

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 10, 2000 in Room 423-S of the Capitol.

All members were present except: Rep. Henry Helgerson - excused  
Rep. Melvin Minor - excused

Committee staff present: Raney Gilliland, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statute's Office  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Bill Bider, Director, Bureau Waste Management, Kansas Department Health & Environment, Forbes 740, Topeka, KS 66620-0001  
Shawn White, Deffenbaugh Industries, Inc., P.O. Box 3220, Shawnee, KS 66203

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She announced there were three bills for discussion and possible action. Two of the bills probably would not be amended and one with an amendment. She opened **HB2659** for discussion and possible action.

**HB2659:** **An act concerning public wholesale water supply districts; relating to the powers and duties thereof.**

Rep. Dan Johnson made a motion the bill be passed favorably and placed on the consent calendar. Rep. Vaughn Flora seconded the motion. Motion carried.

The Chairperson opened **HB2781** for discussion and possible action.

**HB2781:** **An act concerning the state corporation commission; relating to application of certain penalties.**

Rep. Becky Hutchins made a motion the bill be passed favorably and placed on the consent calendar. Rep. Dan Johnson seconded the motion. Motion carried.

The Chairperson opened **HB2782** for discussion and possible action.

**HB2782:** **An act concerning oil and gas; relating to disposition of certain fees.**

A balloon to the bill was distributed by Mary Torrence, Revisor of Statutes. (See attachment 1)

Rep. Dennis McKinney made a motion to adopt the balloon. Rep. Vaughn Flora seconded the motion. Motion carried.

Rep. Tom Sloan made a motion the bill be passed as amended. Rep. Dennis McKinney seconded the motion. Motion carried.

Chairperson Freeborn welcomed Secretary of Agriculture, Jamie Clover-Adams, to the committee. She appeared today to give an update and review of Developing and Implementing Total Maximum Daily Loads (TMDLs): Kansas and the Western United States. (See attachment 2) (Kansas Department of Agriculture Annual Legislative Briefing) She recently attended a Western Governor's meeting and served on a panel to share what Kansas has done on TMDLs. She feels Kansas is on the right track, has the basics down, and is

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way ahead in the TMDL implementation effort. Under Section 303(d) of the Federal Clean Water Act, states must identify lakes, streams and rivers for which permitted point source effluent limits are not enough to ensure the stream meets its designed use. States must then submit lists of "impaired waters" to the Environmental Protection Agency (EPA), develop TMDLs for the impaired segments and design corrective programs to ensure these waters meet their designated uses. Many Kansas streams are impaired by field run off or other non-point sources. The Kansas Department of Agriculture, Soil Conservation Commission and Kansas State University are working with the agricultural sector to implement TMDL non-point source (livestock and row crop) water quality protection programs. A coalition of 14 agricultural organizations has been formed and is working with the state agencies to encourage local TMDL activities within the agricultural sector.

Kansas Department of Agriculture and its cooperators have actively sought the assistance and support of agricultural associations and local conservation districts in the TMDL implementation effort. Local involvement and support is essential to success and will benefit Kansas family farms. (See pages 37 & 38 attachment 2) Questions and discussion followed. Tracy Streeter, Executive Director, Conservation Commission, was in attendance to answer questions concerning costs. Tom Stiles, Section Chief, Kansas Department Health and Environment, was in attendance to answer questions regarding TMDLs. Ron Hammersmidt, Director, Division of Environment, KDHE, was in attendance to answer questions concerning water quality standards. Secretary Adams distributed a copy of a letter to Carol M. Browner, Administrator, regarding Voluntary Cancellation of Pesticides, for the committee to review. (See attachment 3)

The Chairperson thanked Secretary Adams for her presentation and opened public hearing on **HB2860**.

**HB2860: An act concerning solid waste.**

The Chairperson welcomed Bill Bider, Director, Bureau of Waste Management, KDHE, to the committee. He testified in support of the bill on behalf of the Department. They feel this bill makes several changes to statutes which address the payment of tipping fees and expenditures from the solid waste management fund. All of the changes fall into the following five areas: (1) Applicability of the Tipping Fee; (2) Uses for the Solid Waste Management Fund; (3) Eligibility for Grants; (4) New Enforcement Authority for Users of the Fund; (5) KDHE Reporting Requirement Related to the Fund. The costs of the recommended changes will affect the few cities and counties which export their solid waste from Kansas to another state through a permitted transfer station. (See attachment 4) Questions and discussion followed.

Written testimony only was submitted by Craig R. Simons, County Administrator, Harvey County, Newton, Kansas, in support of the bill. (See attachment 5)

The Chairperson welcomed Shawn White, Deffenbaugh Industries, Inc., Shawnee, Kansas. He appeared today in opposition to the bill. Deffenbaugh opposes expansion in spending of the solid waste fund for grants. They oppose increased spending from the solid waste fund for household hazardous waste projects that may already be funded by other Kansas statutes. They oppose expansion of spending from the solid waste fund for environmental cleanups. They oppose expansion of the fee to waste heretofore not covered. They oppose "tax breaks" to the Federal Government that may ultimately lead to requests to increase the tipping from its current level of \$1.00/ton. Deffenbaugh does support efforts to strengthen grant eligibility criteria and efforts to minimize or eliminate fraudulent misuse of grant funds. For these reasons Deffenbaugh Industries urges the committee to reconsider many of the key provisions of the bill and suggests an interim study committee. (See attachment 6)

Shawn Herrick, Executive Director of the Mid-America Tire Dealers Association, appeared in opposition to the bill. MATDA is opposed to striking the language on lines 23-25 on page six. This would remove the current exemption from tonnage fees for waste tires. Tire dealers must use permitted entities which, with enforcement, prevents illegal dumping. Dealers and consumers in Kansas contribute on average of \$50 per ton of waste tires through the 50 cent excise tax on the sale of new tires for the purpose of dealing with waste issues. The dollars generated by the 50 cent excise tax have provided the funding for cleaning up stock-piled scrap tires, as well as providing funding for other grant programs. MATDA members feel that they are

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already providing the means for \$50 per ton for managing waste tires; the mechanism is in place for managing their waste stream, and innovative waste processing should be viable on its own merits and not supported by tax dollars. Independent tire dealers, as an industry, have been part of the solution to waste problems in their industry. Because of these reasons, the exemption for waste tires from a general solid waste tipping fee should be left intact. (See attachment 7)

The Chairperson closed the hearing on **HB2860** and opened public hearing on **HB2861**.

**HB2861:**     **An act concerning waste tires.**

Chairperson Freeborn welcomed Bill Bider, Director, KDHE, to the committee. He testified in support of the bill. This bill was drafted by KDHE to update the waste tire statutes with respect to certain obsolete grant provisions; to clarify KDHE's regulatory authority related to accumulations of tires on rims; and to confirm that KDHE can use the waste tire management fund to directly contract for the disposal of waste tires collected through county-coordinated amnesty collection programs. A copy of a map showing the status of the statewide waste tire clean-up project is attached. At this time, it appears that the clean-up program will probably last through the end of the time period authorized by statute (July 1, 2001). (See attachment 8) Questions and discussion followed.

Chairperson Freeborn closed the hearing on **HB2861**. She thanked all conferees and guests for their participation.

The meeting adjourned at 5:45 p.m. The next meeting is scheduled for February 15, 2000.



## HOUSE BILL No. 2782

By Committee on Environment

2-1

9 AN ACT concerning oil and gas; relating to disposition of certain fees;  
10 amending K.S.A. 1999 Supp. 55-155, 55-161, 55-179 and 55-180 and  
11 repealing the existing sections.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) There is hereby established in the state treasury  
15 the well plugging assurance fund.

16 (b) Moneys in the well plugging assurance fund shall be used only  
17 for the purpose of paying the costs of: (1) Investigation of abandoned  
18 wells, and their well sites, drilling of which began on or after July 1, 1996;  
19 and (2) plugging, replugging or repairing abandoned wells, and remedi-  
20 ation of the well sites, drilling of which began on or after July 1, 1996, in  
21 accordance with a prioritization schedule adopted by the commission and  
22 based on the degree of threat to public health or the environment. No  
23 moneys credited to the fund shall be used to pay administrative expenses  
24 of the commission or to pay compensation or other expenses of employing  
25 personnel to carry out the duties of the commission.

26 (c) On or before the 10th day of each month, the director of accounts  
27 and reports shall transfer from the state general fund to the well plugging  
28 assurance fund interest earnings based on: (1) The average daily balance  
29 of moneys in the well plugging assurance fund for the preceding month;  
30 and (2) the net earnings rate for the pooled money investment portfolio  
31 for the preceding month.

32 (d) All expenditures from the well plugging assurance fund shall be  
33 made in accordance with appropriation acts upon warrants of the director  
34 of accounts and reports issued pursuant to vouchers approved by the  
35 chairperson of the state corporation commission or a person designated  
36 by the chairperson.

37 New Sec. 2. (a) On the effective date of this act, the chairperson of  
38 the state corporation commission shall certify to the director of accounts  
39 and reports the amount of moneys in the conservation fee fund which is  
40 equal to: (1) All amounts credited to such fund pursuant to subsections  
41 (d)(3) and (d)(4) of K.S.A. 55-155, and amendments thereto; plus (2) any  
42 amounts recovered and credited to such fund pursuant to subsection (d)  
43 of K.S.A. 55-180, and amendments thereto, for plugging, replugging or

state corporation

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Attachment 1

1 repairing an abandoned well, drilling of which began on or after July 1,  
 2 1996; minus (3) any amounts expended from such fund pursuant to K.S.A.  
 3 55-161, and amendments thereto, or subsection (a)(2) of K.S.A. 55-179,  
 4 and amendments thereto, for the purpose of: (A) Investigation of aban-  
 5 doned wells, and their well sites, drilling of which began on or after July  
 6 1, 1996; and (B) plugging, replugging or repairing abandoned wells, and  
 7 remediation of the well sites, drilling of which began on or after July 1,  
 8 1996. Upon receipt of such certification, the director of accounts and  
 9 reports shall transfer the amount certified from the conservation fee fund  
 10 to the well plugging assurance fund.

11 (b) All liabilities of the conservation fee fund which are attributable  
 12 to the following are hereby transferred to and imposed on the well plug-  
 13 ging assurance fund: (1) Investigation of abandoned wells, and their well  
 14 sites, drilling of which began on or after July 1, 1996; and (2) plugging,  
 15 replugging or repairing abandoned wells, and remediation of the well  
 16 sites, drilling of which began on or after July 1, 1996.

17 New Sec. 3. Whenever there are insufficient moneys in the well  
 18 plugging assurance fund or the abandoned oil and gas well fund to pay  
 19 the liabilities of such fund, such liabilities shall be and are hereby imposed  
 20 on the conservation fee fund.

21 Sec. 4. K.S.A. 1999 Supp. 55-155 is hereby amended to read as fol-  
 22 lows: 55-155. (a) Operators and contractors shall be licensed by the com-  
 23 mission pursuant to this section.

24 (b) Every operator and contractor shall file an application or a re-  
 25 newal application with the commission. Application and renewal appli-  
 26 cation forms shall be prescribed, prepared and furnished by the  
 27 commission.

28 (c) No application or renewal application shall be approved until the  
 29 applicant has:

30 (1) Provided sufficient information, as required by the commission,  
 31 for purposes of identification;

32 (2) submitted evidence that all current and prior years' taxes for prop-  
 33 erty associated with the drilling or servicing of wells have been paid;

34 (3) demonstrated to the commission's satisfaction that the applicant  
 35 complies with all requirements of chapter 55 of the Kansas Statutes An-  
 36 notated, all rules and regulations adopted thereunder and all commission  
 37 orders and enforcement agreements, if the applicant is registered with  
 38 the federal securities and exchange commission;

39 (4) demonstrated to the commission's satisfaction that the following  
 40 comply with all requirements of chapter 55 of the Kansas Statutes An-  
 41 notated, all rules and regulations adopted thereunder and all commission  
 42 orders and enforcement agreements, if the applicant is not registered with  
 '3 the federal securities and exchange commission: (A) The applicant; (B)

, provided such liabilities were incurred in accordance with the  
 prioritization schedules established pursuant to subsection (b) (2) of  
 section 1, and amendments thereto, and subsection (b) (2) of K.S.A. 1999  
 Supp. 55-192, and amendments thereto

1-2

1 proceeding before the commission, or has remedied or attempted to rem-  
 2 edy the condition of any well under the authority of this act, shall not be  
 3 construed as an admission of liability or received in evidence against such  
 4 person in any action or proceeding wherein responsibility for or damages  
 5 from surface or subsurface pollution, or injury to any usable water or oil-  
 6 bearing or gas-bearing formation, is or may become an issue; nor shall  
 7 such fact be construed as releasing or discharging any action, cause of  
 8 action or claim against such person existing in favor of any third person  
 9 for damages to property resulting from surface or subsurface pollution,  
 10 or injury to any usable water or oil-bearing or gas-bearing formation.

11 (b) The commission, on its own motion, may initiate an investigation  
 12 into any pollution problem related to oil and gas activity. In taking such  
 13 action the commission may require or perform the testing, sampling,  
 14 monitoring or disposal of any source of groundwater pollution related to  
 15 oil and gas activities.

16 (c) The commission or any other person authorized by the commis-  
 17 sion who has no obligation to plug, replug or repair any abandoned well,  
 18 but who does so in accordance with the provisions of this act, shall have  
 19 a cause of action for the reasonable cost and expense incurred in plugging,  
 20 replugging or repairing the well against any person who is legally respon-  
 21 sible for the proper care and control of such well pursuant to the provi-  
 22 sions of K.S.A. 55-179, and amendments thereto, and the commission or  
 23 other person shall have a lien upon the interest of such obligated person  
 24 in and to the oil and gas rights in the land and equipment located thereon.

