

Approved: 2-4-99
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:07 a.m. on February 3, 1999 in Room 254-E of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Steve Kearney, Kansas Drycleaners Environmental Committee
John Neal, Hutchinson
Brian Gieber, Manhattan
Scott Shmalberger, Lawrence
Gene Leonard, Concordia
Clyde Graeber, Acting Secretary, Kansas Department of Health and Environment (KDHE)
Ron Hammerschmidt, Kansas Department of Health and Environment
Larry Knoche, Kansas Department of Health and Environment
Shirley Scilian, Director of Policy and Research, Department of Revenue
Jamie Glover Adams, Governor's Office
Others attending:

See attached list.

The minutes of the February 2 meeting were presented. With a motion by Senator Goodwin and a second by Senator Biggs the minutes were approved as written.

The hearing on **SB 132** - concerning dry cleaners; environmental response act; transfers from state general fund to a trust fund. Chairman Corbin called on Steve Kearney sponsor of the bill.

Steve Kearney, Kansas Drycleaners Environmental Committee, said the bill was introduced on behalf of the Drycleaners Environmental Committee. He introduced the members of their committee that were present, and called on John Neal to testify.

John Neal, Hutchinson, testified that **SB 132** would amend the Kansas Drycleaner Environmental Response Act by transferring quarterly from the general fund to the drycleaning facility release trust fund, of an amount equal to the state sales tax collected from drycleaning sales. This transfer would supplement the \$1.1 million now being raised by the drycleaners through the 2% surcharge and the solvent fee, thereby adding an additional amount of approximately \$2.4 million to \$2.5 million to the trust fund each year. Persons violating the act would be subject to an administrative penalty rather than a civil penalty as currently provided (Attachment 1) Mr. Neal responding to questions said the legislation applies to all cleaning and laundry business. However, they believe there are some establishments that are not following the statutes. Several members of the committee expressed concern with allowing the Director of Taxation the authorization to provide to KDHE, on a confidential basis, a report identifying each drycleaner's place of business. Concern was expressed that it would be a grave mistake to amend the confidential section in the current legislation.

Brian Gieber, Manhattan, Kansas, told the committee his father's business has not been identified as a contaminated site yet, but a facilities only half a block has been. He thought this legislation would give KDHE the money and tools they need to make the trust fund survive (Attachment 2).

Scott E. Shmalberg, President of Scotch Fabric Care Services of Lawrence and Topeka, and Select Dry Cleaners of Kansas City, said 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 (Attachment 3).

Gene Leonard, Concordia, said when contamination was identified on a site they own in Concordia Kansas Department of Health & Environment (KDHE) helped them put together a simple remedial action plan that did not bankrupt them (Attachment 4).

Clyde D. Graeber, Acting Secretary, Kansas Department of Health and Environment, **SB 132** would allow additional revenue to be directed to the Drycleaning Facility Release Trust Fund. It has the potential to speed up the clean up process of program sites already identified (Attachment 5).

Dr. Ron Hammerschmidt and Larry Knoche, Kansas Department of Health and Environment were present and responded to several questions regarding how the super fund works, the safety of water. Dr. Hammerschmidt identified places in the bill where cleanup was necessary.. He reference page 2, line 10 should read pursuant to "section 5".

Ms. Scilia, Department of Revenue said the governor's budget has not included the transfer of funds. She responded to a question concerning how Missouri was handling the contamination sites at this time. She said they were looking at a solvent fee change and a membership fee.

Jamie Clover Adams said the Governor is still debating whether to support the bill. The fiscal note would be 2.5 million.

The meeting adjourned at 9:00 a.m. The next meeting will be held on February 4, 1999

TESTIMONY BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL
RESOURCES

By

John Neal

Ineeda Laundry & Dry Cleaners, Inc.

Hutchinson, Kansas

on

February 3, 1999

Regarding

SENATE BILL NO. 132

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. 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 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.

The Act was needed because, beginning in the mid 1990's, drycleaning owners and operators, myself included, began to receive notice 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 thought to be completely safe as well as economical.

Drycleaners across the country were caught by surprise. They were told that under the Superfund law it would be their responsibility to clean up the contamination. While the ultimate cost of cleanup was usually unknown, it also usually exceeded the ability of the drycleaner to pay for it. If some method of relief were not found, many drycleaners in Kansas, as well as across the United States, were faced with the ultimate loss of their business. In addition, if the drycleaner could not pay for the cleanup, not only would his business and the jobs it created would be gone, but the environmental problem would still be there for someone else to clean up.

