Casey	KDHE
Leo B. Henning	KDHE
Scott Shmalberg	Scott Fabric Care Services
Dennis Dye	Pride Cleaners
Brian Auler	Strickel Cleaners (Manhattan)
STUE KEARNEY	KANSAS DECK CLEANERS
Gene Leonard	Rite Way (Concordia)
Jan Sides	KDHE
John Neal	Ineeda Cleaners, Hutchinson
RON APPLETOFT	WATER DIST No 1 of Jo Co
Alex Kobyanetz	SELF
Mary Meyer	Intern - Rep. Dan Shimech
Ron Hein	Safety - Kleen

TESTIMONY BEFORE THE HOUSE ENVIRONMENT COMMITTEE

By

John Neal

Ineeda Laundry & Dry Cleaners, Inc.

Hutchinson, Kansas

on

MARCH 11, 1999

Regarding

SENATE BILL NO. 132 AND PROPOSED AMENDMENTS

My name is John Neal. I own Ineeda Laundry and Dry Cleaners, Inc., a family-owned company which operates two full-service drycleaning facilities in Hutchinson. These facilities were purchased in 1984 and 1987, respectively.

I am here to testify in support of Senate Bill No. 132 and amendments we are requesting to that bill as it was passed by the Senate. Senate Bill No. 132 would amend the Kansas Drycleaner Environmental Response Act, passed by the Legislature in 1995. That Act places a 2% gross receipts tax on all revenue generated by drycleaning facilities in Kansas. It also levies a fee on all solvent purchased by drycleaners. It provides that the revenues raised be placed in a trust fund to be administered by KDHE for the purpose of cleaning up drycleaning-related contamination. The Act also requires that all drycleaners comply with specified procedural safeguards and performance standards to assure that future drycleaning-related contamination will not occur.

The Act was needed because, beginning in the mid 1990's, many drycleaning owners and operators, myself included, learned from environmental agencies that soil and groundwater contamination had been discovered as a result of solvent used in their drycleaning operations. The solvent usually cited as the culprit is called perchloroethylene, commonly referred to as "perc", a solvent that has been used for many years by the overwhelming majority of drycleaners in the United States because it was long thought to be completely safe as well as economical.

It has not been suggested that drycleaners violated any law or that they were negligent in how they handled or used perc. Virtually all drycleaners faced with contamination problems today had no idea that the solvent that has been sold to us by manufacturers and distributors for the last forty to fifty years could or would in any way be detrimental to the environment. Many, like me, innocently purchased long-standing drycleaning operations totally unaware that accepted and approved business practices would suddenly, under the Superfund Law, result in **retroactive and strict liability** for anyone owning the land or operating a cleaning facility thereon.

Suddenly, we were faced with the very real prospect of being forced to pay for cleanup costs that far exceeded our ability to pay. Clearly something had to be done. That is why Kansas drycleaners, in 1995, asked the Kansas Legislature for help, and the Legislature responded by passing the Kansas Drycleaner Environmental Response Act.

The Act has worked extremely well. It was the second comprehensive act of its type passed in the United States. It is, from what our drycleaning colleagues in other states tell us, a model for other state laws. It is a shining example of how a state agency, KDHE, and private businesses can work together to effectively address environmental cleanup without destroying innocent, hardworking small businesses in the process. Today, because of the trust fund established in 1995 by this Legislature, drycleaning-related contamination in a number of communities is being effectively addressed and remediation projects are in various stages of development and operation.

Over the last three years the revenue coming into the trust fund has been almost identical to that projected when the Act was passed, averaging over \$1.1 million per year. Unfortunately, that is not enough to effectively address the number of contaminated drycleaning sites that have now been identified.

To date approximately 60 such sites have been found. KDHE believes that there are many more sites which simply have not yet been discovered. KDHE has indicated that up to \$3.0 million annually is needed to bring the trust fund to levels which can appropriately and effectively address the cleanup of these sites. Stated simply, there

is a revenue shortfall in our trust fund, not because we underestimated incoming revenue, but because the number of drycleaning sites needing attention is greater than anticipated.

Senate Bill No. 132 and the amendments we are requesting addresses the funding issue as well as several other needed changes to make the Kansas Drycleaner Environmental Response Act more effective. Specifically, Senate Bill No. 132, as it is now before you, provides for the following:

1. Collection and reporting of the solvent fee is moved to the distributor from the purchaser.
2. The cap on cleanup of individual sites is increased from \$2.0 million to \$5.0 million.
3. The ceiling on the trust fund is moved from \$4.0 million to \$6.0 million.
4. The floor on the trust fund is moved from \$2.0 million to \$4.0 million.
5. Persons violating the Act will be subject to an administrative penalty rather than a civil penalty as currently provided.

In addition, we are proposing the following amendments to Senate Bill No. 132:

1. An increase in the gross receipts tax on all revenue from drycleaning facilities from the current 2% to 2.5%.
2. An increase in the deductible per site from \$2,500 to \$5,000.
3. An annual registration fee of \$100 per operating drycleaning facility.
4. A requirement that a copy of the registration certificate must be displayed publicly and that a drycleaner must provide proof of registration before solvent can be purchased

These proposed amendments, together with the provisions of Senate Bill No. 132, should greatly strengthen the administration of the Act and help with its enforcement. The funding changes should result in increasing the total revenue available to the trust fund from about \$1.1 million per year to at least \$1.4 million annually, all of which would be provided by the drycleaning industry.

To effectively address the number of sites already identified across the state, as well as many more which it is anticipated will be identified in the future, more funding will ultimately be needed; however, with the funding additions proposed here, drycleaners will have provided all of the funding that can practically be expected from our industry. To impose any additional taxes on our industry, beyond those requested today, would place many of the state's drycleaners, especially those on the borders of our state who must compete with out-of-state drycleaners who have no sales taxes of any kind on their services, in a very non-competitive position. That is why we are hoping that later in this session, as well as in future years, the state will provide supplemental funding to address this problem.

Our industry cannot solve this problem alone, and it will not go away. With the changes we are requesting today we will, however, have gone a long way toward addressing the problem. Out of the Act passed in 1995 has evolved one of the best examples ever of a state-business partnership. Please help us to assure that that partnership can continue to be effective in cleaning up our environment by supporting Senate Bill No. 132 and the amendments we are requesting today.

Thank you.



OFFICE OF THE MAYOR

February 16, 1999

Senator Dave Kerr
Room 120S
State Capitol
Topeka, KS 66612

Re: SB 132

Dear Senator Kerr:

The Hutchinson City Council supports the passage of SB 132, which would increase the funds available for remediation of sites where the groundwater has been contaminated by drycleaning fluids.

We understand this bill is still in the Senate Energy and Natural Resources Committee and we would urge you to express your approval of the bill to the members of that committee.


Sincerely,

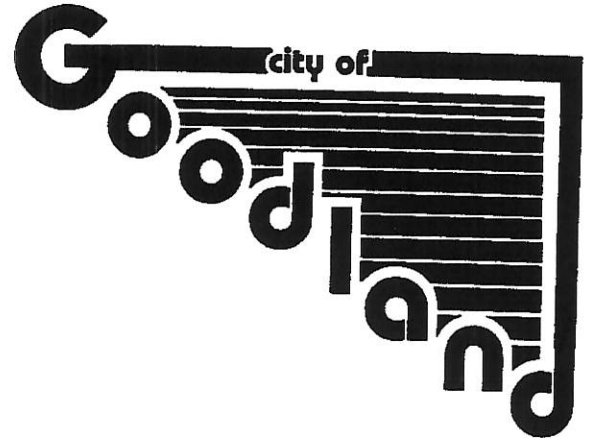
Jeffrey A. Roberts
Mayor

JAR/lc
LASDK1

CITY OF HUTCHINSON, P.O. BOX 1567, HUTCHINSON, KS 67504-1567

TELEPHONE: (316) 694-2611 FAX (316) 694-2673 TDD: (316) 694-2628

House Environment
3-11-99
Attachment 2

recycled and recyclable



March 8, 1999

Representative Joann Freeborn
Room 155-E
State Capitol
Topeka, Kansas 66612

Honorable Representative Freeborn:

The City of Goodland supports the passage of SB 132, an act that would increase state funds available for remediation of sites in communities where groundwater has been contaminated by dry-cleaning fluids.

It is our understanding this bill was passed and forwarded by the Senate Energy and Natural Resources Committee without the funding mechanism in place. The funding element of this legislation is essential in order to prevent the financial devastation of communities, or in some cases individuals, when cleanup of a contaminated site is demanded. In many cases, someone now owns the property who was not responsible for the contamination but is still liable for the cleanup. We urge you to reinstate funding provisions to this legislation, and to express your approval of this bill to other members of the Senate.

If you have any questions, please let me know. Thank you for your support.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Ronald E. Pickman', is written above the typed name.