25 (d) Any moneys recovered by the commission in an action pursuant  
 26 to subsection (c) shall be remitted to the state treasurer. The state treas-  
 27 urer shall deposit the entire amount of the remittance in the state treas-  
 28 ury and credit it to the ~~conservation fee~~ well plugging assurance fund or  
 29 the abandoned oil and gas well fund, as appropriate based on the fund  
 30 from which the costs incurred by the commission were paid. ~~If such costs~~  
 31 were paid from the conservation fee fund, any moneys recovered shall be  
 32 credited to the well plugging assurance fund.

conservation fee fund,

33 Sec. 8. K.S.A. 1999 Supp. 55-155, 55-161, 55-179 and 55-180 are  
 34 hereby repealed.

35 Sec. 9. This act shall take effect and be in force from and after its  
 36 publication in the statute book.

# Kansas Department of Agriculture Annual Legislative Briefing

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# Organization and Programs

## Mission and Vision of KDA

**Mission** - To administer the laws and programs assigned to the Department of Agriculture for the benefit of the people of Kansas.

**Vision** - We will have effective, efficient regulatory programs which, if challenged, will be proven credible.

## KDA Challenge

Balancing responsible and efficient regulation and consumer protection with providing vital education and information about agriculture to an increasingly urban public and lawmakers.

## Governor's Agricultural Advisory Board

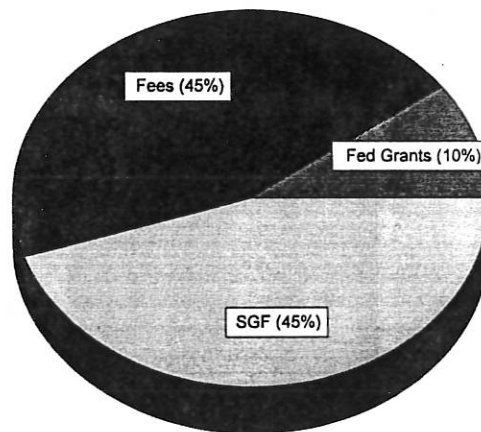
Stephen L. Mangan, Chair  
Ann M. Peuser, Vice Chair  
Galen Swenson  
Elizabeth Perkins  
Patrick J. Maloney  
Betty Corbin  
Roland L. Rhodes  
Dr. Wade Taylor  
Gary Beachner

Tribune  
Baldwin  
Salina  
Howard  
Kingman  
Towanda  
Gardner  
Oakley  
Parsons

## Budget Base FY 2000

Total budget is \$22,120,554

State Water Fund accounts for less than 10 percent of fees - \$988,000



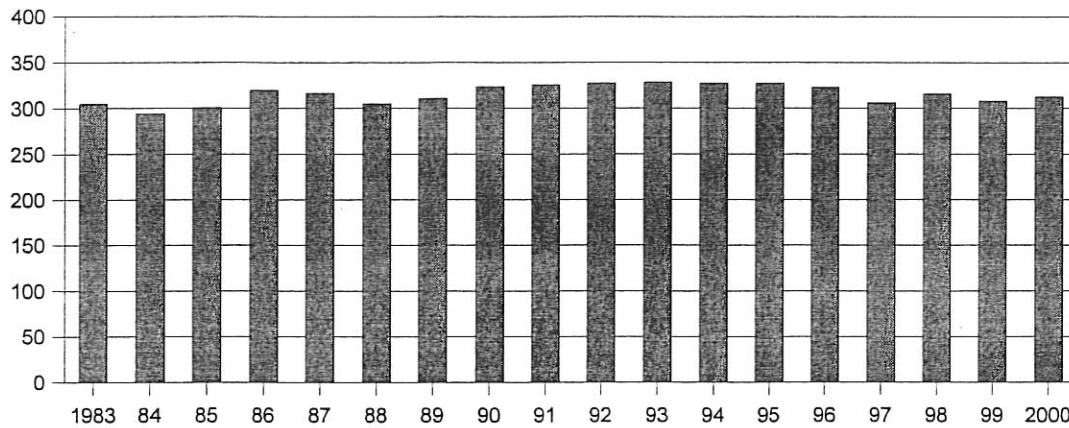
Federal Grants - 10%

SGF - 45%

Fees - 45%

## FTE History

### Number of FTEs by Year



## Department Budgets and Functions

<i>Agricultural Statistics</i>	<i>Functions</i>	<i>Current Issues</i>
Manager: Eldon Thiesson FTE: 9 Budget: \$477,000	<ul style="list-style-type: none"> <li>• Statistical surveys, crop and livestock production</li> <li>• Kansas farm facts</li> <li>• Kansas wheat quality</li> </ul>	<ul style="list-style-type: none"> <li>• FQPA</li> <li>• Pesticide use data</li> </ul>

<i>Commodities</i>	<i>Functions</i>	<i>Current Issues</i>
Manager: Trent LeDoux FTE: 1.5 Budget: \$4 million	<ul style="list-style-type: none"> <li>• Administer the corn, grain and sorghum check-off programs</li> <li>• Invest funds in research, development and marketing programs that are beneficial to Kansas grain producers</li> </ul>	<ul style="list-style-type: none"> <li>• What is the best structure under which to promote Kansas agricultural commodities?</li> </ul>

<i>Division of Water Resources</i>	<i>Subdivisions of DWR</i>
Manager: David Pope, Chief Engineer FTE: 30.5 Budget: \$4.3 million (\$3.74 million SGF; \$570,000 fees; \$988,000 State Water Plan)	<ul style="list-style-type: none"> <li>• Water Management Services</li> <li>• Water Structures</li> <li>• Water Appropriations</li> </ul>

<p><i>Water Management Services</i>  Manager: Steve Stankiewicz/  Jim Bagley</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Interstate Water Section — Kansas vs. Colorado</li> <li>— Republican River involving Nebraska</li> <li>• Basin Teams</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Working with Attorney General's office to prepare for possible litigation</li> <li>• Rules and regulations</li> </ul>
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<p><i>Water Structures</i>  Manager: Sam Sunderraj</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Dam safety</li> <li>• Channel changes</li> <li>• Levees and flood plains</li> <li>• Environmental Coordination Act</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• 34 dams designated "unsafe"</li> <li>• 4 emergency unsafe dam situations resolved (situation resolved by breaching dam or lowering water level)</li> <li>• Improving process through use of data</li> </ul>
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<p><i>Water Appropriations</i>  Manager: Tom Huntzinger</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Applications for permits to appropriate water</li> <li>• Issue certificates of appropriation</li> <li>• Applications to change an existing water right</li> <li>• Enforcement of water right statutes and regulations</li> <li>• Forfeiture of water rights</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Project Zeroed Out</li> <li>• Conducting abandonment hearings</li> <li>• Addressing the problem of over-pumping</li> </ul>
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<p><i>Weights &amp; Measures</i>  Manager: Constantine Cotsoradis  FTE: 22  Budget: \$139 million</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Test petroleum devices annually</li> <li>• Conduct statistical testing of other weighing and measuring devices used in commerce</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Continue good compliance in fuels</li> <li>• Improve compliance in large scales, LP/VTM and scanners</li> </ul>
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<p style="text-align: center;"><i>ACAP</i></p> <p>Acting Manager: Dale Lambley FTE: 13 Budget: \$631,000</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Feed, fertilizer, lime, soil amendments</li> <li>• Eggs, tissue residue, pet foods</li> <li>• Seed, good manufacturing practices</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Revenue and expenditure tracking</li> <li>• Consistent enforcement of laws/regulations</li> <li>• Analyzing/rebuilding a credible program</li> <li>• Efficiencies</li> </ul>
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<p style="text-align: center;"><i>Grain Warehouse</i></p> <p>Manager: Ron White FTE: 10 Budget: \$435,000</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Annual elevator reviews</li> <li>• Special exams</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Storage shortages in recent years</li> <li>• Temporary licenses</li> <li>• Funding</li> </ul>
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<p style="text-align: center;"><i>Plant Protection</i></p> <p>Manager: Tom Sim FTE: 12 Budget: \$937,000</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Phytosanitary certification</li> <li>• Nursery/greenhouse inspections</li> <li>• Noxious weeds</li> <li>• Disease/pest monitoring</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Noxious weed law review</li> <li>• Exports to other nations assured free of pests</li> <li>• Discovery of pests new to Kansas</li> </ul>
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<p style="text-align: center;"><i>Pesticide</i></p> <p>Manager: Ross Mares FTE: 20 Budget: \$1.5 million</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Response to complaints</li> <li>• Pesticide applicator training</li> <li>• Section 18 and 24c registration</li> <li>• Chemigation</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Public education</li> <li>• Analyzing Kansas pesticide law</li> <li>• Enforcement</li> </ul>
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<p style="text-align: center;"><i>Dairy</i></p> <p>Manager: George Blush FTE: 9 Budget: \$420,000</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Grade A/fluid milk</li> <li>• Manufacturing milk</li> <li>• Counter freezer inspection</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Rapid changes in industry</li> <li>• Manufacturing regulations</li> <li>• Possible dairy compact</li> </ul>
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<p><i>Laboratory</i>  Manager: Constantine Cotsoradis  FTE: 22  Budget: \$1 million</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Analytical support for regulatory activities</li> <li>• Product wholesomeness (meat and dairy)</li> <li>• Truth in labeling (feed, seed and fertilizer)</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Retaining technical staff experience</li> <li>• Advancing technology</li> <li>• Efficiencies</li> </ul>
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<p><i>Records Center</i>  Manager: Nancy Anderson  FTE: 12</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Licenses/permits (52 types)</li> <li>• Regulatory notices</li> <li>• Inspection records data entry</li> <li>• Open records requests</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• Consistency (forms/certificates)</li> <li>• Continuous improvement of data and systems</li> </ul>
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<p><i>Meat and Poultry</i>  Manager: Dr. "Butch" Kruckenberg  FTE: 65.5  Budget: \$2.6 million</p>	<p><i>Functions</i></p> <ul style="list-style-type: none"> <li>• Ensuring sanitation in state-licensed meat processing plants</li> <li>• Antemortem and postmortem inspections</li> <li>• Processing inspections</li> </ul>	<p><i>Current Issues</i></p> <ul style="list-style-type: none"> <li>• HACCP implementation in January 2000</li> <li>• Meeting or exceeding federal standards through program and plant improvements</li> <li>• Interstate shipment of Kansas products</li> </ul>
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# Budget Highlights

**Issue:**

**The Kansas Department of Agriculture continues to maintain a conservative budget philosophy, with recent years' efficiencies and improvements accomplished with little or no real growth over the past six fiscal years.**

## **Budgetary History During the Graves Administration**

The fiscal year 1996 budget was the first prepared under the leadership of Governor Bill Graves. To picture development of the budget during this time, it is helpful to compare actual expenditures in fiscal year 1995 with the current services request for fiscal year 2001.

<b>FY 1995 actual expenditures</b>	<b>\$ 18,453,681</b>
<b>FY 2001 current services request</b>	<b>\$ 21,233,806</b>

These numbers do not include expenditures made from State Water Plan funds or "non-expense items," such as pass-through, check-off payments to national commodity associations. These figures equate to a **total increase of 15.1 percent** since fiscal year 1995 and an **average increase of 2.5 percent** per year since FY 1995.

Historically, 60 to 65 percent of the KDA budget is expended for salaries and wages. Using a conservative two percent average increase in salary and wage expenditures per year since fiscal year 1995, 1.3 percent of the 2.5 percent average increase in KDA expenditures since 1995 has been for salary and wages. The remaining 1.2 percent average increase in expenditures has been less than the average inflation rate since FY 1995. KDA's budget has seen little or no "real growth" over the last six fiscal years.

## **Notable Outcomes During the Graves Administration**

- Transfer of marketing division to Department of Commerce and Housing.
- Restructuring and return of credibility to weights and measures program.
- Petroleum measurement program transferred to KDA from the Department of Revenue.
- Incorporation of the grain warehouse program into KDA.
- Consolidation of information technology staff and initiation of actions under an information architectural plan.
- Consolidation of fiscal office and record center.
- Total reduction of 22 full-time employees since FY 1995.
- Improvements in the meat and poultry inspection program, and positioning the state for HACCP implementation and interstate meat shipment.
- "Flattening" the organizational structure of KDA.

- Topeka office moved to remodeled office space leased at a lower rate than Landon and Docking building lease rates.

### **FY 2000 Budget**

The current services request for fiscal year 2000 continues routine KDA activities.

FY 2000 Enhancements include \$50,000 for Best Management Practices and \$986,997 from the State Water Plan.



# Proposed Revisions of the Kansas Noxious Weed Law

## Issue:

The noxious weed law was originally enacted in 1937, with some modification but no major study and review of the statute occurring since the 1950s. Many aspects of weed management and control have changed radically since that time. Agricultural production practices and governmental operations also have evolved considerably in the past 50 years. A group of Kansans have been meeting since January 1999 to review the entire law to develop modifications designed to modernize noxious weed control in Kansas. Their recommendations include a new, biologically based noxious weed classification system and expansion of the cost-share provision to include other control options in addition to herbicides. The new approach would maintain the current shared responsibility between landowners, counties and the state. Legislative action will be necessary to enact their recommendations.

## General Approach to Weed Control Under the Modifications

The review group was committed to developing recommendations that would provide as much flexibility as possible to counties, yet maintain a broad set of standards under which county programs can operate. Individual landowners will continue to be responsible for controlling noxious weeds on their property. County governments continue to be responsible for day-to-day operations of the law. The Kansas Department of Agriculture will provide operational and control standards. Kansas State University will play a role in the educational aspects of noxious weed control.

## Significant Modifications to Law

Perhaps the most significant modification is the adoption of a biologically based noxious weed classification scheme. Noxious weeds will be placed into three categories based on the acreage of each weed present in each county. The categories are:

1. *High Risk.* This category is for weeds with potential to cause economic or environmental harm, found in close proximity to Kansas, but not yet present. This categorization would allow counties to begin containment/eradication activities immediately upon discovery of the weed. After discovery, it would move to the containment or management category, depending on its prevalence in the county. For instance, several knapweed species which exist in Nebraska are moving southward; tropical soda apple, which exists in southern states, is moving north.
2. *Containment.* This category is for those weeds with the potential to be effectively contained (not allowed to spread) and possibly eradicated. These generally are noxious weeds with a fairly limited distribution (100 acres or less) in a county.