This situation occurred because under the Superfund law liability is **strict, retroactive, and joint and several**. No matter how careful, conscientious, or law abiding a drycleaner might be, if a drycleaner owned or operated a business on property which was the source of contamination, even if the contamination had occurred prior to the drycleaner's involvement with that property, the drycleaner could, and under the Superfund law, undoubtedly would, be held liable for the entire cost of cleanup.

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. 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 been identified.

To date approximately 60 such sites have been found. KDHE estimates that there are many more sites which simply have not yet been discovered. KDHE suggests that a minimum of \$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 addresses that issue by asking the Legislature to authorize the transfer quarterly, from the general fund to the drycleaning facility release trust fund, of an amount equal to the state sales tax dollars collected from drycleaning sales. This transfer would supplement the \$1.1 million now being raised by the drycleaners through the 2% surcharge and the solvent fee, thereby adding an additional amount of approximately \$2.4 million to \$2.5 million to the trust fund each year.

We are asking for supplemental funding from the state because Kansas drycleaners are not in a competitive position to increase the surcharge on their services and thereby significantly increase the monies going into the trust fund directly from the industry. For example, many drycleaners near the borders of our state are already at a competitive disadvantage with drycleaners just across the state line. Many Kansas drycleaners must add close to 9% to their cleaning charges for state and local sales taxes and the 2% environmental surcharge, while drycleaners in Missouri have no sales tax at all.

The situation faced by our industry is not something that we knowingly created. Many of us were not even around when contamination originated years ago. All of us were under the impression until recently that the solvents we used were safe. Society did not know there was a problem. Our suppliers did not know there was a problem. Environmental agencies and most of the environmental laws and regulations that we now recognize as important did not even exist until fairly recently.

On the other hand, we are not running from the problem. We understand that environmental contamination must be addressed, and we want to be part of the

solution. That is why we urged passage of the Kansas Drycleaner Environmental Response Act in 1995 with the hope that the trust fund established by the Act could be adequately maintained without help from outside the industry. Unfortunately, the need is greater than anticipated, and we simply cannot take care of it alone. That is why we are asking for your help.

In addition to its funding provisions, Senate Bill No. 132 contains the following changes which would make the Act more effective:

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.
6. The Director of Taxation is authorized to provide to KDHE, on a confidential basis, a report identifying each drycleaner's place of business. This will allow KDHE to be certain that all drycleaners are registered as required by the Act.

We believe that these changes will greatly strengthen the Act and help with its enforcement. Taken together with an increase in monies coming into the trust fund, these changes should ensure that drycleaning-related soil and groundwater contamination is effectively addressed far into the future. Out of the Act passed in 1995 has evolved one of the best examples ever of a state-business partnership. We believe that the changes proposed by Senate Bill No. 132 will assure that the partnership can continue to be effective in cleaning up our environment for many years to come.

We ask your support for Senate Bill No. 132. Thank you.

TESTIMONY BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL
RESOURCES

BY
BRIAN GIEBER
STICKEL CLEANERS
MANHATTAN, KANSAS

on
FEBRUARY 3, 1999

Regarding
SENATE BILL NO. 132

Hello, my name is Brian Gieber. I am here today to give you some background information on my fathers business in Manhattan, "Stickel Cleaners". I hope my testimony will convince you how important the Kansas Dry Cleaner Environmental Trust Fund is. Not only for the survival of my fathers store, which I hope to own and operate, but for all dry cleaners in Kansas.

My father, Tony Gieber, began working at Stickel Cleaners in 1949. The cleaners has been in Aggieville, one block east of the KSU campus since the 1930's. Back then, they used petroleum solvent to dry clean clothing. In 1960 there was an electrical fire which destroyed everything but the building. With new equipment needed, the former owner started using Perchloroethylene, (Perc) as a dry cleaning solvent. Unaware of the repercussions, they disposed of what we now know as "Hazardous Waste", the same way as all dry cleaners did according to the standards and laws of the times. Sadly, this process over time has caused soil and ground water contamination all over Kansas and the nation.