Ronald E. Pickman
City Manager

Cc. Representative Jim Morrison

204 West 11th
P. O. Box 59

Goodland, Kansas 67735-0059

*House Environment
3-11-99
Attachment 3
(785) 899-4500*

City of Concordia

701 Washington PO Box 603
Ph: (913)243-2670

Concordia, Kansas 66901
Fax: (913)243-3328

March 1, 1999

Representative Joann Freeborn
Room 155-E
State Capitol
Topeka, KS 66612

Honorable Representative Freeborn:

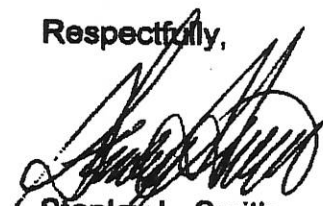
The City of Concordia supports the passage of SB 132, an act that would increase state funds available for remediation of sites where groundwater has been contaminated by dry-cleaning fluids.

Our understanding is that the bill was passed and forwarded by the Senate Energy and Natural Resources Committee without the funding mechanism in place. We urge you to work within your position as chairperson of the House Committee to reinstate funding provisions - and to express your approval of the bill to other members of the House of Representatives.

If you have questions regarding our position, or need additional information or action from us, please let me know.

Thanks once again for your consideration.

Respectfully,



Stanley L. Smith
City Manager

Cc: Mr. Gene Leonard
File

City Hall
701 Washington
PO Box 603
(913)243-2670
FAX (913)243-3328
TDD (913)243-3336

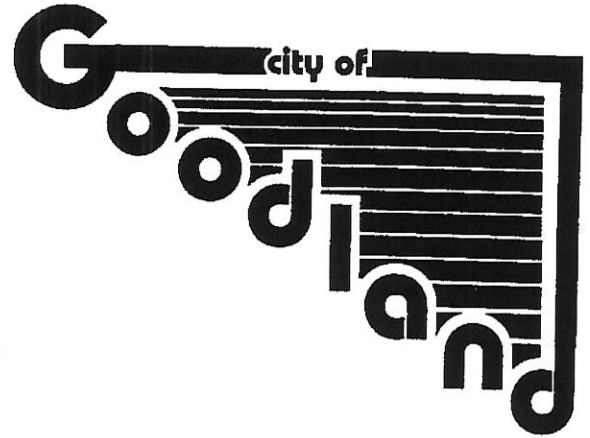
Police Department
401 W. 6th
(913)243-7888

Police Department
PO Box 603
(913)243-3131

Fire Department
701 Washington
(913)243-4411

Municipal Judge
812 Washington
(913)243-1367

City Attorney
613 Washington
(913)243-3788
FAX (913)243-8818



March 8, 1999

Senator Janice Hardenburger
Room 143-N
State Capitol
Topeka, Kansas 66612

Honorable Senator Hardenburger:

The City of Goodland supports the passage of SB 132, an act that would increase state funds available for remediation of sites in communities where groundwater has been contaminated by dry-cleaning fluids.

It is our understanding this bill was passed and forwarded by the Senate Energy and Natural Resources Committee without the funding mechanism in place. The funding element of this legislation is essential in order to prevent the financial devastation of communities, or in some cases individuals, when cleanup of a contaminated site is demanded. In many cases, someone now owns the property who was not responsible for the contamination but is still liable for the cleanup. We urge you to reinstate funding provisions to this legislation, and to express your approval of this bill to other members of the Senate.

If you have any questions, please let me know. Thank you for your support.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Ronald E. Pickman'.

Ronald E. Pickman
City Manager

Cc. Senator Stan Clark

204 West 11th
P. O. Box 59

Goodland, Kansas 67735-0059

(785) 899-4500

City of Concordia

701 Washington PO Box 603
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Concordia, Kansas 66901
Fax: (913)243-3328

March 1, 1999

Senator Janice Hardenburger
Room 143-N
State Capitol
Topeka, KS 66612

Honorable Senator Hardenburger:

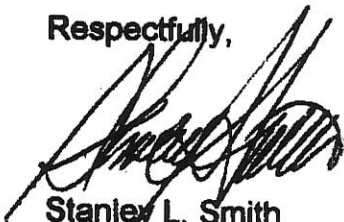
The City of Concordia supports the passage of SB 132, an act that would increase state funds available for remediation of sites in communities where groundwater has been contaminated by dry-cleaning fluids.

Our understanding is that the bill was passed and forwarded by the Senate Energy and Natural Resources Committee without the funding mechanism in place. That funding is necessary to prevent communities - or its individual citizens - from being financially devastated when cleanup is demanded, especially when they were not responsible for the source of contamination. We urge you to work to reinstate funding provisions - and to express your approval of the bill to other members of the Senate.

If you have questions regarding our position, or need additional information or action from us, please let me know.

Thanks once again for your consideration.

Respectfully,



Stanley L. Smith
City Manager

Cc: Gene Leonard
File

City Hall
701 Washington
PO Box 603
(913)243-2670
FAX (913)243-3328
TDD (913)243-2338

Public Department
401 W. 6th
(913)243-7888

Police Department
PO Box 603
(913)243-3131

Fire Department
701 Washington
(913)243-4611

Municipal Judge
812 Washington
(913)243-1367

City Attorney
813 Washington
(913)243-3788
FAX (913)243-8018



CITY OF
WICHITA

TESTIMONY

to

**House Environment Committee
March 11, 1999**

**Senate Bill 132
Drycleaner Environmental Response Act**

Senate Bill 132 demonstrates a strong environmental commitment by the dry-cleaning industry in Kansas. This kind of industry initiative should be supported.

Too often, the government must force businesses which have contributed to pollution of our water, ground, or air to do the responsible thing and actively take part in remediation measures. Senate Bill 132 is an industry effort to increase the amount of money available for the cleanup of sites polluted by dry-cleaning chemicals. And the industry is not just asking for the government to put up more money. The industry is willing to put its money where its mouth is on this issue and increase the amount of funding the cleaners contribute to the fund.

The City of Wichita has taken the lead on several environmental cleanups involving groundwater contaminated by solvents. The City knows how hard it is to find responsible parties, let alone get them to pay their part of the cleanup. Senate Bill 132 is a responsible and workable way to address the pollution caused by dry-cleaning solvents. The City of Wichita supports the bill and urges its passage with the additional funding amendments proposed by the dry-cleaning industry.

*House Environment
3-11-99
Attachment 4*

Pride CLEANERS

March 11, 1999

TO: John Neal

We at Kansas Pride Cleaners are committed to regulatory compliance as well as a desire to provide for the care and protection of the environment. Pride Cleaners operates thirty-nine (39) stores in Kansas and is in full support of Senate Bill #132.

Pride Cleaners is in agreement with and in full support of Kansas Drycleaners increase funding by:

1. An annual registration fee of \$100 per location.
2. An increase in the surcharge on our customers from 2% to 2.5%.
3. An increase in the deductible from \$2,500 to \$5,000 for anyone applying to the fund.

I encourage the support of Senate Bill #132 and ask that you approve additional state monies from the General Fund.

Sincerely,



Lee E. Rose, III
President

Quality ... it's RIGHT... it's READY.... it's GUARANTEED

51 WEST 135TH STREET • KANSAS CITY, MISSOURI 64145

PHONE: (816) 943-0575 FAX: (816) 943-0875

*House Environment
3-11-99
Attachment 5*

TESTIMONY

March 11, 1999

To: House Committee on the Environment

Subject: SB #132 - Kansas Drycleaner Environmental Response Act (DERA) amendments

By: Gene Leonard
1606 Highland Drive
Concordia, KS 66901

Madam Chair and members of the committee, thank you for letting me testify today.

Before selling my business, I had been a dry cleaner for 29 years. During those years, I survived many ups and downs, but the worst "down" was living through a groundwater contamination problem. In 1989, KDHE informed me that perchlorethylene (perc) had contaminated the groundwater and I was required to clean it up.

The use of perc and consequently the contamination at our cleaners began in 1945. We discontinued the use of perc nine months prior to the passing of CERCLA (Superfund) in December of 1980. The disposal practices and daily handling of perc during those 35 years was normal and legal. We couldn't have known that a problem was being created because for most of that time no one knew what contamination was and technology wasn't even available to test for the standards to which we now comply.

Even though everything we did in our day to day operations was normal and legal, I suffered extreme financial difficulties and public humiliation in our community for a problem that began the year I was born. Thankfully, Kansas has DERA, and with it, no other cleaner will suffer the financial and emotional hardships that I have experienced.

In my old trade area of North Central Kansas, I know of 16 abandoned locations and only one active drycleaner serving the communities where those sites exist. I am certain that this problem is repeated in other areas throughout the State. Property values and incomes in most rural communities are low and it is unlikely that current property owners will have the resources to pay for a groundwater cleanup if contamination is found. I suspect that most rural communities will need help in cleaning up historical dry cleaning contamination and DERA is their hope.