3. *Management*. This category is for widespread noxious weeds (greater than 100 acres in a county). They would be subject only to control and management practices. Eradication is not a biological possibility for noxious weeds in this category. It is subdivided into two categories:

3a. *Primary Management*. This describes weeds infesting more than 100 acres in a county, but less than 10,000 acres statewide. It provides a regional "slow-the-spread" approach to protect counties with lower infestation levels.

3b. *Secondary Management*. This subcategory encompasses noxious weeds with more than 100 acres in a county and more than 10,000 acres statewide.

Under this scheme, each county will have its own unique list of noxious weeds based on their biological occurrence and distribution in the county. Since counties are the basic unit of program operations, this approach will provide them with the maximum amount of flexibility in operations.

Two major program operations—enforcement and subsidized control—are linked to the three-tier classification scheme.

*Subsidized control* is mandatory for all containment and primary management noxious weeds in each county. Subsidized control for secondary management noxious weeds is optional at the discretion of the county. Counties will have the authority to provide subsidized control at any level on any of the control practices contained in each official control plan developed by KDA.

*Enforcement* options include both criminal and civil penalties. Counties will have the authority to assess civil penalties. An appeal process and fine schedule will be set out in the regulation, and KDA will have oversight over the counties. Criminal penalties continue to be processed by the county attorney and apply only to the containment and primary management category weeds.

### **Changes in Cost-Share and Reimbursement**

Currently, cost-share is available only for herbicide products identified in the official control plans developed by KDA. Under the new organization, subsidized control options will be expanded to include all control practices identified in the official control plans.

Subsidized control will be modified from providing a subsidy on approved *products* to a subsidy provided on approved *control practices*, and reimbursed on a per-acre basis.

Counties will have the authority to identify which of the approved control practices will be eligible for reimbursement and to determine appropriate subsidy amounts. County weed directors will be expected to work closely with land owners whose properties are infested with containment and primary management noxious weeds. These will have priority over secondary management noxious weeds.

Counties will continue to have the authority to establish a levy for program operations in the county.

The new classification scheme will require counties to accurately monitor the acreage of noxious weeds within their borders. This base information will be essential to determine an appropriate minimum levy. The acreage of containment and primary management noxious weeds will require a levy to generate sufficient funds to ensure appropriate containment of these weeds. If a county chooses to subsidize secondary management noxious weed control, the levy will need to be adjusted accordingly.

The proposal calls for treatment reimbursement on a per-acre basis. This is the most eminently fair way to provide reimbursement so all approved control practices are eligible. Under the current law, for example, a landowner who wants to achieve control using an approved cultural practice, such as cultivation or mowing, is not eligible for any subsidy for this practice. Under the proposed per-acre reimbursement scheme, he or she may be able to receive a subsidy for fuel used to achieve the treatment, provided the county determines this is a control practice eligible for reimbursement.

## Structural Change of Commodity Groups

### Issue:

Kansas producer organizations support a proposal to transfer administration of the commodity commissions for corn, grain sorghum and soybeans from the Kansas Department of Agriculture to the private sector. This plan also includes a similar transfer for the Kansas Wheat Commission. The proposal requires legislative action. It would benefit KDA by the reduction of one full-time employee and associated support functions; it would benefit producers through added efficiencies and by keeping interest on producer funds working for producers rather than accruing in the state general fund.

### **Current Structure Compared with Proposed Structure**

The Kansas Corn, Grain Sorghum and Soybean commissions utilize money collected from producer check-offs on first sales of grain to fund commodity-specific research and promotional activities. The farmer/members of the commissions are appointed by the governor. The commission administrator is housed within the Kansas Department of Agriculture. Funds are collected by the Department of Agriculture and all interest earnings from these funds are deposited in the state general fund. The Kansas Wheat Commission is administered in the same manner, but is a stand-alone state agency.

Under the proposed change, administration of these commissions would be transferred to the private sector. Check-off funds would go directly to producer-managed projects and programs. The commissions would remain chartered by state statute. Commissioners would no longer be appointed by the governor; instead, they would be elected by other growers to represent nine different districts based on Kansas Agricultural Statistics crop reporting districts.

### **Benefits of the Proposed Change**

Making the commissions a private/public partnership offers several potential benefits. Specifically, it provides for more program flexibility and responsiveness, better coordination of activities between commissions, more producer input, and a reduction in state budget and staff outlays. It would streamline the collection and administration process and could provide for one collection point. Further, it keeps interest on producer funds working for producers rather than accruing in the state general fund.

Under the new structure, producers would have direct representation on the commissions and increased input into projects and uses of funds. Private administration of the commissions would maximize the use of check-off funds. Interest earnings on these producer funds, which are now retained by the state general fund, would remain with the producer fund and go directly to producer-approved projects.

Transfer of the commodity commissions' administrative functions from KDA would remove all commodities funding from the KDA budget and result in a reduction of one full-time employee, plus administrative requirements in several other areas of the agency including legal, budgetary and other areas of support to the commissions.

### **Ensuring Accountability Under Private Administration**

The commissions will remain legislatively chartered, which will allow them to contract with KDA to audit first purchasers and continue to serve as the fiscal collection agent. Commissions will be required to have annual audits of their accounting activities performed by KDA or a certified public accounting firm. Legislative language would direct appropriate ways of investing idle funds. KDA also will assist with implementation of the new commissioner election procedure.

If the change occurs in the 2000 legislative session, transitional issues would begin with implementation on July 1, 2000. Commissioners now serving would continue in that position through an 18-month transition which will include public outreach and education. The first commissioner elections would occur in the January-February 2002 timeframe.

### **Other State Examples**

Many agricultural commodities utilize the check-off procedure to benefit their product. Most of these programs have administrative structures located in the private sector. A state government-administered check-off program is actually in the minority in the United States. Of 18 state wheat commissions, Kansas is the only state in which interest dollars do not accrue to the benefit of producer programs. Of 19 state corn check-off programs, only three are currently located in state government. The structure requested by these commodities is similar to the Dairy Commission, which was created by the Kansas Legislature several years ago.

## Amendments to the Kansas Egg Law

### Issue:

Several technical amendments are proposed to the Kansas Egg Law, which was last amended in 1979. The most substantive of these changes is to decrease from 60 to 45 degrees the temperature at which eggs intended for human consumption may be held in storage. The act also would make it a violation to fail to properly mark containers and to offer eggs that have not been candled or graded. New language will be added to establish a sampling size.

Clean-up language will be proposed to replace "board of agriculture" with "secretary of agriculture" and to increase the late fee from \$1 to \$5 a day. The secretary will have discretion when assessing the late fee.

### **Eggs and Food Safety on the National Level**

A colder holding temperature for eggs intended for human consumption is meant to increase food safety. Egg safety standards also are an issue on the federal level, and changes in Kansas law will position our state to comply with these new standards. On December 10, 1999, the President's Council on Food Safety released its "Action Plan to Eliminate Salmonella Enteritidis Illnesses Due to Eggs" by improving handling from production to consumption.

The council proposed a mandatory set of national standards for eggs, as well as interagency, intergovernmental partnerships, to ensure egg safety. The council notes that Americans consume an average of 234 eggs per person per year, and they estimate that one of every 20,000 eggs contains the Salmonella Enteritidis (SE) bacteria which can cause illness if eaten raw in foods or in eggs that are not thoroughly cooked. Because eggs can become contaminated inside the hen, common egg-handling practices are now considered unsafe. These practices, according to the egg safety action plan, include temperature abuse, inadequate cooking and pooling eggs to prepare a large volume of food that is later temperature abused or inadequately cooked.

# FQPA, TRAC Process and Kansas Agriculture

## Issue:

The U.S. Environmental Protection Agency (EPA) currently is assessing risks associated with the use of all pesticides in the United States to ensure they pose “a reasonable certainty of no harm” as required by the 1996 Food Quality Protection Act (FQPA). Because of concerns about the manner in which these risk assessments are conducted and the potential for losing important pest control tools unnecessarily, KDA has been active in monitoring and commenting on the assessment process. KDA continues to emphasize the importance of good science and reliable data as a basis for making policy decisions. KDA has provided funds to Kansas Agricultural Statistics to supplement further data collection on pesticide use in the state of Kansas and to Kansas State University to compile pesticide profiles of the state’s major commodities. This data will be submitted to EPA for use in their risk assessment process.

## What is FQPA?

The FQPA, Public Law 104-170, directs the EPA to establish a new safety standard for evaluating pesticide active ingredients used in food. FQPA, which amended both the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), established a new safety standard for pesticide residues in food and emphasizes protecting the health of infants and children. FQPA’s “reasonable certainty of no harm” requirement replaced the FFDCA Delaney Clause and the FIFRA “risk versus benefit” standard.

Under FQPA, EPA must be able to conclude with “reasonable certainty that no harm will result from aggregate exposure” to each pesticide from all sources. To determine allowable pesticide residues in food, the agency must conduct a comprehensive assessment of each pesticide’s risks. Consequently, re-registration of products has acquired significant new dimensions, including the concept of the “risk cup.” Under FQPA, Risk Cup = pesticide exposure from diet + food + water + occupation + environment = aggregate exposure. EPA began the process by focusing on organophosphate pesticides (simply referred to as OPs) because they are the most extensively applied insecticides. About 50 percent of their uses in the U.S. are on cotton and corn.

## The TRAC Process and the Kansas Secretary’s Role

Secretary Jamie Clover Adams and Former Secretary of Agriculture Allie Devine served on the Tolerance Reassessment Advisory Committee (TRAC) formed to advise EPA and USDA on the implementation of FQPA. The TRAC included stakeholders such as registrants, growers, processors and environmental groups. The Kansas Secretary was the only state agriculture director appointed to serve on the TRAC.

The Kansas Department of Agriculture's engagement in the process has provided important information to EPA and USDA, and it has allowed Kansas concerns about FQPA to be communicated directly to EPA. Some of those concerns include:

- How to protect "minor" crops, which include sunflowers and grain sorghum, from pests when registrants don't want to register their products for minor crops.
- How to avoid granting a de facto monopoly to one registrant of a new class of pesticides which could fill the risk cup.
- How to assess the risks and benefits of a product.
- How to maintain a level playing field for American producers trying to compete in global markets with a severely limited selection of crop protection tools.
- How to evaluate fumigation risk-mitigation measures.
- How to manage federal/state partnerships in registrations of potentially controversial products which could be of concern to public health or the environment.

**What has been the impact of FQPA on Kansas agriculture?**

The OP risk assessment process and potential risk management requirements could affect 679 registered uses in Kansas. In terms of Kansas registered products, this amounts to 8.5 percent of the approximately 8,000 pesticides registered in the state. Although OPs may account for only a small percentage of the number of registered uses, they account for a large percentage of active ingredients actually used in the state. For example, the 1996 Kansas chemical use survey on corn indicates that, of the insecticides applied, methyl parathion and terbufos accounted for 57.6 percent of the OPs used in agriculture.

Pesticide	% Acres Treated	Number of Applications	Rate of Application	Total Applied
Methyl Parathion	10	1.0	0.42	103,300 (18.2%)
Counter® (Terbufos)	8	1.0	1.08	223,300 (39.4%)
Furadan® (Carbofuran)	insufficient data	insufficient data	insufficient data	insufficient data

Chemical use surveys of most other major Kansas crops illustrate agriculture's dependence on the availability of OPs.



## Potential Impacts of Further FQPA Implementation on Kansas Agriculture

Every pesticide that is presently registered, and new products, will be assessed under the FQPA "reasonable certainty of no harm" standard. Despite claims that they are still in the pilot phase of pesticide reassessment, EPA has announced cancellations or severe restrictions on Guthion® (azinphos methyl) and methyl parathion. Once such decisions are made by EPA, it is unlikely they will reverse them, even if new data and analysis show that the use does pose a "reasonable certainty of no harm."

EPA plans to reassess approximately 9,700 tolerances (pesticide residues) on foods by August 2006. Of the total, they have already done a preliminary assessment of about 1/3 of these. They plan to do another 1/3 by August 2002. If at any time EPA has new information that appears to change the potential risk of a chemical, the agency may change the chemical's priority in the schedule. EPA has prioritized their reassessment of pesticides into three groups. Group 1, for example, includes OPs and carbamates. Group 2 includes chemicals registered before 1984, and Group 3 includes any remaining pesticides registered after 1984.

In addition to the Group 1 priorities, EPA is conducting a special review of the triazine herbicides, which include Aatrex® (atrazine). Aatrex® is the most extensively applied herbicide in Kansas because it is an integral part of controlling weeds in corn and sorghum production. Recently EPA decided to change the manner in which the triazine herbicides are evaluated to include both a threshold (risk level) value and a non-threshold (linear interpolation) value. This basically means EPA is evaluating pesticides under both the old Delaney Clause value and the newer FQPA "reasonable certainty of no harm" basis. EPA is also applying both this threshold (Delaney) and non-threshold (FQPA) approach to pesticides that are presently in the new registration pipeline, which extends the time needed for approval of new pesticides.

Other herbicides and insecticides commonly used in Kansas are currently under review. They include the herbicides Lasso®, Harness® and Dual II Magnum® to control broadleaf weeds and grasses in row crops; and the insecticides Warrior® to control Army cutworms in wheat, Counter® for corn pests, Lorsban® to control greenbugs and Warrior® to control headworms in sorghum. EPA recently announced the 'voluntary cancellation' by the registrant of Dyfonate®, which was used to control corn root worm, wire worms, white grubs and European Corn Borer in field corn.

During the reassessment of risk of pesticide use, EPA is often using "default assumptions" when they feel that they have inadequate data. This concept is based on the assumption that a pesticide is used at maximum label rate and applied as many times as the label permits.

### What is KDA doing?

Kansas Agricultural Statistics (KAS) will be collecting Kansas pesticide use data for submission to EPA in a manner similar to the way that USDA collects data under the National Agricultural Statistics Service (NASS) program.

KDA is planning to supplement the ongoing NASS data collections with pesticide use data on beef and dairy cattle, on-farm post-harvest chemical use, grain elevator post-harvest chemical use for grain sorghum to supplement the ongoing post-harvest pesticide use survey of soybeans and oats, and horticulture and turf. EPA has no reliable data on these commodities. It is important for agriculture in general, and Kansas agriculture specifically, that we collect the best possible pesticide use data that we can to defend against the use of default assumptions. KAS will conduct these surveys and, as usual, data and participant names will be kept confidential.