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My father bought Stickel Cleaners in 1970 not knowing of the liabilities he might face in the future. Even though the disposal was and has been done legally, due to Retroactive Liability today, he would be found responsible for the unaffordable clean up costs.

Although no problems have arisen for us yet, a former dry cleaning plant only half a block from our store was recently identified as a contaminated site. With further investigation and testing we could possibly be implicated and found responsible for part of the pollution and be held liable for clean up.

I have worked side by side with my dad since 1977. Today we employ 24 full and part time people. We have always operated according to the laws and regulations. With your help, our hope is to continue in business and give KDHE the money and tools they need to make our trust fund survive.

Thank You.

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

before the Senate Energy and Natural Resources Committee

February 3, 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.

TESTIMONY

February 3, 1999

To: Senate Committee on Energy and Natural Resources

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

By: Gene Leonard
1606 Highland Drive
Concordia, KS 66901

Chairman Corbin and members of the committee, thank you for letting me testify today.

Fifty-four years ago my Grandfather started the Rite-Way Laundry & Dry Cleaners at 217 West 3rd in Concordia. In 1968 I became the third generation to enter the family business and in 1978 I took over completely when my Father retired. By then our primary business was commercial laundry and in March of 1980 we purchased our competitors dry cleaning business at 112 East 6th. At that time we discontinued all dry cleaning at our original location.

In June 1985 as part of a statewide scan of all Public Water Wells, the Bureau of Water Protection tested well #17 which is located one block from our 3rd street facility. The test was positive for Volatile Organic Chemicals and CERCLA (commonly known as Superfund) required KDHE to perform a site investigation to determine who was responsible for the contamination.

In July 1989, I was informed that even though we were not responsible for the closing of well #17, perchlorethylene contamination was found on our property. If we refused to voluntarily clean up the contamination and KDHE performed the work, we would be responsible for triple the clean up cost. Until that day I thought that Superfund dealt with locations such as Times Beach or Love Canal. Little did I know that our business would soon carry the same dreaded label, "*polluter*". The local newspaper featured us on the front page with a picture of a test rig drilling wells on our property. Insurance denied coverage, banks refused any new loans and ultimately I sold my home to raise cash for the cleanup effort.

We were required to pay for a problem that began in innocence the year I was born and continued for 35 years. Everything we did in our day to day operations was normal and legal. In

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fact any ongoing contamination ended at least eight months before Superfund was passed in December of 1980.

With KDHE's help, we were able to put together a simple remedial action plan that did not bankrupt us. The plan, using contaminated water in the laundry, was implemented in December of 1990 and has successfully reduced the contamination to below action levels for safe drinking water. The system was shut down in 1996 and the site is now on long term monitoring.

Contamination has been found at our former 112 West 6th location and it has been added to the list of sites under DERA. This location had been a cleaning shop for over forty years when we acquired the property and the cost of cleaning up this historical contamination will be substantially higher than the third street location. Without DERA, we could be financially ruined and the problem may still not be fully addressed. DERA is our hope for financial survival and Concordia's hope to protect it's groundwater.

DERA provides many benefits. It provides environmental protection to water supplies throughout Kansas. It also provides financial protection to many communities, active and retired drycleaners, property owners, landlords, and banks. Along with several others around the State, I have personally benefited by being reimbursed from the fund for most of our clean up expenses incurred prior to DERA's enactment.

After 31 years in the Industry, I have sold my business. During those years, rural Kansas has been in economic decline and I've seen nine communities in our trade area lose their drycleaners. Concordia has dropped from five full-service and two coin-ops to only one full-service cleaner. Property values and incomes in these towns are low and property owners are not likely to have resources to fund a groundwater cleanup. I suspect that most of these communities will need help in cleaning up historical dry cleaning contamination and their only hope is DERA. Our program needs additional funding to address more problems more quickly. I urge you to approve the proposed funding methods.

Respectfully,
Gene Leonard



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

February 3, 1999

**Testimony presented to
Senate Committee on Energy and Natural Resources**

by

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

**Senate Bill 132
Drycleaning Environmental Response Act**

Honorable Chairman Corbin and members of the committee, thank you for the opportunity to appear before you today 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

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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.