*House Environment
3-11-99
Attachment 6*

DERA provides many benefits:

1. It provides environmental protection to water supplies throughout Kansas by requiring cleaners to use modern, environmentally sound practices.
2. It eliminates a great deal of litigation and legal expense, allowing more money to be spent on remediation.
3. It can use innovative technologies, and potentially spend much less per site than a private sector project would require.
4. It provides financial protection to many communities, active and retired drycleaners, property owners, landlords and banks by paying for remediation at contaminated sites on a prioritized basis.

To maintain DERA's viability and improve its effectiveness, we are asking you to approve changes that will increase surcharges and fees paid by cleaners and their customers. I also ask you to consider approving a transfer of money from the General Fund in an amount equal to the total collected by the Revenue Department on behalf of DERA. Current drycleaners and their customers may not be able to bear all the expense of problems at the large number of historical sites. Matching funds could be the general public's contribution to clean water in areas where significant problems exist, but very little drycleaning is done to generate money for DERA.

Looking to the future, next year I suggest you consider dealing with remediation on a broader scale. As a State, we have a much larger problem than just contamination from current and past drycleaners. Other industries also have problems, such as farmers, feedlots, elevators and any business or individual that ever used chemicals. It has been suggested that a very tiny environmental tax on each cubic foot of water pumped by municipalities and irrigators could raise funds to pay for historical contamination, regardless of the source. For instance, in the case of drycleaners, the water tax might pay for any contamination created prior to 1981, and DERA would pay for problems created after that date.

For now, I ask you to pass Senate Bill #132 with the amendments we have proposed. In addition, please consider additional matching funds from the State until something like the water tax can be implemented.

Respectfully,

Gene Leonard

The testimony of Scott E. Shmalberg regarding Senate Bill no. 132

before the House Environment Committee

March 10, 1999

My name is Scott E. Shmalberg, I am the President of Scotch Fabric Care Services of Lawrence and Topeka as well as Select Dry Cleaners of Kansas City. My company, which employs 200 Kansans has been owned by my family through three generations. Currently we operate 27 dry-cleaning outlets in Northeast Kansas, 10 of these locations are operating production facilities.

I have come before you today to encourage you to continue the Legislature's support of a very successful environmental program. In 1995 when the Kansas Legislature passed the Kansas Dry Cleaners Environmental Response Act many States were attempting to set up similar programs to deal with environmental issues. Our industry's situation had been brought to the forefront as a result of the standards established by the Clean Water Act. To date ten States have established programs to deal with the problem of historical contamination resulting from the waste by-products of the dry cleaning process. The program in Kansas is without doubt the finest and most progressive in the country. While many states have become bogged down in legal issues or bureaucratic gridlock KDHE has been able to make a significant impact at a number of sites through remediation efforts despite their limited funding.

The majority of the contaminated sites currently registered with KDHE are either derelict sites, where the location is closed with no trail of ownership, or existing cleaners where the contamination occurred during previous ownership. These prior owners often cannot be located, are deceased, or if found do not have the financial resources to pay any portion of the remediation costs. I am fortunate that none of my facilities appear on KDHE's list of

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contaminated sites, it is probably just a matter of time. I wonder how my grandfather would have reacted in 1946 if someone tried to explain to him that forty years in the future a law would be passed declaring the industry's equipment and standard practices illegal and make his grandchildren and great grandchildren liable for his actions. This is not the forum to debate retroactive liability, our industry is here today simply trying to play with the hand that is has been dealt.

The vast majority of funds spent today on remediation have gone to clean and protect public water systems in Kansas. Without the existing fund the Cities or the State would have borne the costs with little or no recourse against current or previous owners. This program has been immensely beneficial to the State but has become limited by its funding, I would encourage you to support this bill to provide KDHE with the resources necessary to protect the waters and soils of our State.



LEAGUE OF KANSAS MUNICIPALITIES

LEGAL DEPARTMENT □ 300 S.W. EIGHTH □ TOPEKA, KANSAS 66603

PHONE: (785) 354-9565 □ FAX: (785) 354-4186

To: House Environment and Natural Resources Committee
From: Kim Gulley, Assistant General Counsel
Date: March 11, 1999
Re: Support for SB 132

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our member cities. The League is supportive of SB 132 and the efforts that have been made so far to remediate sites that have been contaminated by dry cleaning establishments.

Several cities have expressed the need for a fast, efficient means of remediating these sites. These sites can rise to the level of a public nuisance and in some cases have threatened public water supplies. The Drycleaner Environmental Response Act was established in response to this recognized problem and its importance cannot be overstated. We support the changes recommended by SB 132 in that we believe they were intended to strengthen the Act.

The League also believes that it is vital to maintain adequate sources of financing for the remediation fund. Without the funding to remediate these sites, one of two things will happen: 1) the site will not be cleaned up and could, therefore, pose a threat to the public's health and safety; or 2) the local government will be forced to step in and remediate the site. In either case, the local taxpayers will bear the burden.

The League supports SB 132's efforts to establish a process for the collection and enforcement of the Drycleaner Environmental Response Act. We would also encourage the Committee to consider increasing the available financing sources for the remediation fund.

We respectfully request your favorable consideration of this legislation.

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KANSAS

DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Clyde D. Graeber, Acting Secretary

Testimony presented to
House Committee on Energy and Natural Resources
March 11, 1999

by

Clyde D. Graeber
Acting Secretary
Kansas Department of Health and Environment

Senate Bill 132
Drycleaning Environmental Response Act

Honorable Chairman Freeborn and members of the committee, thank you for the opportunity to appear before you to discuss what I believe to be an important environmental issue in Kansas. The Drycleaning Environmental Response Act became law on July 1, 1995, as a result of a joint proposal made by the drycleaning industry and KDHE. The KDHE regulations for this Act became effective on January 2, 1997. The Drycleaning Environmental Response Act authorizes the regulation and distribution of the handling of drycleaning fluid, the storage of fluid and wastes generated during the drycleaning process, the proper disposal alternatives for the various wastes, and established the Drycleaning Facility Release Trust Fund.

Currently, there are 57 contaminated drycleaning sites identified. Since the beginning of the program, the number of drycleaning sites have steadily increased, with 10 to 15 new sites being added to the program each year. KDHE believes this trend will continue for several more years. Collections deposited to the fund generates only enough revenue to work on about 10 sites a year. Many of these sites take years to remediate and require long-term operation and maintenance to adequately remediate the site. Therefore, the backlog of sites which cannot be addressed increase annually. Presently, limited resources allow KDHE to address only those sites that score the highest on the priority ranking list. Those sites ranking highest are where public drinking wells or surface water has been adversely

impacted by the drycleaning solvents. Remediation of the lower ranking sites are not addressed until the highest priority sites are resolved.

KDHE supports Senate Bill 132 as amended. The department also supports the efforts by the drycleaning industry to supply additional resources to the Drycleaning Facility Release Trust Fund. The additional resources will allow additional contaminated sites to be addressed and could potentially accelerate the cleanup process of contaminated sites presently being remediated. The department estimates that to adequately protect the human health and environment at the presently identified drycleaning contaminated sites and potential future sites, the Drycleaning Facility Release Trust Fund resources should be \$3 million annually from all funding sources. We have no position on the nature of funding source.

Thank you for allowing me to speak before the committee today. If you need additional information or assistance from KDHE as you consider this bill, please do not hesitate to ask.

Testimony

by the

Kansas Cement Council

before the

House Environment Committee

Regarding SB 296

March 11, 1999

Good afternoon Madam Chairman and members of the Committee. My name is Walter Greer. I am Vice President of Environmental Affairs for Ash Grove Cement Company of Overland Park. Today, I am representing the Kansas Cement Council. We appreciate the opportunity to provide comments in support of SB 296.

The Kansas Cement Council is a business coalition comprised of Ash Grove Cement Co., Heartland Cement Co. and Lafarge Corporation, all of which operate portland cement manufacturing plants in southeast Kansas. Because of the availability of good limestone and abundant natural gas, Kansas was a national leader in the production of cement at the beginning of this century. At its peak, the Kansas cement industry consisted of seventeen cement plants. Since then, market forces, more efficient production methods and stringent environmental regulations have reduced that number to four active plants.

In order to remain competitive, all four of these facilities currently utilize hazardous waste-derived fuel or used tires to partially replace the large quantities of fossil fuel required to operate their kilns. In addition, this fuel substitution is environmentally beneficial because it assures

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almost complete destruction of unwanted waste while producing an essential ingredient of an environmentally friendly product, portland cement concrete.