**Tabular Summary of Pesticide Use Surveys Funded by Fee Fund**

	On-Farm Post-Harvest	Beef/Dairy Cattle	Horticulture/Turf	Post-Harvest Grain Sorghum at Elevators
Time	Oct-Nov/1999	Feb-Mar/2000	Mar-April/2000	Oct-Nov/2000
Funds	\$16,000-\$20,000	\$25,000	\$31,000-\$35,000	\$20,000

Ongoing activities or surveys completed that can be used and not funded by KDA:

- a. NASS corn and soybeans, 1999, 120 samples ⇒ State-level data
- b. NASS post-harvest survey of corn and wheat, 1998
- c. NASS post-harvest survey of soybeans and oats, 1999
- d. KAS structural pesticide use, 1994
- e. KAS/KSU agricultural chemical usage of alfalfa, 1992
- f. KSU and KAS are planning to conduct a pesticide use survey on sunflowers for the 1999 use season and publish in 2000.

In addition to the pesticide use surveys, KDA has contracted with KSU to compile pesticide profiles for the major commodities that include crops, beef and dairy cattle, horticulture and turf.

**Tabular Summary of Planned Commodity Profile Completions**

Wheat	Corn	Sorghum	Soybeans	Cattle	Alfalfa	Hort/Turf
Jul 1999	Jul 1999	Nov 1999	Feb 2000	Mar 2000	Apr 2000	May 2000

# State Meat and Poultry Inspection Program Update

## Issue:

Members of the legislature are familiar with the challenges the state's small meat and poultry processing plants, and the state inspection program, have faced in recent years. This briefing contains good news about meat and poultry inspection in Kansas. In recent years, the inspection program and plants have been challenged to improve sanitation in the plants in order to maintain the state's "equal to" federal status and approval from the United States Department of Agriculture's Food Safety Inspection Service (FSIS). The most recent federal review showed great improvement in plant conditions and inspection program performance, earning the state program a laudable category II ranking. Plants and inspection staff also have been working together to complete the training, planning and facility changes necessary to comply with adoption of federal HACCP requirements in January 2000. It is expected that most of the state's fully inspected plants will meet the final HACCP compliance deadline of January 25, 2000. It also should be noted that legislation allowing interstate shipment of state-inspected meat and poultry in 2001 has been introduced in Congress.

## **Federal Reviews of Kansas Program**

In August 1998, reviewers from FSIS initiated a comprehensive review of the Kansas meat and poultry inspection program. At that time, reviewers found serious deficiencies at seven of the nine plants randomly selected for review. KDA reported that corrective actions were underway, as was a practice program to strengthen and upgrade the inspection program. In September, a federal reviewer visited six state plants and determined that state-initiated corrective actions were having an effect. Over the next 12 months, further improvements included peer reviews and program analyses, changes in staff and increases in inspection personnel, communications with the meat processing industry, and training for industry and inspection personnel.

The final, in-plant review took place during the week of October 25, 1999. Slaughter and processing plants were selected at random, with seven fully inspected and one custom plant reviewed. The state earned a category II "acceptable with minor variations" rating from this review.

In the letter of transmittal, Deputy Mark T. Mina of the FSIS office of field operations said, "The Kansas Inspection System, under the direction of Dr. Kruckenberg, has been highly successful in upgrading the program. The overall condition of plant facilities, plant sanitation and general housekeeping has consistently and remarkably improved with each follow-up review. The current deficiencies were notably limited in their degree and extent within the plants where found" . . . "Program supervisors and inspectors demonstrated confidence and understanding of program requirements and were practiced in addressing issues. Plant personnel demonstrated an increased understanding, initiative and responsiveness to meet regulatory requirements. These attributes reflect in a very positive way on the effectiveness of the inspection program." Noting that Kansas

can be justly proud of the recent accomplishments of the Kansas Meat and Poultry Inspection Program, Dr. Mina's letter said the next federal review is planned for late 2001.

### **Hazard Analysis at Critical Control Points (HACCP) Adoption**

Several years ago, all states were required to adopt a set of federal regulations designed to increase food safety conditions in the United States. Called HACCP, it moves the field of meat and poultry inspection into a science-based method of determining safety and wholesomeness, with an emphasis on preventing problems before they occur. Meat and poultry processing plants across the country have been adopting HACCP since 1998. The last required to have HACCP in place are the very small plants, such as most of those in Kansas, now facing a deadline of January 25, 2000.

The Kansas Department of Agriculture has offered assistance in the form of free or reduced cost training on HACCP and related topics, written communications and consultant services for plants faced with the new requirements. It also worked with the Kansas Department of Commerce and Housing to provide guaranteed loans to plants which needed to make infrastructure upgrades and wanted to take advantage of the program through KDFSA.

Some plants will choose not to take actions necessary to be fully inspected under HACCP. They may retire or opt to go to "custom" status, preparing products only for the owners of the animals and their families, employees or guests. Many other plants already have HACCP plans in place or will be ready by January 25. The program manager estimates 90 percent of the state-inspected plants will meet that deadline.

### **Federal Legislation on Interstate Shipment of State-Inspected Products**

Senate Bill 1988, the "New Markets for State-Inspected Meat Act of 1999," was introduced into the U.S. Senate on November 19, 1999 and referred to the Committee on Agriculture, Nutrition and Forestry. This bill would allow for interstate shipment of state-inspected meat and poultry products under cooperative agreements with the federal government. It would be effective October 1, 2002. Section 301 of the bill says, "It is the policy of Congress to protect the public from meat and meat food products that are adulterated or misbranded and to assist in efforts by state and other government agencies to accomplish that policy . . . Congress finds that--(1) the goal of a safe and wholesome supply of meat and meat food products throughout the United States would be better served if a consistent set of requirements, established by the Federal Government, were applied to all meat and meat food products, whether produced under state inspection or federal inspection; (2) under such a system, state and federal meat inspection programs would function together to create a seamless inspection system to ensure food safety and inspire consumer confidence in the food supply in interstate commerce; and (3) such a system would ensure the viability of state meat inspection programs, which should help to foster the viability of small establishments."

## **States Maintaining State Meat Inspection Programs**

States with meat inspection programs are Alabama, Arizona, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Montana, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

## **Benefits of State Inspection Programs**

- **Family Farm Livestock Producer Profits**

State-inspected plants allow the producers of food animals to market their products directly to the customer, increasing the producer's share of the profits. Only inspected and passed products may enter into commerce. During the extremely low hog prices last fall and winter, the state-inspected plants processed nearly 40 percent more hogs than usual. Through the state plants, producers were able to market their animals directly to the end consumer, thus increasing their share of the transaction.

- **Access and Responsiveness to the Needs of Small Processing Facilities**

The meat processing industry in Kansas supports state inspection primarily because of access. Questions, appeals, complaints, changes in red tag status and explanations of regulations are all more easily and quickly accessed under the state inspection system. Small plants in states with federal inspection can find themselves waiting long periods of time to get action or answers as requests move through the federal bureaucracy. Plant owners know all the players and have met program management. They know they will get a return call in a reasonable period of time, even if they don't always get the answer they want. In the federal system, the decision-making process is considerably slower and their chances of meeting the head of FSIS are minuscule.

- **Serving as a Complement to Large Processors**

The state-inspected plants are the primary outlet for light-weight cattle, animals suffering from chronic conditions, and lower quality cattle and swine. Since slaughtering and inspecting these animals while assuring food safety can require more time, the large federal plants do not like to accept them. Losing the services of the small plants could adversely affect the ability of the livestock producer to market this type of animal. According to a 1998 survey of many states, designation of a state for federal inspection will lead to a decrease in the number of plants operating under inspection. In one state, a survey indicated that up to 50 percent of the plants operating under state inspection would switch to custom exempt. Thus, the outlet for less uniform cattle is substantially reduced.

- **Facility Improvements for Older Structures**

In theory, federal requirements for structures should match state requirements. In fact, however, the state has been less apt to require the remodeling of older structures if they are

producing a safe and wholesome product. Recently, a state-inspected plant invested \$300,000 in plant upgrades to become HACCP- and interstate shipment-ready. When consulted to review the facility, however, FSIS officials said it could not be accepted as a federal plant without three major facility upgrades expected to cost an additional \$80,000.

- **Flexibility**

The state program works hard to be responsive to the special needs of plants and our rural communities. Under the federal system, slaughter schedules tend to be quite rigid. Federal inspectors are Union employees. The federal system charges overtime (\$40 per hour voluntary inspection fee) for non-amenable species such as emu, deer, buffalo and ostrich—even if they are slaughtered during normal plant hours. State inspectors do not charge overtime for these animals, which legally can be shipped across state lines even under the current law. The state program is sensitive to special needs, like county fairs and holidays. FSIS has recently notified customers of its intentions to increase its fees.

- **A Level Playing Field and Consumer Confidence**

Custom plants allowed to operate without investing in HACCP training or plans, or even maintaining up-to-date equipment and good sanitation, can put fully inspected plants at a competitive disadvantage. Consumer confidence also is at stake. If an outbreak of a food-borne illness were traced back to a custom plant in Kansas, consumers would likely not differentiate between the types of small plants. The entire industry would suffer.

- **Food Safety From “Custom” Plants**

Kansas has 20 custom plants—those which slaughter and process only for the owner of the animal, his or her family, guests or employees. The number of custom plants, and the number of owners threatening to go custom, has grown as HACCP deadlines neared. These plants are not approved to have retail sales. Under federal inspection, custom plants receive minimal inspection, perhaps being visited only one to three times per year. Although in theory sanitation standards are as strong for custom as they are for fully inspected plants, in reality a plant which is seldom inspected seldom maintains comparable sanitation standards. The Kansas program has always felt food safety to be as important for customers of custom plants as it is for retail customers. Kansas inspectors frequently inspect custom plants and institute a reinspection schedule if a problem is discovered.

The quality of inspection in custom exempt plants is inferior in the federal system. In 1987, when Montana reestablished state inspection, the federal inspectors gave the state a list of approximately 90 custom exempt plants. These plants had been inspected only once every two years. It was later found that some 80 existing plants were not included on this list and had been operating outside the inspection system. Besides posing serious public health risks, these plants were in unfair competition with the inspected plants and likely cost the state tax dollars. In the state inspection program, the custom exempt plants are inspected at least four times per year.

- **Slaughter of Diseased or Injured Animals**

Federal inspection allows diseased, sick or debilitated animals to be custom-slaughtered without inspection since the meat goes back to the owner. In Kansas, however, custom slaughter of diseased, dying or disabled animals is prohibited to protect food safety. They can be slaughtered at a state-inspected facility if a veterinarian inspects the animal and certifies the meat is safe to consume.

- **Direct Suppliers to Independent and Small-Town Grocery Stores**

Many of the grocery stores in rural Kansas purchase their meat and poultry products from state-inspected plants. Without inspection, the small grocery stores would have to locate another source for their meat and poultry products. This would not only present a hardship to the small retail operation, but would also reduce the market for the livestock producer. Many restaurants would face the same problems as the grocery stores. Consequently, the economic impacts of state inspection go far beyond just the processing plant and its employees.

- **Increasing Niche Markets for Kansas Meat Products**

In many areas, small meat processing facilities have found new markets in consumers who wish to purchase organic products or regional or ethnic specialty products. State programs traditionally work with business owners who wish to open new facilities. Conversations with other programs indicate that states with federal inspection are less likely to have these new small business start ups.

# Information Resources Technology Update

## Issue:

Computerization and information management were major concerns in the department five years ago. In response to those concerns, a plan for computerization under a client-server environment was formulated and now has been implemented. The goal has been to provide both external and internal customers of KDA with improved access to public information. Licensing and certification are managed in a very timely manner, even at times of peak demand. Customers of the updated systems have been satisfied with the service they have received.

Components of the plan included development of an architectural information plan in 1997. Based on flexibility, scalability and interoperability, this plan is functional and remains the basis for all information technology decisions. Information resources and technology personnel and services have been consolidated; staff are performing as a team. Organized upgrades of computers and installation of compatible software are up-to-date and maintained according to this plan. In three years, the department moved from 8088 computers and mainframe terminals at limited locations, to a complete client-server environment with internet access for employees in Topeka and most field locations.

The department is addressing challenges in implementing the portion of the plan intended to provide fully compatible intranet and internet services. Like many other entities, KDA has been challenged by rapid changes in computer development software, difficulty finding qualified personnel and providing training to existing personnel. The department uses an Oracle database, which now provides the software of choice for development and implementation procedures. KDA is working on an upgrade to the database version of Oracle 8i.

## **Adjustments to the Architectural Plan**

When implementation of the plan began, KDA wanted to do away with its many non-interactive, stand-alone databases. Division of water resources programs used an Oracle database. Other KDA information technology and database software were housed in a DOS-based database named Filepro. This software, and its setup within KDA programs, resulted in many stand-alone databases that do not interact between agency functional areas, especially those dealing with customer information and regulated entities holding licenses from several KDA programs. About 47 agency licensing programs continue to use this software today.

KDA, after development of its architectural plan, product review and consultation with DISC and other state entities, selected a development tool for use with Oracle. Like many agencies, KDA was unable to hire senior programmers into state service, which made it necessary to contract with consulting staff to provide these services. During that time, the five major pesticide licensing functions—more than half the licenses the department's records center bestows—were



converted to the KDAIIS system. KDA was later able to hire a senior level programmer to work with in-house programming staff and coordinate the development process. KDA has determined it can avoid multiple development platforms and reduce ongoing maintenance costs by upgrading to the database version of Oracle 8i, with its internet and intranet deployment capabilities.

### **Other Information Resource Technology Issues**

This year, in addition to maintaining a regular schedule of software and hardware acquisitions and upgrades, department staff prepared for Y2K and relocated wiring and computers for employees during the phased remodeling of the Topeka office. Ninety-nine percent of the department's computers have been upgraded to Windows 95 or Windows NT operating systems. It is a goal to maintain a 20 percent annual replacement or upgrade rate of automation in the department, and more work is needed to move toward a more paperless environment.