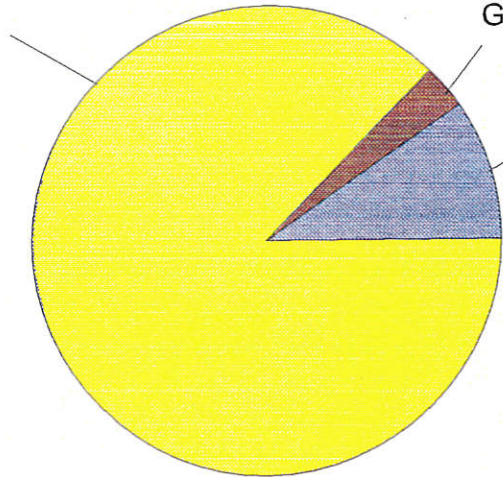
Senate Bill 132 would allow additional revenue to be directed to the Drycleaning Facility Release Trust Fund. If approved, this measure could allow KDHE to address more contaminated sites than we are currently remediating, and could potentially speed up the clean-up process at program sites already identified. The current law has had a positive impact on the Kansas environment. SB 132 would allow for an expansion of the current program and subsequent positive outcomes.

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.

General Annual Expenses

Drycleaning Facility Release Trust Fund

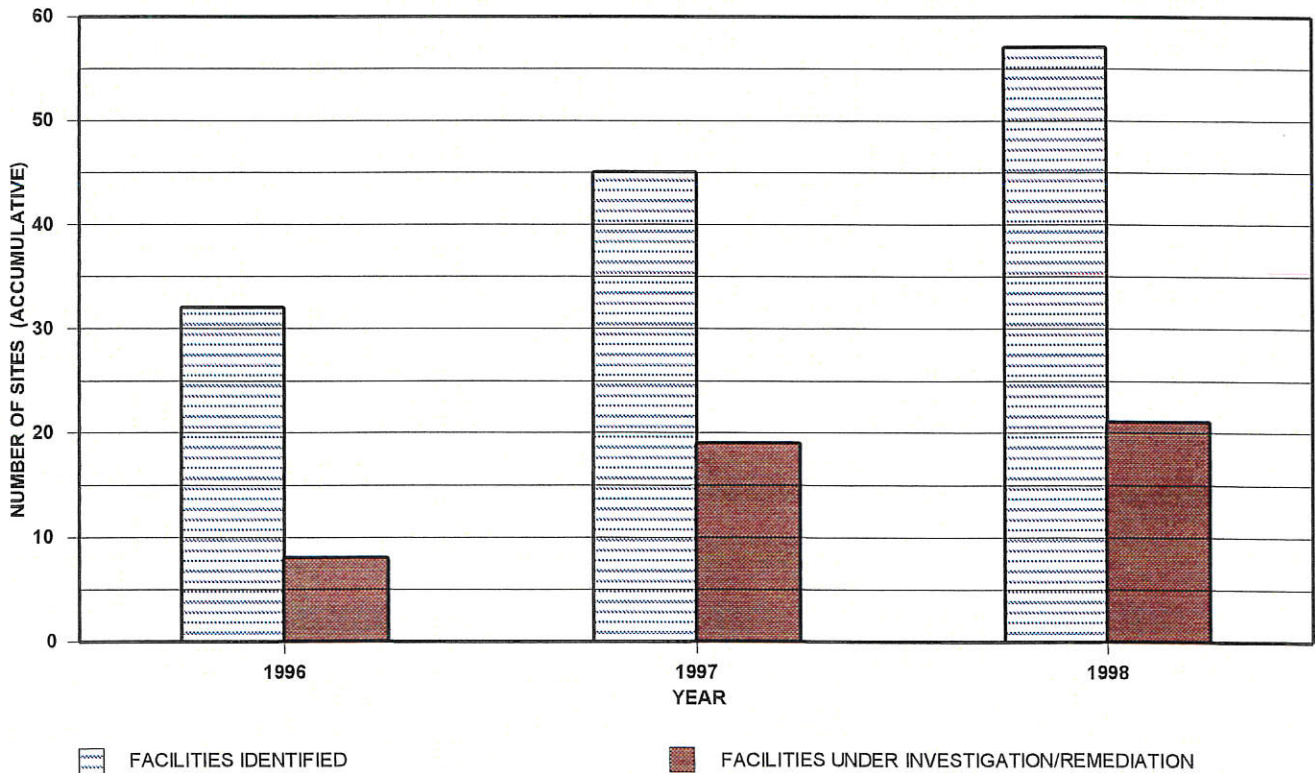
Prof. Fee/State Contractor (87.07%)
\$990,000