The Kansas Cement Council wants to assure that this win-win situation continues into the future. To achieve this goal, we need adequate and timely regulatory oversight and management by the Kansas Department of Health and Environment (KDHE). In turn, KDHE needs staff and other resources to provide this service to the public and the regulated community. SB 296 would provide the Department with sufficient funds to regulate hazardous waste activity by directing the hazardous waste monitoring fees currently paid to the State general fund to a new, dedicated-fee fund. In addition to receiving the redirected monitoring fees, the Department will continue to receive 75% of the hazardous waste treatment fees paid by Council members and others. By statute, 25% of the hazardous waste treatment fees are directed to the State general fund. We are not advocating a change in distribution of the treatment fees.

Therefore, passage of SB 296 would result in the application of a substantial portion of the fees collected as a result of hazardous waste management in the State to the regulation of that activity. Approval of SB 296 would tend to reduce or eliminate fee increases in the immediate future. Additionally, the establishment of a dedicated fee fund would allow KDHE greater flexibility in its hazardous waste management program. These outcomes will assist the Kansas cement industry in maintaining its competitive position in the marketplace while allowing the Department to provide an important service to all Kansans. We urge your recommendation of SB 296 for passage.

Once again, thank you for the opportunity to testify here today. I would be happy to respond to any questions you may have.

KCC

800 SW Jackson St. #1408
Topeka, KS 66612

Kansas Cement Council

(785) 235-1188
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Written Testimony in Support of SB296

Paul J. Peters

Lafarge Corporation, Fredonia

March 11, 1999

The Lafarge Corporation facility in Fredonia, KS burns hazardous waste for fuel in the manufacture of portland cement. Back in 1992 Lafarge testified in support of the original Off-Site Treatment Fee Bill. This bill resulted in the payment of fees by facilities such as ours that manage hazardous wastes. We supported the bill and payment of fees because we understood that the fees would improve the effectiveness of the hazardous waste program in Kansas.

This has not been the result, however. Instead, a major portion of the fees paid by us is used for other purposes. Our fees either go into the general fund or go to the Household Hazardous Waste (HHW) and Pollution Prevention (P2) programs. We view this as an inappropriate use of our fees.

If the citizen of the State have an interest in management of HHW, then support for this program from the general fund is appropriate. The same goes for the P2 program although it also seems appropriate for generators of waste to help pay for P2 programs. We do not object to our taxes being used to support these programs, but we do object to our hazardous waste treatment fees being used for these purposes.

Lafarge Corporation pays its fair share of taxes to the general fund. Above and beyond this, we also pay substantial fees to the Department of Health and Environment. We believe these fees should be viewed as user fees to be used in support of an efficient and professional Hazardous Waste Section. To this end, we support the establishment of a dedicated fee fund to be used for support of the hazardous waste program in Kansas.

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Attachment II*



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

Testimony presented to

House Environment Committee

March 11, 1999

by

William L. Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment

Senate Bill 296

KDHE appreciates this opportunity to provide testimony in support of Senate Bill 296 which proposes to establish a dedicated fee fund for all hazardous waste fees paid by generators, transporters, and processors of hazardous waste. The purpose of this bill, which was introduced by private companies in Kansas, is to ensure that the fees paid by businesses, local governments, or other handlers of hazardous waste are used to support the state hazardous waste regulatory program rather than other unrelated state programs.

This bill would modify the way that the hazardous waste regulatory program is currently funded. In fiscal year (FY) 1999, the program will be funded from two primary sources and one secondary source. The primary sources are an annual federal grant from the U.S. Environmental Protection Agency (EPA) which provides about 71 percent of all program funds and state general funds which support about 24 percent of the program budget. The remainder comes from hazardous waste treatment fees which are paid by the four Kansas facilities which are involved in the combustion of hazardous waste received from off-site sources. The funding sources for the hazardous waste program in FY 99 are shown below:

• Federal RCRA Grant	\$ 894,000
• State General Funds	\$ 298,000
• Hazardous Waste Treatment Fees	\$ 66,000
Total Budget	\$1,258,000

Under the proposed scenario, the state general fund allocation would be eliminated because facility monitoring fees, which are currently deposited into the state general fund, would now be deposited to the new *Hazardous Waste Management Fund*. This fund would provide the required 25 percent match for the federal grant and it would be used to support the hazardous waste program and related administrative overhead costs.

Each year about \$420,000 in monitoring fees is deposited in the state general fund, but only about \$330,000 is allocated from the fund to support the hazardous waste program. At this time, there is a great need to have access to these extra funds because the EPA grant has remained constant for several years and the state general fund allocation has been steadily reduced. Several years of inflation has resulted in a situation where nearly all of the existing funds are needed for staff salaries and only a limited amount of money is available for operating expenses. Also, there is very little money to support much needed travel to facilities, staff training, and technical training and education for the regulated community. Virtually no funds are available to support contractual services to assist in highly technical work such as trial burns or risk assessments at combustion facilities.

Although the department currently has access to the treatment fees which are paid by the four combustion facilities, maximum payments are capped at \$60,000 annually for each cement kiln and \$200,000 annually for the Safety-Kleen incinerator in Coffeyville. Total collected revenue is expected to be about \$250,000 in FY 99 which is substantially higher than historical averages which have been about half of that amount. The large increase in FY 99 (and in FY 98) is due to a special dioxin combustion project which is occurring at Safety-Kleen. There is a great deal of uncertainty whether this facility will continue to operate after this project is completed near the end of 1999. Thus, treatment fee revenues could drop substantially.

It is also noteworthy that state law specifies that 25 percent of all treatment fee revenues are used to support the household hazardous waste collection grant program. Most of the remainder of collected fees have been historically used to fund the pollution prevention program in KDHE and Kansas State University. The department can provide information about this service program for Kansas businesses, especially small businesses, if the committee wishes.

With passage of SB 296, program revenue and expenditures in FY 2000 will be :

<u>Revenue</u>		
Federal RCRA Grant		\$ 1,055,000
State Fees (deposited in Dedicated Fund)		
Treatment Fees	200,000	
Monitoring Fees	420,000	
Permit Fees	0	
Subtotal		<u>620,000</u>
Total Revenue		\$ 1,675,000
 <u>Expenditures</u>		
Base Hazardous Waste Program		\$1,300,000
Household HW Grants (25% of Treatment Fees)		50,000
Pollution Prevention Program		75,000
Agency Overhead (18% of Federal Grant)		<u>161,000</u>
Total Expenditures		\$ 1,586,000

KDHE operates the state hazardous waste program in lieu of EPA running the program. Kansas businesses frequently comment that they would much rather have KDHE administer this program than EPA, which is usually perceived as more rigid and less responsive to company needs than a state agency. To maintain state authority for the program and continuously assume responsibilities for new federal regulations, KDHE must maintain a staff which is both technically capable and large enough to handle the work load. Funding must grow modestly to simply maintain current services and capabilities. This proposal to utilize the hazardous waste fees already paid specifically for this purpose could meet current and short-term funding needs without revising regulations to increase fees. Kansas businesses would like their current fees to be fully utilized to support the program to avoid having to increase treatment fees or establish new permit fees which are authorized in current law, but have not been needed.

Finally, this proposal is consistent with a House Appropriations Subcommittee report in 1995 which recommended a shift away from state general fund support for KDHE's environmental regulatory programs. The report stated it was preferable to fund these programs with user fees rather than state general funds. This funding approach places the financial burden of maintaining regulatory programs on the businesses and other organizations which create the need for the program rather than on the public as a whole. In this case, it also creates an incentive for businesses to minimize waste or eliminate it's generation all together.

The key changes to the law recommended by this bill to establish this new funding mechanism are:

1. Establish the new dedicated fee fund to receive all monitoring fees, treatment fees (except the 25 percent supporting HHW), permit fees, and the current balance in the Perpetual Care Trust Fund (expected to be about \$300,000 on July 1, 1999). The use of the Perpetual Care Trust Fund balance will provide necessary startup funds for this funding mechanism and eliminate the need for state general funds in FY 2000.
2. Eliminate the Perpetual Care Trust Fund because it has become obsolete with the development of the federal Superfund program.
3. Eliminate the Environmental Permit Fund which currently receives 75 percent of treatment fees.

We appreciate this opportunity to present testimony on Senate Bill 296.

HEIN AND WEIR, CHARTERED

ATTORNEYS AT LAW

5845 S.W. 29th Street, Topeka, KS 66614-2462

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Ronald R. Hein

Stephen P. Weir

HOUSE ENVIRONMENT COMMITTEE

TESTIMONY RE: SB296

Presented by Ronald R. Hein

on behalf of

Safety-Kleen

March 11, 1999

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Safety-Kleen, which was formerly Aptus. Safety-Kleen owns and operates a hazardous waste treatment facility in Coffeyville.

Safety-Kleen supports passage of SB296. The bill passed the Senate 40-0. This bill would allow the Kansas Department of Health and Environment to utilize all of the monies which are paid into the Department for fees under the various statutes indicated. These fees are assessed pursuant to statutes regulating our business, and other businesses as well. We believe that the fees we pay, as opposed to taxes, should be used to support the programs contemplated by the statutory fees.