# Renovation of the Mills Building

## Issue:

**Mills Building renovation began in the spring of 1999. When completed in February 2000, the building will provide totally renovated downtown Topeka office space for most of the Kansas Department of Agriculture, the Kansas Water Office, the Kansas Conservation Commission, the Ethics Commission and some Department of Health and Environment staff.**

## **Building Renovations**

The renovation of the Mills Building was accomplished with tenants in place. Both the building's interior and exterior have changed substantially. Windows were completely replaced with modern, insulated units.

The main entrance for the Department of Agriculture, Conservation Commission, Department of Health and Environment and the Ethics Commission are on Ninth Street. Visitors to the Kansas Water Office enter on Kansas Avenue. New awnings and signs on the building's exterior will clearly identify the various offices.

The color palate for Department of Agriculture offices—green, blue, wheat and natural wood tones—was selected to reflect the colors of the Kansas landscape. The design allows natural light to move throughout the floor. Training areas and conference rooms were another priority in the design. Furniture was purchased through Correctional Industries or Designed Business Interiors.

The fourth floor houses KDA administration. The third floor houses fiscal operations, the records center, program managers and technicians. The division of water resources, including water appropriations and structures administration, will be located on the second floor when that floor is complete in early February. Some DWR staff are be housed on a portion of the first floor.

At completion in February 2000, KDA will occupy completely remodeled downtown office space at a cost of \$13.50 per square foot. Comparable downtown office space in non-state buildings runs between \$15-\$20 per square foot. Unremodeled space in Docking and Landon runs \$14 per square foot for FY 2000 and \$14.30 for FY 2001. Leased office and storage space will include 46,294 square feet compared to 49,260 square feet under the old lease.

## Education: Agriculture's Role in the Lives of Kansans

### Issue:

Although today's farms contribute more to the overall economy of the state than ever before, 98 percent of Kansans now live off the farm. Fewer Kansans grew up on a farm or even visited their grandparents at the home place. Many Kansans of all walks of life do not automatically understand the challenges faced by agriculture, nor do they understand why it is important that they should. Now is the time for Kansas agriculture to tell its story. All Kansas consumers and policy makers need to know the facts about agriculture's contribution to every Main Street from Atwood to Wichita. Not only is Kansas agriculture bountiful, reliable and productive, it also makes positive contributions to the environment, creates wealth and provides jobs for nearly a fifth of the state's off-farm population.

### The Role of the Secretary and the Kansas Department of Agriculture

The Kansas Department of Agriculture is a regulatory agency. It has a responsibility to all Kansans to ensure the safety of our meat, milk and eggs, to ensure the responsible and judicious use of pesticides and to guarantee our water resources are used beneficially. Balance is vital to the work of this department to be responsible to all Kansans.

Confident that this mission is being met effectively, efficiently and equitably, the Secretary has expanded the department's focus to one of educating and advocating for all of agriculture. Targets of the educational efforts include urban consumers, Congress, our sister state agencies and agricultural groups.

### Facts About Agriculture in Kansas

- In Kansas, agriculture means jobs. **Farm and farm related jobs** (agricultural production and farm input jobs) employed 19.9 percent of Kansans in 1996. Even in metropolitan areas, 13.3 percent of the jobs were related to the farm and food.
- The Kansas Department of Human Resources identifies **value-added agriculture** as number three of the key industry clusters of the Kansas economy for 1997. Following aircraft, aerospace and the materials sectors, value-added agriculture employed 31,573 Kansans. This segment has grown by 17.1 percent since 1991. The average annual wage in value-added agriculture was \$27,895, slightly more than the overall state average of \$25,495.
- In "The Economic Impact of Kansas Agriculture," it was estimated that the **overall economic impact** in 1996 was more than \$34 billion and 308,000 jobs. Agriculture was responsible for about 26 percent of the total sales and 16 percent of the total value-added revenue generated in the state.

- Economic multipliers associated with agricultural production and processing have a major bearing on the state's activity. KSU economists estimate that for each \$1 increase in demand for agricultural output, overall economic activity in Kansas would be expected to increase by \$2.15.
- What is agriculture in Kansas? It includes production, processing, transportation, wholesaling, retailing and business services—from the farm gate to the food plate.
- The food and fiber system is our nation's largest employer.
- Americans spend approximately 10 percent of their disposable personal income on food. In some other nations, however, the consumer spends more than half of his or her income to buy food.

## Division of Water Resources Update

### Issue:

The Kansas Department of Agriculture applied for technical assistance from the Kansas City DOE/Allied Signal plant to analyze the processing steps which lead to water appropriations throughout Kansas. Outside assistance from Allied Signal professionals will provide KDA with neutral, third-party analysis. This, combined with the technical expertise of Division of Water Resources (DWR) staff should lead to improvements in the way applications are handled that will culminate in timely certification of water rights. The current process resulted in a backlog of certificates in early 1999, with some individual applications taking more than 20 years to certify. This does not serve DWR customers—neither individual applicants nor the people of the state of Kansas—who expect the state's water resources to be managed to their benefit.

### Allied Signal Assistance

The overall mission of the division of water resources is to manage and conserve the quantity of water resources in Kansas.

In the past, it has been difficult to untangle the processes used by the division and to quantify meaningful outcomes. Further, there was difficulty separating technical activity, processes and data to determine personnel and resource needs. The Governor's directive to efficiently produce program results and provide outstanding customer service highlight the importance of Allied Signal's assistance in establishing processes to better quantify outcomes and determine personnel and resource needs.

The Allied Signal project will focus on one segment of the division, utilizing the general engineering and systems analysis skills of Allied Signal combined with the water appropriation staff's specific knowledge of the division. We anticipate using what is developed as the foundation for further internal program analysis. A better understanding of processes in this one area will assist Department administrators in better evaluating division personnel and resource needs. Analysis of the process may also lead to streamlining, which would benefit division employees and Kansas water policy.

### Summary of Procedures for Processing Applications for Permit to Appropriate Water

1. Application for permit to appropriate water received with filing fee. K.S.A. 82a-708a.

2. When an application acceptable for filing is received, it is assigned a file number and priority is established by date and time of receipt. See K.S.A. 82a-707, K.S.A. 82a-710, and K.A.R. 5-3-1 and 5-3-2
3. Receipt of application and fee is acknowledged.
4. Contents of the application are set forth in the prescribed application form and such other information as may be required for proper understanding of the proposed appropriation. K.S.A. 82a-709 and K.A.R. 5-3-4.
5. Review of the application begins. If the application is found to be defective, inadequate or insufficient to determine the nature and amount of the proposed appropriation, it is returned for correction. The application does not lose its priority of filing, if it is returned within the time allowed. Default in the refiling constitutes a forfeiture of priority date and dismissal of the application. See K.S.A. 82a-710 and K.A.R. 5-3-4b.
6. Once the information needed to process the application is complete and in its proper form, notice of the proposed appropriation is given to adjacent landowners and holders of water rights, who are given an opportunity to comment. If located in a groundwater management district that requests an opportunity to review the application, the application is provided to the groundwater management district for its review. This step includes an evaluation of the compliance with the rules and regulations of the district. See applicable regulations for the specific GMD. GMD No. 1 is 5-21-1 thru 5-21-4; GMD No. 2 is 5-22-1 thru 5-22-9; GMD No. 3 is 5-23-1 thru 5-23-11; GMD No. 4 is 5-24-1 thru 5-24-7; and GMD No. 5 is 5-25-1 thru 5-25-11.
7. The application is evaluated and processed. Technical analysis, consideration of public comments and GMD recommendations occur at this stage. Sometimes a field investigation is necessary. Compliance with rules and regulations is determined. See K.S.A. 82a-711 and applicable rules and regulations, especially K.A.R. 5-3-10 through 5-3-17 and 5-4-4.
8. After evaluating the application, if it is determined that the application does not comply with the law or applicable rules and regulations, the applicant is notified and given an opportunity to modify the application to comply with rules and regulations or provide any additional comments or information the applicant would like considered. See K.A.R. 5-3-18.
9. A hearing may be held if the Chief Engineer finds it to be in the public interest, or if a hearing has been requested by a person who shows that approval of the application may cause impairment of senior water rights. See K.A.R. 5-3-4a.
10. After all information and comments are received, a final evaluation of the application and record is completed and a decision is made to approve the application, approve it with special modifications or conditions, or deny it. See K.S.A. 82a-711, 711a and 712.

# Nutrient Management Program

## Issue:

The Kansas Department of Agriculture began reviewing and approving swine production facility nutrient plans when Substitute for H.B. 2950 went into effect January 1, 1999. During the spring of 1999, KDA and Kansas State University sponsored four awareness meetings for pork producers. A portion of each meeting was devoted to assisting producers with preparation of a nutrient management plan for their facilities. KDA and KSU also assisted with the swine facility operator certification training sessions presented at seven locations across the state. As of January 2000, the department has 116 plans on file, 56 of which are awaiting results of fall soil sampling. The statute assigned KSU the responsibility of providing research support to the overall program. KSU and KDA continue to assist one another in nutrient planning and research data collection efforts.

## Background

Substitute for H.B. 2950 was enacted during the 1998 legislative session. The statute established added requirements for operation of confined swine production facilities. One significant requirement involves the preparation of a detailed nutrient utilization plan. KDA is responsible for review and approval of swine production facility nutrient plans. The primary goal of nutrient planning is to balance field nutrient applications with crop nutrient uptake to protect the quality of Kansas ground and surface waters.

Under the law, a nutrient utilization plan is required of all swine facilities of 1,000 or more animal units (approximately 2,500 hogs). The plan describes the manner in which waste produced in the facility is to be applied to land. KDA must review and approve a facility's nutrient management plan before it can receive its operational permit from the Kansas Department of Health and Environment (KDHE). This requires close coordination between the KDA nutrient management program and KDHE's confined animal feeding operations permitting section. KDA also has responsibility for reviewing plan amendments and providing regulatory oversight of the application of waste to fields.

## Nutrient Utilization Planning

The primary objectives of the nutrient utilization plans are to engage producers in a five-year soil-fertility planning process and ensure application of nutrients at proper agronomic rates. The agronomic application rate for swine waste is based on the amount of waste required for plant nutrition and balanced with the holding capacity of the soil. Under the planning process, confined swine facilities of 1,000 or more animal units identify by legal description and site maps the individual fields where swine manure or waste water is to be applied. A set of baseline soil tests are then taken of individual fields and analyzed to determine current levels of nitrogen,

phosphorus, copper, chlorides and zinc. The facility utilizes this information to prepare a plan forecasting nutrient applications for the upcoming five-year period. Once the initial plan has been prepared, facilities must conduct soil tests and update the plan at least annually. Substantive changes in the plan require approval by the Secretary of Agriculture. KDA, with assistance from KSU, has developed and provided to producers and consultants a computerized program which assists in preparation of the necessary nutrient plans. It is available on the KDA website at [www.ink.org/public/kda/nutrient](http://www.ink.org/public/kda/nutrient).

**Current Status**

KDA currently has 116 swine facility nutrient plans on file. A total of 56 of these plans are awaiting fall soil sample results. The remainder are completed. We also have had contact with three producers for whom no plans are yet on file at KDA. We have contacted them to remind them of the requirement. A summary of facilities by KDHE district is as follows:

<i>District</i>	<i>Counties</i>	<i>Facilities</i>
NC	12	29
NE	5	5
NW	8	21
SC	5	7
SE	4	7
SW	14	50
Totals:	49	119



## Grain Storage Conditions in 1999

### Issue:

Kansas Department of Agriculture data on state-licensed grain storage facilities reveal large amounts of grain in conditional storage or temporarily piled on the ground again in 1999. High carryover stocks, good crops and slow grain markets kept the storage situation tight in January 2000. Many problems reported this fall were regional in nature, with the majority centered in the north central and northwest areas of the state.

### More Storage Available

The grain storage situation could have been worse. The 1999 legislature's action to provide tax abatements for construction of both commercial and on-farm storage resulted in more space available for fall crops. Storage capacity is on the increase statewide. However, although large amounts of grain remained on the ground in early January, most is expected to be moved by January 31.

Kansas Agricultural Statistics (KAS) reports Kansas commercial grain storage capacity in 1996 as 761,920,000 bushels; in 1997 as 742,220,000 bushels; and in 1998 as 783,650,000 bushels. State-licensed elevators have reported an increase in storage capacity of 16,966,000 bushels in calendar year 1999 and 14,178,000 bushels in 1998. On-farm storage, according to KAS numbers, shows no change since 1996. Fewer problems with rail transportation were reported in the state during the harvest season. Numbers for grain on the ground, or conditional storage in state-licensed elevators, as of January 3, 2000, follow:

	1999 Fall Harvest in Bushels*	1998 Fall Harvest in Bushels
Grain Sorghum	5,981,000	1,534,000
Corn	6,387,000	1,000,000
Conditional	2,150,168	2,754,000

\*Several years of such problems have caused some elevators to arrange to cover and aerate their ground-stored grain, so these numbers may be somewhat misleading.

## Update on TMDLs in Kansas

### Issue:

**Under Section 303(d) of the Federal Clean Water Act, states must identify lakes, streams and rivers for which permitted point source effluent limits are not enough to ensure the stream meets its designated use. States must then submit lists of "impaired waters" to the Environmental Protection Agency (EPA), develop Total Maximum Daily Loads (TMDLs) for the impaired segments and design corrective programs to ensure these waters meet their designated uses. Many Kansas streams are impaired by field runoff or other non-point sources. The Kansas Department of Agriculture, Soil Conservation Commission and Kansas State University are working with the agricultural sector to implement TMDL non-point source (livestock and row crop) water quality protection programs. A coalition of 14 agricultural organizations has been formed and is working with the state agencies to encourage local TMDL activities within the agricultural sector.**

### **History**

The state intervened in litigation brought by the Kansas Sierra Club and Kansas Natural Resource Council against EPA which resulted in a court settlement requiring Kansas to complete development of TMDLs for surface waters within the state. The court decree outlined an eight-year schedule for accomplishing this task on a basin scale, beginning with the Kansas-Lower Republican Basin (KLR) of north central and northeast Kansas. A total of 117 TMDLs have been developed for the KLR and approved by EPA. TMDL development is underway for the Arkansas and Cimarron river basins.