Gen. Adm. Expenses (3.08%)
\$35,000

Salaries and Wages (9.85%)
\$112,000

KANSAS DRYCLEANING SITES



IDENTIFIED DRYCLEANING TRUST FUND FACILITIES BY COUNTY

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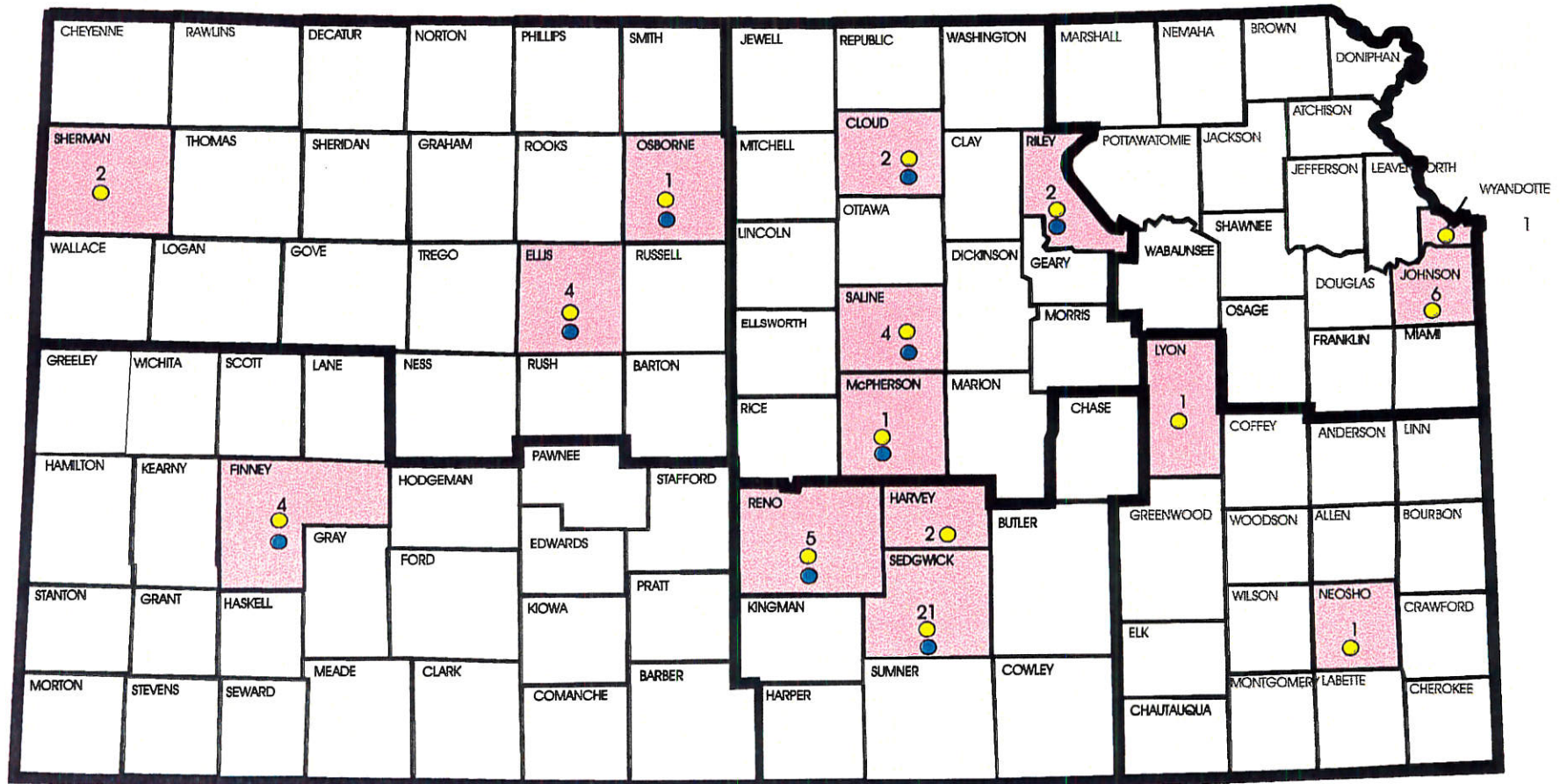