Not only do we believe that these fees should be utilized by KDHE for the purposes enumerated, we also believe, philosophically, that fees imposed by state government should not be just another general tax. Our company also pays general taxes which are used to support the state general fund.

For these reasons, we would urge the Committee to support SB296.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

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KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

Testimony presented to

House Environment Committee

March 11, 1999

by

William L. Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment

Senate Bill 246

The Department of Health and Environment appreciates this opportunity to provide testimony in support of Senate Bill 246. As passed by the Senate, this bill would amend the hazardous waste statutes to provide a mechanism to update the definitions of two terms in Kansas law whenever the U.S. Environmental Protection Agency updates the definitions in the federal regulations. The updates would not become effective unless the secretary adopts the revised federal regulations. The two terms are "Hazardous waste" and "Acutely hazardous waste."

HB 2264, which was passed favorably out of the House Environment Committee, contains all of the provisions of SB 246, plus additional provisions related to hazardous waste transfers. A vote of the full House never occurred before the "turn around date" so the bill was stricken from the House calendar. KDHE proposes to incorporate the additional provisions of HB 2264 into SB 246. A balloon is attached which makes this change to the bill. The end result is that SB 246 becomes essentially the same as HB 2264 as it was passed out of the Environment Committee. It is noteworthy that both SB 246 and HB 2264 were introduced by the Joint Committee on Administrative Rules and Regulations.

The testimony which KDHE presented to the House Environment Committee on HB 2264 dated February 18, 1999 is directly relevant to our amended version of SB 246. We will not repeat all of that information in this testimony. However, we will summarize the goals of the bill and the reasons why we support SB 246 including our suggested amendments.

Update to "Hazardous Waste" Definition

The current Kansas definition for "Hazardous waste" references a list of federally excluded waste materials as published in July 1, 1983. With the proposed change to the

definition, any federal additions to, or subtractions from, the excluded materials list will become effective in Kansas as soon as the secretary adopts the revised federal regulations. Typically, KDHE adopts updates to the federal regulations every two years.

Similarly, the current definition of "Acutely hazardous waste" references an old federal regulation dated July 1, 1984. The referenced regulation lists commercial chemical products or manufacturing chemical intermediates which are hazardous wastes when disposed of by the generator. EPA has routinely updated this list over the years, but our statutory definition remains tied to the 1984 federal lists. The proposed change would automatically update our statutory definition whenever the secretary adopted new versions of the federal regulations.

New Provisions Related to Hazardous Waste Transfers

State and federal laws and regulations are silent regarding the transfer of hazardous waste from one vehicle to another or one container to another during the transportation of waste through the state. The transfer of hazardous waste from railcars to dump trucks or tanker trucks, or from drums to larger containers, in locations which are not able to fully contain the waste could result in releases which cause environmental damages or threats to human health in the vicinity. Hazardous wastes exhibit one or more dangerous characteristics and for this reason, these wastes are regulated under a strict set of "cradle-to-grave" state and federal standards. However, these "in-transit" transfers fall outside of those management standards.

This bill would make it unlawful to transfer waste from container to container or vehicle to vehicle unless the transfer takes place at a location permitted as a hazardous waste treatment, storage, or disposal facility or as a household hazardous waste facility. The transfer of unopened waste containers (such as 55 gallon drums) from vehicle to vehicle would not be prohibited at non-permitted sites. Overall, this bill would prevent bulk waste transfers from occurring at locations such as railroad yards, rail spurs, truck stops, parking lots, or other undesirable locations.

Thank you for this opportunity to provide testimony on SB 246.

SENATE BILL No. 246

By Joint Committee on Administrative Rules and Regulations

2-4

hazardous

9 AN ACT concerning ~~solid~~ waste; amending K.S.A. 65-3430 and repealing and K.S.A. 1998 Supp. 65-3441
10 the existing ~~sections~~

sections

11
12 Be it enacted by the Legislature of the State of Kansas:

13 Section 1. K.S.A. 65-3430 is hereby amended to read as follows: 65-
14 3430. As used in K.S.A. 65-3430 to 65-3447, and amendments thereto:

15 (a) "Department" means the Kansas department of health and
16 environment.

17 (b) "Disposal" means the discharge, deposit, injection, dumping,
18 spilling, leaking or placing of any hazardous waste into or on any land or
19 water so that such hazardous waste or any constituent thereof may enter
20 the environment or be emitted into the air or discharged into any waters,
21 including groundwater.

22 (c) "Facility" means all contiguous land, structures and other appur-
23 tenances and improvements on the land utilized for the purpose of treat-
24 ing, storing, or disposing of hazardous waste. A facility may consist of
25 several treatment, storage, or disposal operational units.

26 (d) "Generator" means any person, by site, whose act or process pro-
27 duces hazardous waste or whose act first causes a hazardous waste to
28 become subject to regulation.

29 (e) "Hazardous waste" means waste or combination of wastes which
30 because of its quantity, concentration or physical, chemical, biological or
31 infectious characteristics or as otherwise determined by the secretary to
32 cause, or significantly contribute to an increase in mortality or an increase
33 in serious irreversible or incapacitating reversible illness; or pose a sub-
34 stantial present or potential hazard to human health or the environment
35 when improperly treated, stored, transported or disposed of or otherwise
36 managed. Hazardous waste shall not include: (1) Household waste; (2)
37 agricultural waste returned to the soil as fertilizer; (3) mining waste and
38 overburden from the extraction, beneficiation and processing of ores and
39 minerals, if returned to the mine site; (4) drilling fluids, produced waters
40 and other wastes associated with the exploration, development and pro-
41 duction of crude oil, natural gas or geothermal energy; (5) fly ash, bottom
42 ash, slag and flue gas emission control wastes generated primarily from
43 the combustion of coal or other fossil fuels; (6) cement kiln dust; or (7)

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1 materials listed in 40 CFR 261.4, as in effect on July 1, 1983, or any later
2 version as established in rules and regulations adopted by the secretary.

3 (f) "Hazardous waste disposal facility" means a facility or part of a
4 facility at which hazardous waste is treated, stored or disposed and at
5 which waste will remain after closure. Such term also shall mean a haz-
6 ardous waste injection well.

7 (g) "Hazardous waste management" means the systematic control of
8 the collection, source separation, storage, transportation, processing,
9 treatment, recovery and disposal of hazardous waste.

10 (h) "Manifest" means the form prescribed by the secretary to be used
11 for identifying the quantity, composition, origin, routing and destination
12 of hazardous waste during its transportation from the point of generation
13 to the point of disposal, treatment or storage.

14 (i) "Modification" means the expansion or enlargement of a facility
15 beyond the boundaries established by an existing permit or any material
16 or substantial alteration or addition to an existing permitted facility which
17 would justify the application of permit conditions that would be materially
18 or substantially different from the conditions of the existing permit or are
19 absent from the existing permit.

20 (j) "Monitoring" means all procedures used to (1) systematically in-
21 spect and collect samples or require information and copy records or data
22 on the operational parameters of a facility, generator or a transporter; or
23 (2) to systematically collect and analyze data on the quality of the air,
24 groundwater, surface water or soil on or in the vicinity of a hazardous
25 waste generator, transporter or facility.

26 (k) "Off-site facility" means a facility where treatment, storage or dis-
27 posal activities are conducted by a person other than the hazardous waste
28 generator.

29 (l) "On-site facility" means a facility which is solely owned and op-
30 erated by the generator exclusively for the treatment, storage or disposal
31 of wastes which have been generated on the contiguous property and
32 includes the same or geographically contiguous property which may be
33 divided by public or private right-of-way, provided the entrance and exit
34 between the properties is at a crossroads intersection and access is by
35 crossing and not going along the right-of-way or noncontiguous properties
36 owned by the same person but connected by a right-of-way which the
37 person controls and to which the public does not have access.

38 (m) "Permit" means the document issued to a person by the secretary
39 which allows such person to construct and operate a hazardous waste
40 treatment, storage or disposal facility in the state.

41 (n) "Person" means an individual, trust, firm, joint stock company,
42 federal agency, corporation, including a government corporation, part-
43 nership, state, municipality, commission, political subdivision of a state or

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(h) "Hazardous waste transfer facility" means any hazardous waste transportation-related facility, other than the location of generation or of final treatment or disposal, that, during the course of transportation, serves as an area for the accumulation, consolidation, distribution or transfer of hazardous waste shipments, including loading docks, parking areas, rail spurs and other similar areas where shipments of hazardous waste are held during the normal course of transportation. "Hazardous waste transfer facility" does not include hazardous waste disposal facilities or permitted household hazardous waste facilities.

Reletter the remaining subsections accordingly

1 any interstate body.

2 (o) "Secretary" means the secretary of the department of health and
3 environment.