The most common causes of impairment of Kansas streams, rivers and lakes are sedimentation, fecal coliform bacteria and nutrient enrichment (largely excess phosphorus). Pesticides (alachlor and atrazine herbicides) cause impairment in six Kansas lakes. Approximately 80 percent of the stream reaches in the KLR were listed as impaired by bacteria. Since Kansas has a relatively rigorous program of regulating large-scale Confined Animal Feeding Operations (1,000 Animal Units or more), a significant proportion of the bacterial impairment appears to come from the accumulated mix of numerous small, non-point sources such as small livestock feed yards, temporary winter feeding in riparian areas, over-grazed pastures, home septic systems or wildlife.

Although pesticides in water historically have been an emotional issue, bacteria and nutrients are gaining increasing national attention. EPA published new standards for nitrates and phosphorus in water in December 1999. The federal Clean Water Action Plan also has an emphasis on bacteria and nutrients.

Kansas TMDL implementation plans are set up on a ten-year schedule, with a midpoint milestone. In the first five years of each TMDL plan, emphasis is on achieving action by the responsible parties through education and voluntary participation, supplemented by cost share

programs. For the second five years, emphasis will be on monitoring water quality improvement. If participation or water quality improvements do not occur, KDHE will move to implement a "regulatory fix."

### **Participation by Agriculture is Vital**

KDA and its cooperators have actively sought the assistance and support of agricultural associations and local conservation districts in the TMDL implementation effort. Local involvement and support is essential to success and will benefit Kansas family farms.

Within the agricultural community, a group has come together to encourage and assist Kansas farmers and ranchers in meeting the challenges posed by TMDLs. The "TMDL Agriculture Working Group" is a coalition of 14 agricultural organizations and three cooperating agencies. Members include the Kansas Agricultural Aviation Association, Kansas Association of Conservation Districts; Kansas Association of Wheat Growers, Kansas Cooperative Council, Kansas Corn Growers Association, Kansas Dairy Association, Kansas Farm Bureau, Kansas Fertilizer and Chemical Association, Kansas Grain and Feed Association, Kansas Grain Sorghum Producers Association, Kansas Livestock Association, Kansas Pork Producers Council, Kansas Seed Industry Association, and Kansas Soybean Association. Cooperators are KDA, SCC and KSU Research and Extension. The group is focused on informing the agricultural community about TMDLs. It encourages the establishment of locally led committees to address agriculturally related TMDL water quality concerns.

The TMDL Working Group also is encouraging their membership to participate in local county conservation district annual meetings during January and February 2000. SCC will provide a short presentation on TMDLs at the meetings. The effort to recruit persons willing to serve on local TMDL committees will then begin.

STATE OF KANSAS

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Jamie Clover Adams, Secretary of Agriculture  
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KANSAS DEPARTMENT OF AGRICULTURE

February 4, 2000

Carol M. Browner, Administrator  
1101A USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

RE: Voluntary cancellation of pesticides

Dear Ms. Browner:

The purpose of this letter is to discuss the potential impact of 'voluntary' pesticide cancellations by registrants on minor uses in Kansas, crop diversity under the Freedom to Farm Bill and minor-use crops.

'Voluntary' Pesticide Cancellations and Potential Impact on Minor Uses

The Kansas Department of Agriculture (KDA) is concerned about the potential loss of pesticides for minor uses as a result of the implementation of FQPA. A review of the Federal Register over the last several months indicates that several registrants have 'voluntarily' submitted requests to EPA to cancel the use of their organophosphate and carbamate pesticides on minor uses while preserving their major uses. We recognize that under FIFRA and FFDCA as amended FQPA, registrants may voluntarily cancel a pesticide registration under Section 6(f)(1). EPA, under Section 6(f)(1)(c)(ii), "may not approve or reject the request until the termination of the 180-day period beginning on the date of publication of the notice in the Federal Register, *except that the Administrator may waive the 180-day period upon the request of the registrant* (sic) or if the Administrator determines that the continued use of the pesticide would pose an unreasonable adverse effect on the environment." In addition, under Section 6(f)(1)(B), "Before acting on a request under subparagraph (A), the Administrator shall publish in the Federal Register a notice of the receipt of the request and provide for a 30-day period in which the public may comment." We also note that the 30-day public comment period is being waived in many cases. For example, on November 10, 1999, the Federal Register (Vol. 64, Number 217) stated, "The Agency has determined that, while these actions require publication for the purpose of announcement, a comment period is not warranted." The only recourse often stated by EPA is "users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180-day period." We all realize that recourse is not really viable. As State Lead Agency for pesticides, KDA wants to be able to comment to EPA about proposed 'voluntary' pesticide cancellations that may adversely impact our agricultural economy. Under FIFRA you have the authority to grant our request.

Carol M. Browner, Administrator  
February 4, 2000  
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We understand that registrants want to retain their products for major uses to ensure that the "risk cup" is not overfilled. At the moment, they seem to be voluntarily canceling very minor uses as an initial voluntary risk-mitigation measure. Our concern is that at some point registrants may request the cancellation of uses that impact minor-use crops in Kansas, and that EPA may not be cognizant of the implications and thus waive any waiting period or the 30-day period in which the public may comment under Section 6(f)(1)(B). Minor-use crops in Kansas include grain sorghum (identified as a vulnerable crop in an MOU by EPA/USDA in August 1994), sunflower, canola, cotton, peaches, apples, melons, vineyards, vegetables, walnuts, pecans, fruits and berries. In addition, Kansas has a minor commodity—about 20,000 managed honeybee colonies, used to pollinate crops both in and out of state, that produce honey and wax. Long-term economic viability of the Kansas agricultural sector depends not only on maintaining our major and minor crops, but also on diversifying crops as provided by the Freedom to Farm Bill.

Let me present a few examples of the pattern of 'voluntary' pesticide cancellations that registrants have requested over the past several months.

#### Organophosphate Pesticides

On September 1, 1999, Novartis Crop Protection requested the cancellation of Triumph 4E insecticide that had nine SLN registrations. The pesticide is a member of the organophosphate insecticides (OPs) used to control insects in turf, maize, rice and other crops. Diazinon (patented to Geigy, now Novartis, in 1956), which is the active ingredient in Triumph 4E, is the mainstay of Novartis' OPs. In 1999, there were 138 pesticides containing diazinon registered in Kansas.

On November 4, 1999, two registrants, Platte Chemical and Cheminova, requested cancellations of chlorpyrifos for such uses as insect control in commercial sod and ornamentals—minor use. On November 10, 1999, Dow AgroSciences, and registrants who have an agreement with Dow, requested the cancellation of the use of chlorpyrifos in popcorn—minor use. In 1999, there were 278 pesticides containing chlorpyrifos registered in Kansas. These uses span from production agriculture (Lorsban®) to residential use (Dursban®), particularly for termite control. One of the principal agricultural uses of chlorpyrifos in Kansas is to control insects in grain sorghum, a minor-use crop nationally, but a major commodity produced in Kansas. Kansas is the Nation's leading producer of grain sorghum because it can be grown statewide and lends itself well to dryland farming. How soon will it be before Dow decides to 'voluntarily' cancel the use of chlorpyrifos in another minor-use crop such as grain sorghum in order to protect major crops such as field corn?

Perhaps the best example to date of a registrant canceling a minor use that adversely impacted Kansas agriculture involves the registrant Gowan Co., which produces Supracide® 25WP (EPA Reg. No. 100-754-10163) under agreement with Novartis Crop Protection. On November 4, 1999, Gowan Co. requested that methidathion, used on potatoes and sorghum, be canceled. This request was followed by a December 27, 1999, request that additional uses of methidathion on sorghum and tobacco be canceled. They wanted to maintain the use primarily for citrus, nuts and other uses deemed essential, but to avoid the potential of overfilling the risk cup. In 1998, KDA attempted to seek a Section 18 under FIFRA to control Banks grass mites in grain sorghum. EPA verbally denied the Section 18 because it would have been politically embarrassing to allow its use while the TRAC was given presentation on methidathion.

The preliminary suggestion was that the risk cup was filled with use on citrus. We later learned that EPA had a tolerance established for its use in grain sorghum, so KDA attempted to establish a Section 24(c) registration under FIFRA. The registrant would not support the action because of the political science surrounding the product. KDA subsequently applied to EPA for a Section 18 Crisis Exemption to use Capture 2EC (bifenthrin), a synthetic pyrethrin, in grain sorghum for seed only, which EPA granted. This broad spectrum insecticide/miticide not only killed the mites, but also the beneficial insects such as lady bugs and parasitic wasps. We would not necessarily call this good environmental stewardship or progress. We see no reason why Gowan or EPA should not allow the use of Supracide® 25WP to be used in grain sorghum for seed production only. We don't believe that residue is, or should be, a problem. Based on PR Notice 97-2, Section 3 registration should have been a priority because "the use did not provide sufficient economic incentive to support the initial registration . . . or (B) the alternatives to the pesticide use pose greater risks to the environment or human health."

#### Carbamate Pesticides

Similar actions have been taken by registrants who produce carbamates. EPA considers OPs and carbamates to have "a common mode of toxicity." Thus, it is not surprising that registrants who produce carbamates would also want to decrease the number of uses, particularly minor uses, that would allow the core uses to remain and fill the risk cup. In 1999, 54 pesticides containing carbaryl were registered in Kansas.

On November 3, 1999, several registrants requested the 'voluntary' cancellation of more than 20 carbamate insecticides ranging from Sergeant's Pet Products, which produces carbamates to control fleas and ticks on dogs, to Howard Johnson's Enterprises Sevin Brand 5% carbaryl insecticide that many home owners use in their gardens. The voluntary withdrawal of many of

these commonly used products would ultimately leave about 12 products containing carbaryl to control insects for agricultural commodities, some of which contain 80% active ingredient.

#### Crop Diversity

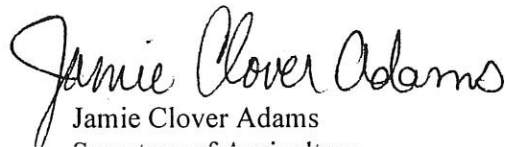
Another concern that KDA has with the actions of registrants who voluntary cancel pesticides for today's minor uses relates to crop diversity. Conventional wisdom, since the 1995 Freedom to Farm Bill, suggests that farmers ought to diversify their commodity production. In Kansas, cotton production rose from about 12,000 acres in 1998 to about 30,000 acres in 1999. If economics hold out, Kansas State University anticipates cotton production could increase to 100,000 acres in two to three years. Similarly, sunflower acreage increased from 180,000 acres in 1998 to 270,000 acres in 1999, and it is expected to increase by 20% in 2000. Winter canola production, while still very low, increased by about 50 percent between 1998 and 1999. What happens to growers who begin to diversify their crops and encounter either some known or emerging pests (beet armyworm and aphids are examples of emerging pests in cotton)? What incentive is there for a producer to diversify if the risk cup for a particular pesticide is already filled because of existing production elsewhere?

Carol M. Browner, Administrator  
February 4, 2000  
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Minor-Use Crops

EPA may argue that USDA, through the IR-4 program, is developing low-risk pesticides and OP alternatives for minor crops, but a review of the Federal Register indicates that only a few IR-4 petitions have been submitted to EPA during the last several months. The rate of voluntary cancellations far outnumber the rate of pesticide petitions. This is further borne out by a review of EPA's Interim Fiscal Year 2000 Work Plan for pesticide registration. The list identifies 25 new chemical candidates, 10 of which are reduced risk, and only one is an OP alternative. The bottom line is that existing minor uses and the incentive for crop diversity are in trouble, and KDA does not see an end to this problem. Although USDA is engaged in providing pesticide alternatives for minor use crops as the number of OP and carbamate insecticide uses become more and more restrictive, the amount of resources for this effort is meager.

Sincerely,

  
Jamie Clover Adams  
Secretary of Agriculture

JCA:JS:lkt

cc: Sen. Sam Brownback  
Sen. Pat Roberts  
Rep. Jerry Moran  
Rep. Jim Ryun  
Rep. Dennis Moore  
Rep. Todd Tiahrt



**KANSAS**  
**DEPARTMENT OF HEALTH AND ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Clyde D. Graeber, Secretary

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Testimony presented to

**House Environment Committee**

by

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

**House Bill 2860**

The Kansas Department of Health and Environment is pleased to have this opportunity to present testimony in support of House Bill 2860. This bill was drafted by the department to make several necessary changes in the sections of the solid waste law related to the payment of landfill tipping fees and the uses for the collected fees.

In 1999, the Kansas Association of Counties introduced HB 2484 which called for an increase in the landfill tipping fee in order to maintain several desirable grant and public education programs. Although a hearing was held for that bill in this committee, it was never worked. A year ago, KDHE supported KAC's proposal; however, a recent analysis of tipping fee revenues and expenditures from the solid waste management fund shows that an increase to the current \$1.00 per ton tipping fee is not necessary to maintain solid waste programs at or near existing funding levels. Two charts are attached to this testimony showing that projected tipping fee revenue should adequately support all necessary solid waste programs for at least the next two or three years.

This determination of adequacy assumes solid waste imports will not change significantly during this period. Total tipping fee revenue is very dependent on the quantity of solid waste imported to Kansas. In recent years, \$750,000 to \$1,000,000 has been received for waste imported to Kansas. However, in the past few months, there has been a major decrease in the amount of waste imported to landfills in southeast Kansas (perhaps as much as \$300,000 per year). This reduction has been factored into the attached charts.