FIGURE 1



● Identified Drycleaning Facilities by County

● Sites under Corrective Action

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REGISTERED DRYCLEANING TRUST FUND FACILITIES BY COUNTY

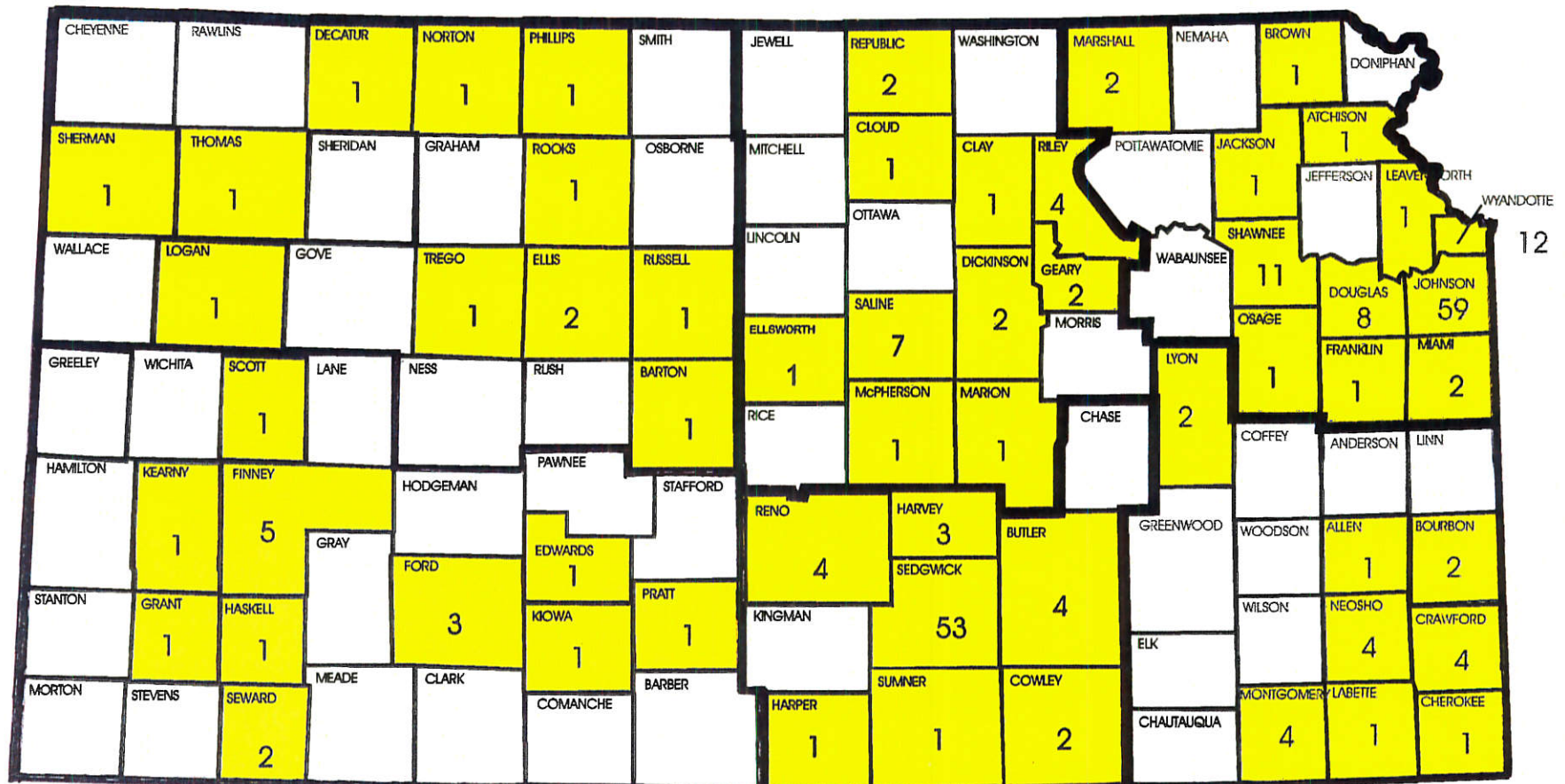


FIGURE 2



Number of Registered Drycleaning Facilities
in each County

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12

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