4 (p) "Storage" means the holding of hazardous waste for a temporary
5 period at the end of which the hazardous waste is treated, disposed of or
6 stored elsewhere.

7 (q) "Transporter" means any person who is engaged in the off-site
8 transportation of hazardous waste by air, rail, land, highway or water.

9 (r) "Treatment" means any method, technique, or process, including
10 neutralization, designed to change the physical, chemical or biological
11 character or composition of any hazardous waste so as to neutralize such
12 waste or so as to recover energy or material resources from the waste, to
13 render such waste nonhazardous, or less hazardous, safer to transport,
14 store or dispose of or amenable for recovery, amenable for storage or
15 reduced in volume.

16 (s) "Waste" means any garbage, refuse, sludge or other discarded
17 material which is abandoned or committed to treatment, storage or dis-
18 posal, including solid, liquid, semisolid, or contained gaseous materials
19 resulting from industrial, commercial, mining, community and agricul-
20 tural activities. Waste does not include solid or dissolved materials in
21 domestic sewage, in irrigation return flows, or solid or dissolved materials
22 or industrial discharges which are point sources subject to permits under
23 K.S.A. 65-165, and amendments thereto.

24 (t) "Acutely hazardous waste" means a commercial chemical product
25 or manufacturing chemical intermediate having a generic name listed in
26 40 CFR 261.33(e), as in effect on July 1, 1984, *or any later version as*
27 *established in rules and regulations adopted by the secretary*; or an off-
28 specification commercial chemical product or manufacturing chemical
29 intermediate which, if either met specifications, would have a generic
30 name listed in 40 CFR 261.33(e), as in effect on July 1, 1984, *or any later*
31 *version as established in rules and regulations adopted by the secretary.*

32 (u) "Underground injection" means the subsurface emplacement of
33 fluids through a well for which a permit has been issued by the secretary.

34 (v) "Land treatment" means the practice of applying hazardous waste
35 onto or incorporating hazardous waste into the soil surface so that it de-
36 grades or decomposes and renders the waste nonhazardous.

37 (w) "Above ground storage" means the placement of containerized
38 hazardous waste into an above ground structure for a temporary period
39 prior to the reuse or ultimate treatment or disposal of such waste.

40 (x) "Closure plan" means a written document which identifies the
41 procedures by which the owner or operator of a hazardous waste man-
42 agement facility will close such facility so as to control, minimize or elim-
43 inate, to the extent necessary to prevent a threat to human health and the

environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall or waste decomposition products to the ground, groundwater, surface waters or to the atmosphere.

(y) "Post-closure plan" means the written document which identifies the procedures by which the owner or operator of a hazardous waste management facility shall provide, for a minimum of 30 years, for ground-water protection, site security and maintenance of cover and leachate collection systems.

~~Sec. 2. K.S.A. 65-3430 is hereby repealed.~~

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Sec. 2. K.S.A. 1998 Supp. 65-3441 is hereby amended to read as follows: 65-3441. (a) It shall be unlawful for any person to:

(1) Dump or deposit, or permit the dumping or depositing of any hazardous waste regulated by this act into any facility which does not comply with the provisions of this act or rules or regulations, standards or orders of the secretary, but this provision shall not prohibit: (A) The use of hazardous wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not adversely affect the public health or environment, or (B) a generator who periodically produces a quantity of hazardous waste less than the quantity regulated under subsection (k) of K.S.A. 65-3431, and amendments thereto, from disposing such quantity of hazardous waste into a facility approved by the department which has a permit issued under K.S.A. 65-3407, and amendments thereto.

(2) Construct, modify or operate a hazardous waste storage, treatment or disposal facility without a permit or other required written approval from the secretary or to be in violation of the rules and regulations, standards or orders of the secretary.

(3) Violate any condition of any permit issued by the secretary.

(4) Store, collect, treat or dispose of hazardous waste contrary to the rules and regulations, standards or orders of the secretary.

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

(6) Knowingly make any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with this act.

(7) Knowingly destroy, alter or conceal any record required to be maintained under rules and regulations promulgated by the secretary pursuant to this act.

(8) Fail to designate on a manifest a facility which is authorized to operate under the federal hazardous waste program or under a state hazardous waste program which has received approval to operate in lieu of the federal hazardous waste program.

(9) Transport hazardous waste to a facility which is not authorized to operate under the federal hazardous waste program or under a state hazardous waste program which has received approval to operate in lieu of the federal hazardous waste program.

(10) Add, mix or blend any hazardous waste with fuel oil or any other fuel intended for use by residential consumers or sell such blended fuel to a residential consumer.

(11) Transport and dispose of, or cause the transportation and position of, hazardous waste in a manner contrary to the rules and regulations, standards or orders of the secretary. It shall not constitute a defense to the generator that the generator acted through an independent contractor in the transportation or disposition of the hazardous waste.

(12) Operate a hazardous waste transfer facility at which hazardous waste is transferred from one or more containers to one or more different containers. The provisions of this subsection shall not apply to overpacking of hazardous waste containers when the overpack containers are marked with labels that contain all the information on the original labels.

(b) Any person who violates any provision of paragraphs (1) to (10), inclusive, of subsection (a) shall be guilty of a class A nonperson misdemeanor and, upon conviction thereof, shall be punished as provided bylaw. Any person who violates any provision of paragraph (11) or (12) of subsection (a) shall be guilty of a severity level 10, nonperson felony and, upon conviction thereof, shall be punished as provided by law.

(c) Any person who knowingly violates any provisions of paragraphs (1) to ~~(11)~~ (12), inclusive, of subsection (a) shall be guilty of a severity level 6, nonperson felony and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation, and, upon conviction thereof, shall be punished as provided by law.

(d) Any individual who violates any of the provisions of paragraphs (1) to ~~(11)~~ (12), inclusive, of subsection (a) shall be legally responsible to the same extent as if such acts were in the individual's own name or on the individual's own behalf

(e) The county or district attorney of every county shall file private actions for enforcement of this section upon request of the secretary or upon the county or district attorney's own motion after consultation with the secretary.

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

Sec. 3. K.S.A. 65-3430 and K.S.A. 1998 Supp. 65-3441 are hereby repealed.

15-4

INDUSTRY SULFUR PROPOSAL TALKING POINTS ON COST¹

Background

Everyone wants and expects clean air, but at a reasonable cost for the benefits received. Recognizing that air quality varies across regions of the U.S., the petroleum industry has brought forth a targeted proposal that would reduce sulfur in all gasoline year-round, but would provide greater reductions in areas of the country that have more significant air quality needs.

- The petroleum industry is proposing two new lower sulfur gasolines for the nation that will be available starting in 2004 and will result in significant emissions reductions. The first will contain an average sulfur level of 150 ppm with a per gallon cap of 300 ppm, and will be supplied in states with significant ozone air quality problems, mostly in the eastern half of the country. (Reformulated gasoline (RFG) will also contain an average sulfur level of 150 ppm.). The other new gasoline will contain an average sulfur level of 300 ppm with a per gallon cap of 450 ppm and will be supplied to your state, as well as all other states (except California), where air quality is relatively good. States that demonstrate the need for the 150 ppm gasoline in particular areas will be able to opt those areas into the program. The current national average gasoline sulfur level is 340 ppm.
- Both the 150 ppm and the 300 ppm lower sulfur gasolines are compatible with cleaner cars of the future, which EPA will likely require for the 2004 model year.
- Though you may not perceive sulfur in gasoline as an issue, EPA is likely to lower gasoline sulfur levels as part of its future Tier 2 tailpipe emission reduction standards rulemaking. Given the options currently available, the petroleum industry approach is the best alternative for your state.

Cost²

- The dual fuel proposal will cost refineries about \$3 billion in capital investments.
- The 300 ppm lower sulfur gasoline, which would be supplied in your state, will cost on average less than one cent per gallon (cpg) more to produce than today's gasoline.³
- An alternative approach that has been advanced by others, a 30 ppm average sulfur level nationwide (80 ppm cap), would cost 5 to 6 cpg (EPA estimate) more to produce on average than today's gasoline, a higher cost on average than the 300 ppm gasoline that would be supplied in your state under the petroleum industry proposal. The excess cost of this California-style gasoline is unnecessary in states where air quality problems are minimal. Why should motorists pay a premium for California-style gasoline when they don't have California's pollution problems? The petroleum industry's regional approach is more cost-

¹ Costs indicated in this paper are averages over all refinery costs. Actual costs will vary by refinery.

² Market forces will determine pump prices, which may not include full recovery of manufacturing costs.

³ Cost may be slightly higher in the Pacific Northwest where current sulfur levels are relatively high.

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Attachment 14

effective because reductions will be greatest in areas with the most significant air quality problems.