**Overview of HB 2860**

This bill makes several changes to statutes which address the payment of tipping fees and expenditures from the solid waste management fund. All of the changes fall into the following five areas which are listed and explained on the following pages:



- Applicability of the Tipping Fee
- Uses for the Solid Waste Management Fund
- Eligibility for Grants
- New Enforcement Authority for Users of the Fund
- KDHE Reporting Requirements Related to the Fund

### **Applicability of the Tipping Fee**

It is proposed that the tipping fee be applied to some waste which does not currently pay the fee and that an exemption be established for other waste which is subject to the fee. These changes are listed below:

- (1) The current exemption for landfilled waste tires would be eliminated. This would make tire recycling projects eligible for grants under the waste reduction grant program.
- (2) The tipping fee would be applied to solid waste which is exported from Kansas through permitted transfer stations. Exporting counties have received grants from these funds even though they do not pay tipping fees.
- (3) Unpermitted disposal as authorized by KDHE for emergencies would not be subject to the tipping fee.
- (4) The secretary would have the authority to waive the tipping fee for disposal in permitted facilities when large quantities of waste are produced by natural disasters.
- (5) All government units would be exempt from the payment of tipping fees for construction and demolition waste not just cities, counties, and the state as now exists. Federal attorneys have pointed out the discriminatory nature of the current law and refused to pay based upon provisions in current federal law.

### **Uses for the Solid Waste Management Fund**

Several new uses and clarification of uses for the fund are proposed as listed below:

- (1) The types of projects eligible for solid waste plan implementation grants would be expanded to include innovative waste processing technologies which demonstrate non-traditional methods to reduce waste volume by recovering materials or energy.
- (2) The household hazardous waste grant program would be expanded to allow grants for the "enhancement" of existing programs and for public education when the nature of the local operations change.
- (3) The fund could be used to perform corrective actions at "active" or "closed" solid waste processing or disposal facilities if a threat to human health or the environment exists due to past waste management practices.
- (4) The fund could be used for the removal or stabilization of waste which has been illegally dumped when the responsible party is unknown, unwilling, or unable to perform the necessary corrective action.

- (5) The bill confirms that the fund can be used for statewide waste collection events coordinated by KDHE for potentially dangerous materials such as mercury, dioxin, or other chemical wastes.
- (6) The fund would be used for the disposal of household hazardous waste generated as a result of community clean-up projects associated with natural disasters like tornados, floods, fires, etc.

### **Eligibility for Grants**

The section of law dealing with the eligibility to receive grants needs to be expanded to ensure that grants are appropriately awarded. Two new eligibility criteria are recommended. First, since the grants are primarily designed to help communities implement their solid waste management plans, county or regional plans would need to be up-to-date with respect to the annual and five year reviews specified in the law. If a county or region has not completed its review and submitted documentation to KDHE, no public or private entity covered by that county's or region's plan would be eligible for a grant. Second, no public or private entity that is operating in substantial violation of applicable solid or hazardous waste laws or regulations would be eligible for any solid waste program grants.

### **New Enforcement Authority for Users of the Fund**

Current law gives the secretary no authority to take enforcement action when the recipient of a grant misuses awarded funds. The requested changes would allow the secretary to order repayment of improperly used funds and initiate a civil action in district court to recover any unapproved and non-reimbursed expenditures. The proposed changes authorize KDHE to enter private property to perform necessary corrective measures and establish the procedures KDHE must follow prior to initiating any corrective action on private property including communications with the landowner.

### **KDHE Reporting Requirements Related to the Fund**

The department is proposing a new requirement for the submission of an annual report to the legislature which is due before the first day of each session. These reports will summarize solid waste management fund revenues and expenditures for the previous fiscal year and evaluate the adequacy of the fund to satisfy all necessary program functions in the future.

### **Costs and Benefits of Recommended Changes to the Laws**

The costs of the recommended changes will affect the few cities and counties which export their solid waste from Kansas to another state through a permitted transfer station. At the present time, this is Cowley, Sumner, and Harper Counties. In total, these counties would pay about \$30,000 to \$40,000 per year. Additional new fees would be paid by the 20 waste tire monofills. In total, these facilities would pay about \$20,000 in fees per year. Some decrease in fee payments would result by the new exemptions explained above.

The new uses for the solid waste management fund proposed in this bill will bring several benefits to Kansas and allow the continuation of waste reduction grants which help hundreds of communities conserve landfill space. Unsightly and dangerous illegal dumps will be eligible for clean-up using the fund, facilitating such work when responsible parties cannot or will not take care of such problems. Also, clean-up of the massive waste problems associated with natural disasters will include the removal of dangerous chemical products allowing the remaining waste to more safely enter construction and demolition landfills or even be burned.

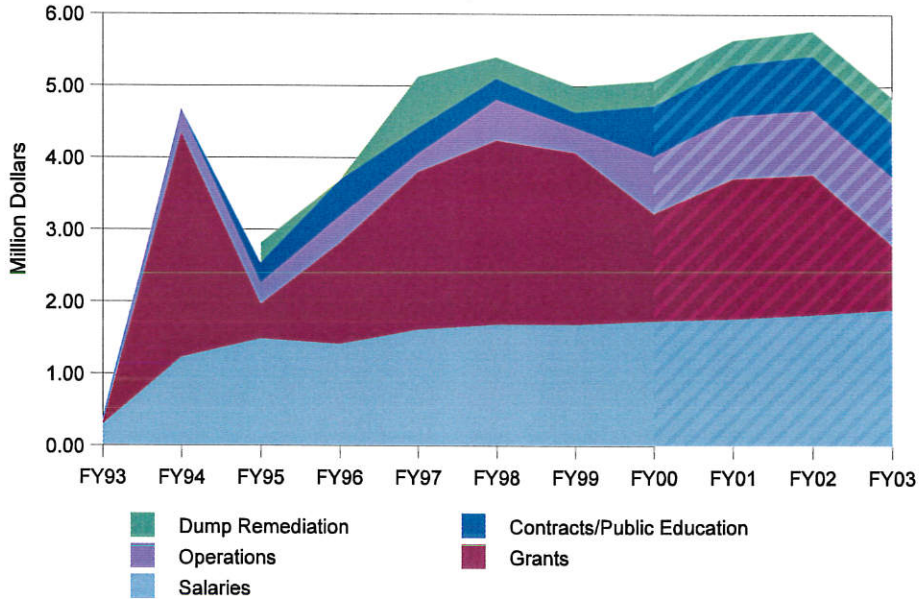
Finally, the suggested changes improve the accountability of KDHE and the users of the funds through new eligibility restrictions, enforcement authorities, and reporting requirements. As funds become more limited, it is very important to ensure that all expenditures yield tangible benefits to Kansans.

Thank you for allowing KDHE to provide testimony on HB 2860.

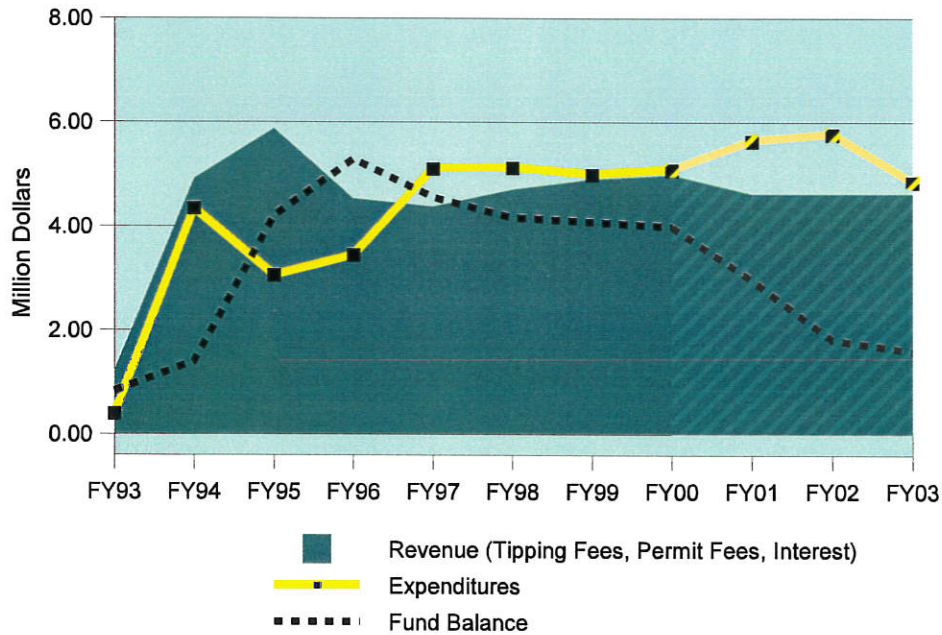


**Kansas Department of Health and Environment  
Bureau of Waste Management**

**Expenditures from the  
Solid Waste Management Fund**  
*Tipping Fee Remains at \$1.00 per Ton*



**Solid Waste Management Fund  
Revenue - Expenditures - Balance**  
*Tipping Fee Remains at \$1.00 per Ton*





## HARVEY COUNTY, KANSAS

ADMINISTRATION DEPARTMENT

COURTHOUSE  
P.O. BOX 687  
NEWTON, KANSAS 67114-0687

PHONE: 316-284-6806

FAX: 316-284-6856

February 10, 2000

Representative Joann Freeborn and Members of the House Committee of Federal and State Affairs:

Harvey County supports the enactment of House Bill 2860, as the bill would provide grant assistance for solid waste improvement.

Sincerely,

Craig R. Simons  
County Administrator

CRS/s

*House Environment  
2-10-00  
Attachment 5*

# DEFFENBAUGH INDUSTRIES, INC.

POST OFFICE BOX 3220  
SHAWNEE, KANSAS 66203  
913-631-3300

February 10, 2000

The Honorable Representative Joann Lee Freeborn, Chairperson  
Committee on Environment  
Kansas House of Representatives  
State of Kansas  
Topeka, KS 66612

RE: House Bill No. 2860

Madam Chairperson and Members of the Committee:

My name is Sean White and I appear before you today to share with you my company's position on House Bill No. 2860.

Deffenbaugh Industries, headquartered in Shawnee, has been a leader in solid waste management in Kansas for over 25 years. Deffenbaugh and its affiliate companies employ over 1,200 people at various locations in Kansas. We take great pride in our ability to provide efficient, cost-effective, and environmentally protective solid waste management and recycling services to the citizens and businesses of our state. Deffenbaugh has invested millions of dollars in recycling infrastructure in Kansas over the last several years. Our investments were made without grant funds and while bearing the largest share of the current tipping fee. These investments have resulted in Deffenbaugh Industries emerging as the leading recycler in Kansas.

House Bill No. 2860, among other things, proposes to expand eligible uses of funds from the \$1.00/ton solid waste "tipping fee". Recently, the Solid Waste Fund has collected approximately \$4M per year in tipping fees<sup>1</sup>. Of the aggregate amount of annual tipping fees, Deffenbaugh pays over \$1M. If this issue is correctly framed in the context of a tax, it is apparent the Department collects a large amount of revenue from a very limited universe of taxpayers - with Deffenbaugh paying approximately 25%.

While Deffenbaugh is obviously concerned about any expansion of tipping fee spending primarily out of self-interest, we nonetheless believe there are numerous valid reasons that the Legislature should not act at this time to approve new uses of the Fund:

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<sup>1</sup> Landfill Tipping Fees, Revenue and Use, Background Information, November, 1998, pg. 1, KDHE-BWM

*House Environment  
2-10-00  
Attachment 6*

## 1. Deffenbaugh Opposes Expansion in Spending of the Solid Waste Fund for Grants.

Given that \$6.8M in competitive implementation grants were awarded during State fiscal years 1996 to 1999, Deffenbaugh opposes any increases in spending related to grants. As a leader in the increasingly competitive solid waste field, Deffenbaugh has always been concerned about the number and magnitude of grants awarded to private sector companies. We are especially sensitive to this issue given the robust economic environment we all have enjoyed over the last several years. Interest rates have approached historic lows while the availability of capital is at all time highs. Indeed, there are more opportunities than ever for recycling businesses to access private capital markets<sup>2,3</sup>.

Deffenbaugh's analysis of the Department's data for grants awarded during State fiscal years 1996 - 1999 indicates that of the \$6.7M awarded, 36% went to the private sector, while 64% went to the public/nonprofit sector. Additionally, our analysis indicates that of the total 152 grants awarded, 28 were made to the private sector, while 124 were made to the public/nonprofit sector. It is also interesting to note that the dollar size of the average private sector grant (\$85,687) is nearly two-and-one-half times greater than the average public/non-profit sector grant (\$34,578). Given the sheer magnitude of Applications for competitive grants under the existing allowed uses of the Solid Waste Fund, the Department should consider reducing the number of grants awarded. Indeed, the Department has estimated that grant application requests typically range from \$6M to \$7M every six months<sup>4</sup>. For State fiscal years 1996 through 1999, that is a staggering \$48M to \$56M! Consideration should be given to either terminating competitive implementation grants to the private sector, or converting grants to low-interest loans. The current Kansas Solid Waste Management Plan states<sup>5</sup>:

*"The program evaluation process also involves examining all uses for the solid waste management fund...An important part of this assessment is a look at existing grant programs. Based upon past successes (or failures), grant programs can be continued, terminated, or modified. Another consideration is whether grant programs should ultimately be replaced by low interest or no interest loans as many states have done. This transition could be very important if tipping fee revenues diminish due to higher waste recovery rates or less imported waste..."*

Although it appears that some of the grant monies have supported worthy projects, Deffenbaugh feels that it would be worthwhile to take an objective look at the past successes and failures of the competitive implementation grants as suggested by the Kansas Solid Waste Management Plan prior to authorizing any expansion of grants to activities heretofore not covered. Elimination of grants to the private sector or conversion to low interest or no interest

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<sup>2</sup> A Financing Guide for Recycling Businesses: Investment Forums, Meetings, and Networks, September 1996, U.S.EPA

<sup>3</sup> Financing Environmental Technology: A Funding Directory for the Environmental Entrepreneur, November 1997, U.S. EPA Region 9

<sup>4</sup> Landfill Tipping Fees, Revenues and Use, Background Information, November 1998, pg. 7, KDHE-BWM

<sup>5</sup> Kansas Solid Waste Management Plan: A Decision-Maker's Tool for Kansas Officials and Private Service Providers, December 1996, Executive Summary, pg. 7, KDHE-BWM, et. al.

loan programs may allow the Department to meet its budgetary constraints while at the same time preserving grants for the public/non-profit sector. Additionally, elimination of grants to the private sector would relieve the Department and the Governor's Grants Advisory Committee of a function that is more appropriately suited to private capital markets - namely, assessing the financial risks and rewards of proposed private sector recycling ventures.

## **2. Deffenbaugh Opposes Increased Spending from the Solid Waste Fund for Household Hazardous Waste Projects that May Already Be Funded by Other Kansas Statutes.**

Kansas hazardous waste statutes already provided for taxes and fees to be paid by handlers of hazardous waste to fund various household hazardous waste projects. Indeed, K.S.A. 65-3460 authorizes the Secretary of the Department to administer a grant program to:

*"...(1) provide for the safe disposal of small quantities of hazardous waste in the possession of homeowners and other householders and farmers; (2) educate the public about the dangers posed by hazardous waste; and (3) encourage local units of government to develop local hazardous waste collection programs either individually or jointly..."*

## **3. Deffenbaugh Supports Efforts to Strengthen Grant Eligibility Criteria.**

Ensuring that grant applicants and/or recipients are generally in compliance with applicable solid waste planning and regulatory requirements makes common sense.

## **4. Deffenbaugh Supports Efforts to Minimize or Eliminate Fraudulent Misuse of Grant Funds.**

Information prepared by the Department for the 1998 Legislative Session suggested that questionable expenditures may have been made with grant funds<sup>6</sup>. In order to fully assess this issue, the Department may want to conduct an audit of grant funds awarded to date and identify those areas where misuse or misappropriation may have occurred.

## **5. Deffenbaugh Opposes Expansion of Spending from the Solid Waste Fund for Environmental Cleanups.**

House Bill No. 2860 proposes to grant "Superfund"-like cleanup authority to KDHE to force cleanups and cost-recovery actions to recoup Solid Waste Fund dollars. Deffenbaugh believes that those responsible for illegal dumping should be held accountable and should be compelled to cleanup the problems they cause. However, we believe that KDHE already has adequate statutory authority to compel responsible parties to perform cleanups. By Solid Waste Fund dollars more "easily accessible" for cleanups, the legislature may actually be creating a disincentive for responsible parties to spend their own money to cleanup their messes. The

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<sup>6</sup> Kansas Solid Waste Program Report, An Assessment of State Needs and Program Expenditures, Prepared for the 1998 Legislature, 1998, Appendix D, pg. D-3, KDHE-BWM



mind set may develop that it is easier to spend Solid Waste Fund dollars for cleanups up front and then spend more time and Fund dollars on attorney's fees seeking recovery of those costs. This method of fund management clearly has not worked with the Federal "Superfund" program and most likely will cause more problems than it solves in Kansas.

**6. Deffenbaugh Opposes Expansion of the Fee to Waste Heretofore Not Covered.**

Deffenbaugh Industries is also concerned about expansion of the fee to wastes heretofore exempt from fees - namely, tires, and waste shipped out of Kansas through transfer stations. These additional areas warrant further exploration prior to expanding the fee to new wastes (i.e., assess revenue and expense impacts, determine if fees are already collected for tires, etc.).

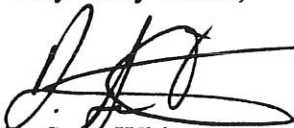
**7. Deffenbaugh Opposes "Tax Breaks" to the Federal Government that May Ultimately Lead to Requests to Increase the Tipping from its Current Level of \$1.00/ton.**

Although Deffenbaugh, as a private business, enthusiastically supports tax relief in general, we believe that creating a whole new category of exempt waste, especially for the Federal government, warrants further analysis. For instance, given the number of large Federal installations in Kansas (McConnell AFB, Fort Leavenworth, etc.) perhaps the amount of "lost" tipping fee review would put undue pressure on the Solid Waste Fund and ultimately lead to requests to increase the per ton tipping fee.

For these reasons, Deffenbaugh Industries urges the Committee to reconsider many of the key provisions of House Bill No. 2860. Given the magnitude of these issues and the large dollar amounts involved, perhaps this issue would be well suited to objective study during an interim study committee.

Deffenbaugh Industries appreciates the opportunity to testify before the Committee today, and we would be more than happy to answer any questions at this time.

Very Truly Yours,



D. Sean White

cc: Ronald D. Deffenbaugh, President



## Mid-America Tire Dealers Association

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**STATEMENT  
OF THE  
MID-AMERICA TIRE DEALERS ASSOCIATION  
BEFORE THE  
HOUSE OF REPRESENTATIVES ENVIRONMENT COMMITTEE**

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Madam Chairman and Members of the Committee:

My name is Shawn Herrick, Executive Director of the Mid-America Tire Dealers Association (MATDA). I am submitting testimony on behalf of the Board of Directors and the membership of the MATDA. Thank you for allowing us to express our position.

The Mid-America Tire Dealers Association is an organization dedicated to the promotion of the image and success of the tire industry in Kansas and Nebraska. MATDA was incorporated in 1990, and represents over 175 member businesses and their employees.

**In reference to HB 2860, an act concerning solid waste tonnage fees, we are opposed to striking the language on lines 23-25 on page six. This would remove the current exemption from tonnage fees for waste tires.**

This association has been very involved in the scrap tire program from its inception. In 1990, tire dealers in Kansas understood the need to address tire disposal, and supported efforts for solutions. The mishandling of scrap tires gave our industry a "black eye," and upstanding dealers had to compete with those who refused to cooperate. The dedication of lawmakers, the regulating community and the dealers has resulted in laws and regulations that are working.

Tire dealers must use permitted entities which, with enforcement, prevents illegal dumping. **Dealers and consumers in Kansas contribute on average of \$50 per ton** of waste tires through the 50¢ excise tax on the sale of new tires for the purpose of dealing with waste issues. The dollars generated by the 50¢ excise tax have provided the funding for cleaning up stock-piled scrap tires, as well as providing funding for other grant programs.

Scrap tire issues have been in the forefront of the world's tire industry for more than 15 years. Rubber manufacturers have invested millions of dollars in research for waste processing technologies. Numerous innovative or nontraditional means of dealing with scrap tires have been developed and should be able to support themselves without grant dollars from the state: which has been offered as the reason for an effort to remove this exemption for tires in the solid waste laws.

Our members feel that they are already providing the means for \$50 per ton for managing waste tires; the mechanism is in place for managing their waste stream, and innovative waste processing should be viable on its own merits and not supported by tax dollars. I would like to make it clear that the independent tire dealers, as an industry, have been part of the solution to waste problems in their industry. **Because of these reasons, the exemption for waste tires from a general solid waste tipping fee should be left intact.**

Thank you for allowing time for the MATDA position. The favorable consideration of this request would be appreciated.



**KANSAS**  
**DEPARTMENT OF HEALTH AND ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Clyde D. Graeber, Secretary

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Testimony presented to

**House Environment Committee**

by

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

**House Bill 2861**

The Kansas Department of Health and Environment is pleased to have this opportunity to present testimony in support of House Bill 2861. This bill was drafted by KDHE to:

- (1) Update the waste tire statutes with respect to certain obsolete grant provisions
- (2) Clarify KDHE's regulatory authority related to accumulations of tires on rims
- (3) Confirm that KDHE can use the waste tire management fund to directly contract for the disposal of waste tires collected through county-coordinated amnesty collection programs

Each of the three areas are briefly explained below.

**Delete Obsolete Grant Provisions**

The provisions of K.S.A. 65-3424f related to base grants and competitive market development grants are deleted. The base grants provided counties with financial aid to fully inventory their counties to identify all tire piles. This work was carried out in 1997 and 1998 by about 60 counties which took advantage of this grant program. The market development grant program was available during fiscal years 1997 and 1998. Only one grant was awarded to a tire recycler in Wichita (Mid-Continent Resource Recovery). An additional portion of the abatement grant section which refers to the market develop grants should also deleted.

**Regulation of Tire Accumulations on Rims**

Most illegal or unwanted tire piles contain a mixture of tires on rims and off rims. For the purposes of the statewide clean-up project being administered by KDHE, it has been necessary to consider all of the tires as "waste tires." It is not possible to implement a clean-up program which distinguishes between tires on or off rims. The current statutory definition of "waste tire" does not

specify whether a “waste tire” can be on a rim. However, the statutory definition of “used tire” clearly limits used tires to tires that have been removed from rims.

KDHE believes that environmental circumstances warrant a statutory change which will make it very clear that tires on rims should be subject to the same laws and regulations as tires which have been removed from rims. As stated above, clean-up projects cannot reasonably separate tires which are on rims from those which are off rims. Thus, the statutory definition should confirm that “waste tires” includes tires which are on or off rims. Also, large accumulations of tires on rims have been identified at several sites and they present various impacts and risks related to fire, rodent habitat, and nuisance.

The proposed new definition for “used tire” would include tires on rims. If the owners can show that their tires have value (to be reused as tires) in accordance with the sales and inventory test in existing regulations, the used tire accumulation would not be subject to all of the same standards as waste tires. The greatest benefit to passing the “value test” is the avoidance of permitting requirements for accumulations of greater than 1000 tires. Some storage requirements would still exist for outdoor accumulations of greater than 500 used tires.

#### **Direct KDHE Contracting for Disposal of Waste Tires Collected During Amnesty Programs**

Existing law gives KDHE authority to directly contract for the disposal of waste tires found in piles. Existing grant provisions authorize KDHE to award grants to counties to dispose of the waste tires collected during local amnesty collection programs. The law is silent as to whether KDHE can dispose of the piles of tires which are made during an amnesty collection event. The proposed change will confirm that KDHE may directly contract to dispose of these tires.

Over the past several months, county amnesty programs have taken place and KDHE has allowed the statewide tire pile clean-up contractor to dispose of the tires collected during the amnesty events. This decision has allowed the overall program to be implemented in a more efficient and cost effective manner. Using the state contractor has yielded several benefits including: (1) state and local staff save time in developing and managing grant contracts, (2) counties and regions avoid the complex and time-consuming bid process, and (3) the average cost for tire disposal is lower than if multiple small disposal contracts were bid due to the economies gained by one large contract. KDHE’s involvement in promoting and implementing the amnesty events in cooperation with county staff has worked very well in the 10 to 15 counties which have now completed this step in the tire clean-up process.

A copy of a map showing the status of our statewide waste tire clean-up project is attached. At this time, it appears that the clean-up program will probably last through the end of the time period authorized by statute (July 1, 2001).

Thank you for this opportunity to provide testimony in support of HB 2861.

# STATEWIDE WASTE TIRE CLEAN UP STATUS

A C 100 (1) 100 CHEYENNE	A C 300 (2) RAWLINS	A C 14,143 1,000 DECATUR	A 300 (3) 800 1,500 NORTON	17,367 710 (4) 1,390 PHILLIPS	A 210 (2) 1,200 185 SMITH	A JEWELL	A REPUBLIC	A 11,511 WASHINGTON	C 106,370 5,880 (24) MARSHALL	A C 140,139 1,920 NEMAHA	A 3,928 780 BROWN	A DONIPHAN	
A C 33,921 610 (2) 9,500 SHERMAN	A 28,202 1,900 THOMAS	A 2,530 SHERIDAN	A 18,494 675 (5) 1,200 GRAHAM	A C 25,280 1,150 (3) ROOKS	A 3,528 400 (2) OSBORNE	MITCHELL	A C 18,793 750 (3) CLOUD	A WASHINGTON	A MARSHALL	A 80,775 1,450 JACKSON	A 30,000 (1) ATCHISON	A 921 (1) LEAVENWORTH	
A 8,326 1,200 WALLACE	A LOGAN	A 4,429 5,025 GOVE	300 (2) 770 TREGO	A 455 (3) ELLIS	A 125 (1) 1,675 RUSSELL	A LINCOLN	A OTTAWA	A 49,674 CLAY	A RILEY	A 152,761 1,500 (1) 1,500 SHAWNEE	A 7,929 5,024 (12) JEFFERSON	A 921 (1) WYANDOTTE	
GREELEY	A WICHITA	A 9,228 SCOTT	A LANE	A NESS	A 504 (2) BARTON	A ELLSWORTH	A SALINE	A DICKINSON	A GEARY	A WABAUNSEE	A C 49,087 1,000 OSAGE	A 34,648 2,954 (15) DOUGLAS	A C 108,217 600 MIAMI
A 4,347 (19) 4,900 20,000 HAMILTON	A 1,125 KEARNEY	FINNEY	1,589 HODGEMAN	A PAWNEE	A STAFFORD	RICE	MCPHERSON	20,169	A MORRIS	A 140 (1) LYON	A C 5,254 COFFEY	A C 12,961 ANDERSON	A C 41,821 5,200 LINN
A 4,347 (19) 4,900 20,000 HAMILTON	A 1,125 KEARNEY	FINNEY	1,589 HODGEMAN	A PAWNEE	A STAFFORD	750 EDWARDS	15,862 RENO	A 97,217 3,700 (1) SEDGWICK	A 34,511 MARION	A CHASE	A 3,147 458 (2) WOODSON	A 17,214 2,800 ALLEN	A 14,803 5,778 (8) BOURBON
A STANTON	A 77,219 GRANT	HASKELL	GRAY	FORD	A 32,187 500 PRATT	A 5,952 1,000 KINGMAN	A 97,217 3,700 (1) SEDGWICK	A 34,511 BUTLER	GREENWOOD	A C 3,605 WILSON	A C 12,859 NEOSHO	A C 2,568 CRAWFORD	
MORTON	A STEVENS	A SEWARD	A 5,192 (6) MEADE	CLARK	A KIOWA	A BARBER	A 247,301 SUMNER	A 8,745 200 COWLEY	A ELK	A MONTGOMERY	A C 25,664 LABETTE	A 30,680 796 (6) CHEROKEE	

Data Sources:  
 county boundaries - KGS/KCDB  
 tire information - KDHE/BWM  
 created by KDHE/BWM  
 updated February 9, 2000

1,964,716 Waste Tires Cleaned Up

73,279 Inventory to be Cleaned Up  
 (the number in parenthesis represents  
 the number of piles)

31,860 Exempt Due to Beneficial Use

22,700 Enforcement Sites

21,792 Ineligible

A = Applied for Amnesty Event

A = Completed Amnesty Event

C = Approved for Consolidation