Cost-Effectiveness

- In general, the cost of reducing emissions by modifying vehicles is substantially less expensive than the cost of reducing them by modifying fuels.
- The industry's approach would save about \$3 billion per year when compared to proposals that would drastically reduce sulfur nationwide.
- It is important for EPA to approach gasoline sulfur reductions in a way that improves air quality and ensures fuel/vehicle compatibility, but is also cost-effective so that consumers are not faced with unnecessary costs. The petroleum industry proposal provides such an approach. **Please urge EPA to support it and to include it in the range of options in the rule that will be proposed later this year.**

ADMINISTRATION OF KANSAS WATER LAW

**Senate Agriculture Committee Response to Request
for Additional Information**

by

**David L. Pope
Chief Engineer-Director
Division of Water Resources
Kansas Department of Agriculture**

February 8, 1999

*House Environment
3-11-99
Attachment 17*

Senate Agriculture Committee Response to Request for Additional Information
February 8, 1999

Request No.1 (Huelskamp). A list of times that a waiver has been granted during the last 10 years and why.

Records of the number of waivers are not formally documented so the summary is from a review of the files from 1995 - present. Many updates of regulations were made in 1994, so summaries including information prior to 1995 would be distorted. Under K.A.R. 5-10-4 waivers or exemptions to regulations may be granted by the Chief Engineer.

During this period 3,005 new applications were processed. There were 105 waivers found or about 3.5%. Reasons are listed:

<u>Regulation</u>	<u>Description</u>	<u>No.</u>
5-4-4	waived spacing from non-domestic wells that were usually owned by the applicant	60
	waived spacing from domestic wells not permitted or impairment was not anticipated	8
5-3-10	waived safe yield, which was often for contamination remediation	23
	waived safe yield in GMD #2 for cooling water that returned to the aquifer, which is non-consumptive	4
5-3-15	waived written permission requirements to pump surface water during the low-flow season, July-September	8
5-3-5d	waived requirements for water level measurement tubes	2

During this period 2,652 change applications were processed. There were 23 waivers found or less than 1%. Reasons are listed:

<u>Regulation</u>	<u>Description</u>	<u>No.</u>
5-4-4	Spacing waived well moved closer to wells owned by applicant and one emergency water district well, an observation well was required to monitor possible impairment	2
5-5-9	planned change of use apparently would exceed the original consumptive use but the quantity was very small	1
5-5-11	waived limitation on increases in irrigated acreage proposed, quantity of water was reasonable. flow meters were required to monitor use. with changes in equipment design and or water management plan it was believed no increase in net consumptive use would occur	6

Request No.1 (Huelskamp). A list of times that a waiver has been granted during the last 10 years and why. Continued from previous page.

(Waivers granted during change application continued)

<u>Regulation</u>	<u>Description</u>	<u>No.</u>
5-5-11(e)	flow meter requirement waived, alternative measurement required – operating time and flow rate	1
5-21-3(a)	spacing waived, small quantity, well moved closer to applicants well (GMD 1)	1
5-21-3(d)	point of diversion move exceeded allowable distance, small quantity for a municipal hardship, well in area a substantial distance from other wells (GMD 1)	1
5-22-8(a)	point of diversion move exceeded allowable distance, this change also reduced the number of points of diversion increasing spacing (GMD 2)	1
5-23-3(a)	waived spacing requirement, moved well closer to applicants own well (GMD 3)	1
5-23-3(d)	point of diversion moves exceeded allowable distance a very small amount, one resulted in increased spacing from other wells and the the other was moved closer to applicants own well (GMD 3)	2
5-24-6(a)	waived spacing requirement, moved well closer to applicants own well and away from other wells (GMD 4)	1
5-25-2(b)	point of diversion moves exceeded allowable distance, moves either were near applicants own wells, moves increased spacing to other wells and often accompanying equipment changes decreased quantity diverted (GMD 5)	6

Meter waivers (K.A.R. 5-3-5e) granted since 1995 have been for two general reasons, blanket waivers after major changes in GMD meter regulations and for relatively small numbers of users where installation of a meter into a previously constructed diversion works would be extremely expensive. In these cases an alternative measuring device was required monitoring pump running time and pump capacity or a non standard meter installation that would provide accurate measurement. There were about 330 meter waivers in the years '95-'97 and about 20 from '98 to the present.

Senate Agriculture Committee Response to Request for Additional Information
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Request No. 2 (Morris). Details of the permitting and certificate backlog- a breakdown of how many, how old, and what part of the state and reasons for not being completed.

Applications for permits

The Division of Water Resources does not believe there is a backlog of applications at this time. However, about 900 applications are processed each year so there will always be a significant accumulation of applications in process. The average time to process an application in the past 12 months is about 80 days. A reasonable and sustainable long term processing time is about 90 days. The total number of pending applications in January 1999 was about 530 and for February 1999 was less than 500. Reasonable and sustainable long term accumulations of applications is between 500 and 550 given the fact that significant amounts of time are needed in some cases to resolve questions from others outside the Division. Processing of permits is a daily routine so the number of pending applications is continually changing. Accumulated applications described in different ways may be for different time frames and therefore totals may not always be readily comparable.

Annual numbers of accumulated applications by field office

<u>Field Office</u>	<u>January '95</u>	<u>January '96</u>	<u>January '97</u>	<u>January '98</u>	<u>January '99</u>
Topeka	111	78	66	56	48
Stafford	324	271	262	287	291
Stockton	87	69	100	95	82
Garden City	110	105	114	101	103
Chanute	40	28	19	15	10
Total	672	551	561	554	533

Annual numbers of accumulated applications within each stage of processing

<u>Process stage</u>	<u>January '95</u>	<u>January '96</u>	<u>January '97</u>	<u>January '98</u>	<u>January '99</u>
Waiting initial review	148	44	90	46	66
Initial review	116	102	58	43	42
Field office action	66	18	13	20	23
Waiting other admin. action	2	10	11	11	2
Review for water quality	17	17	11	11	11
Released from '90 GMD #5 moritorium	101	106	41	45	38
Released from '90 moritorium, NPE south central Kansas	NPE	NPE	NPE	NPE	2
Returned to headqtrs	NPE	NPE	2	0	10
Sent to appl. for data	14	35	56	55	24

Annual numbers of accumulated applications within each stage of processing (continued)

<u>Process stage</u>	<u>January '95</u>	<u>January '96</u>	<u>January '97</u>	<u>January '98</u>	<u>January '99</u>
Waiting PD location (60 day suspension)	NPE	NPE	12	18	18
Domestic/field off.*	15	54	59	67	71
Clarication by appl.	48	28	22	17	22
Review by GMD	13	22	45	36	38
Notice to neighbors	45	43	38	63	51
Review by field off.	26	11	18	24	8
Review by agencies**	11	12	47	58	54
Waiting other permits	NPE	NPE	NPE	1	6
Pending GMD appeal	NPE	NPE	2	1	10
Pending action on right	17	16	11	10	7
Waiting to locate PD	NPE	NPE	7	10	15
Pending Chief Engr. (approval)	23	30	16	11	9
Pending final action	NPE	NPE	NPE	2	3
Reinstated after susp.	2	2	3	2	1
Change in use	NPE	NPE	NPE	2	0
Waiting on another	NPE	NPE	3	3	2

NPE– Not previously evaluated; * - temporary domestic applications;
 ** - includes 41 industrial and hydraulic dredging applications

Approximately half of the new applications received are awaiting decisions or a response from others outside the Division of Water Resources (October 1, '98).

Applications pending in New Applications Unit	61
Applications being processed in New Applications Unit	65
Applications in field offices for further processing	128
Pending action on other related water rights	17
Pending final approval	30
 Subtotal waiting or in process at Division of Water Resources	 301
 Waiting on owners or drillers response	 74
Waiting on GMD, other agency, or adjoining owners response	212
 Subtotal waiting on others outside DWR	 286

There are some categories of applications that have accumulated awaiting procedural or policy decisions that should not be defined as backlog. Examples of these include about 50 sand and gravel applications that are waiting on the Task Force decisions; 15-20 applications for diversion solely for rural and suburban fire protection where the Division is working with the State Fire Marshal on a permitting process; numerous permits related to drainage district wells and other wells that pump

the quantities of water from behind levees and dewatering operations for large structures to prevent flooding of basement floors where the application fees under the present statutes would be unreasonable.

Certificates

The number of permits that have completed the perfection period are listed in the table. A large number of permits were issued in the '70's and early '80's resulting in more files needing certificates for the '81-'90 time period. Files remaining to certify in the period '70 and earlier are primarily those with various complications such as small quantities perfected, or questions about the place of use that caused owners to be reluctant to discuss them. Getting appointments with these owners is very difficult so the Division of Water Resources has in the past set these old files aside, forgot about them, and moved on to others. The Division of Water Resources issued such large numbers of permits in the '70's and '80's that, for more than a decade, it did not have the resources to follow up with all the certificates. The Division has processed those that were the easy ones in the past. Now for those remaining, time has dimmed memories of past water management, and the ability to clearly interpret older records on these more difficult files. The Division has now put a renewed focus on certifying these files with Project Zeroed Out. Project design reflects a determination to not set a difficult file aside but to do the work and make decisions required to complete the certificate.

Dates since perfection period ended

Topeka Field Office Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Allen			1		
Anderson			4	2	
Atchison			4	3	
Bourbon			4		
Brown			1		2
Coffey			2	1	1
Cherokee			6	1	1
Chautauqua					1
Crawford			8	7	3
Clay	6		12	12	9
Douglas	1		8	7	3
Dickinson		1	16	8	5
Doniphan			5	1	1
Elk			2		
Franklin			18	6	
Geary	5	1	4	7	
Greenwood			6	1	2
Jackson			4	5	

opeka Field Office (cont.) Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Jefferson	1	2	20	3	2
Johnson		2	9	19	4
Labette			8	2	
Linn			8	5	2
Leavenworth	1		9	4	2
Lyon			12		1
Montgomery			9	4	2
Miami			8		3
Morris	1	5		2	
Marshall	2		13	2	2
Nemaha			3		1
Neosho			7	2	3
Osage	3	1	11	3	1
Pottawatomie		2	21	16	7
Riley	2	1	12	4	2
Shawnee			26	15	7
Wabaunsee	1	1	11	8	8
Wilson		1	11	4	1
Washington		1	17	3	9
Wyandotte			10	5	1
total Topeka Field Office	23	18	330	162	86

afford Field Office Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Barber	6	6	8	3	1
Clark		3	10	3	1
Comanche	1	5	8		2
Decatur			4		1
Edwards		8	18	3	1
Hodgeman	1	2	10		
Harper	2	8	9	2	3
Kingman	7	22	26	9	2
Kiowa	1	2	20	1	3
Pawnee	1	15	13	2	4
Pratt	1	11	45	17	3
Reno	12	20	78	32	6
Stafford		6	19	17	2
Sedgwick	21	14	84	19	21
Sumner	4	3	23	8	3
total Stafford E.O.	57	125	375	115	53

Stockton Field Office Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Cloud		1	1	1	5
Cheyenne			2		1
Ellis		1	4		
Graham		5	6		
Gove			3		1
Jewell	1	1	1		2
Lincoln		2	2		4
Mitchell			1		2
Norton	1		1		
Osborne		3			
Ottawa	2	1	2		1

Stockton Field Office (cont.) Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Phillips		4	2		
Rooks		1		1	1
Russell			1		
Saline		1		1	
Sheridan			4		
Sherman			1		
Smith		2			
Thomas			2	1	1
total Stockton F.O.	4	22	33	4	18

Garden City Field Office Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Finney	7	65	54	7	5
Greeley	4	21	24	1	3
Grant	15	45	47	6	
Gray	70	28	48	7	2
Hamilton		2	6	7	1
Haskell	11	47	92	5	2
Kearny	7	10	17	2	7
Lane		4	6		
Morton	11	18	24	6	10
Scott	15	56	94	21	10
Stanton	12	46	41	7	3
Stevens	5	45	56	8	21
Seward	11	23	38	6	8
Wichita	14	54	64	9	2
total Garden City F.O.	182	464	611	92	74

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Topeka & Stafford Butler	2	10	15	8	4
Cowley	5	7	25	11	4
Chase			4	2	1
Harvey	5	10	68	19	7
Marion	1		17	4	1
total Topeka & Stafford	13	27	129	44	17

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Topeka & Stockton Republic	1	1	3	4	10
Topeka & Stafford & Stockton McPherson	1	7	46	4	3

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Stafford & Stockton Barton	4	2	18	2	2
Ellsworth		3	2	1	
Ness	2	1	5		
Rice	4	5	22	11	4
Rush		1	6		
total Stafford & Stockton	10	12	53	14	6

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Stafford & Garden City Ford	8	43	71	24	4
Meade	8	6	33	3	11
total Stafford & Garden City	16	49	104	27	15

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Stockton & Garden City Wallace	6	33	43		2

Senate Agriculture Committee Response to Request for Additional Information
February 8, 1999

Request No. 3 (Morris). Please clarify why your written testimony stated a backlog of 8,000 certificates, but your verbal testimony said 6,000.

Permits are approved and certificates are processed every day so the number of files within the system is dynamic. Therefore the number of files defined as backlog depends on the time frame. Approximate numbers of files needing certificates is described as follows.

8,000 files – The total number of permits to divert water that will potentially be certified. However, 2,000 of these have new permits but have not yet notified DWR of completion of diversion works.

6,000 files – All permits that are now diverting water (8,000 - 2,000) and are either still in the perfection period or have completed the perfection period. However, 2,500 of these are still in the perfection period and about 500 will complete the perfection period each year.

Therefore at this time about 3,500 files (6,000 - 2,500) have completed their perfection period and are awaiting a certificate (those accumulated today). However, by the time the 3,500 files are certified, another 2,500 will have completed their perfection period and need a certificate (at the present pace of processing).

This means in order to eliminate the backlog over the next several years, 6,000 certificates must be completed-- the 3,500 now waiting plus the 2,500 scheduled to complete the perfection period. Also, in this time frame, another 2,000 new applicants will have started their perfection period. DWR must complete more than 500 certificates each year to keep the backlog from increasing.

Project Zeroed Out has objectives that address this challenge.

Senate Agricultural Committee Response to Request for Additional Information
February 8, 1999

Request No. 4 (Morris) Clarify statement that most of the abandonments occurred after the hearing process— actually of the 32 water rights that have been abandoned since 1997, only 4 had hearings

There were 76 files reviewed in 1997 that did not show due and sufficient cause for non use and notices were sent. Status of these files is as follows:

- 28 failed to respond to the notice and were dismissed
- 2 were dismissed as abandoned after a hearing was held
- 2 were voluntarily forfeited by the owner after the hearing was held
- 44 responded and needed a hearing, 32 have had hearings but decisions are pending

76

32 have had hearings but decisions are pending

Senate Agriculture Committee Response to Request for Additional Information
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Request No. 5 (Clark). Information about any abandonment action, or water right permit or change application regarding the following people:

Terry Nelson- concerning Norton County water issues

Ben Ellegood- Gove County

Robert or R.D. Ellegood- Gove County

J.G. Porter - Logan County

Jim or Pat Porter- Logan County

Unknown name- Cheyenne County issue involving a water right that was perfected in 1981 but the wrong quarter was listed on the paperwork so now there is a problem with certifying the water on the proper quarter

Terry Nelson

Mr. Nelson filed applications for 23 permits to divert water, mostly in Norton County. These permits were primarily for water supply to confined hog facilities. These applications were approved in December 1998.

Terry Nelson has more than 75 water rights. A few are rural domestic but most are irrigation and livestock. The review of these water rights found:

no abandonment actions are underway on any water rights

16 changes in point of diversion or place of use have been approved from 1982-97

6 applications were dismissed prior to approval from 1996-98

Ben and Robert Ellegood (file 11,614)

Names on this water right are Robert D. Ellegood, Ben Ellegood, Kenneth Ellegood and Keith Ellegood as owners of parcels of land covered by this water right. The Division of Water Resources found this file not to be in good standing due to non use without due and sufficient cause. A formal inquiry about this water right was sent to Ben Ellegood in September, 1992 and again in 1995. Information available and provided to the Division indicated water diverted from 1981-1983 but apparently had not been used from 1984-1997. Reasons given prior to the hearing for not diverting water were the equipment was not in working order-- not sufficient cause for non use. A notice was issued to Ben, Kenneth and Keith Ellegood on May 15, 1998 and given 15 days to request a hearing. A hearing was held November 5, 1998 and a decision from the hearing officer is pending.

J.G. Porter (file 17,131 and 32,051)

J.G. Porter is the only name appearing on the water rights. Records indicate water pumped on file 17,131 from 1971-1979. No information was available on use from 1980-1984. Apparently the well was not used from 1984 - 1997. Records indicate water pumped on file 32,051 possibly in 1978, 1979, 1981, and 1983. Apparently the well was not used from 1984 - 1997. Inquiry was made by the owner in 1994 about the Water Resources Conservation Program. Information available indicated the wells had not been used and that the water rights were not in good standing until a due and sufficient cause for non use was provided. A formal notice to schedule a hearing was sent to the Attorney of Mary Porter, widow of Mr. Porter, on September 4, 1997. A hearing was held February 20, 1998 and the hearing officer upheld the Divisions position that the water rights had been abandoned. The decision was appealed by the Attorney representing the owner and the outcome of the appeal is pending.

Unknown name- Cheyenne County issue involving a water right that was perfected in 1981 but the wrong quarter was listed on the paperwork so now there is a problem with certifying the water on the proper quarter.

We were not able to determine the water right for this case without the owners name, or the water right file number. Our staff in Topeka and Stockton field office could not recall this issue.