

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:09 a.m. on January 26, 2000 in 245-N of the Capitol.

All members were present except: Senator Pugh who was excused.

Committee staff present:

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

Conferees appearing before the committee:

Clyde Graeber, Secretary, Kansas Department of Health and Environment
Greg Foley, Chief, Livestock Management Section, Water Bureau, Kansas Department of Health and Environment
Karl Mueldener, Director, Water Bureau, Kansas Department of Health and Environment
Ron Hammerschmidt, Director, Division of Environment, Kansas Department of Health and Environment

Others attending:

See attached list.

Information requested by Chairperson Corbin from Sharon Falk, Manager, Big Bend Groundwater Management District #5, testimony of January 19, 2000 was submitted for the record (Attachment 1).

With a motion from Senator Huelskamp and a second from Senator Morris the minutes of January 19, 2000 were adopted.

Chairperson Corbin appointed a subcommittee to study the Water Banking Bill, they are as follows: Senator Huelskamp, Chairperson, Senator Vratil and Senator Stephens.

Review by the Department of Health and Environment regarding the progress on the implementation of 1998 HB 2950.

Secretary Graeber said **HB 2950** was passed to provided direction the Kansas Department of Health and Environment to enhance the Livestock Waste Management Program (LWMP) relative to confined animal feeding operations, specifically for swine production facilities. Since the programs inception, staff has strived to ensure that the best available technology is understood and utilized in protecting the environment of Kansas. He said KDHE anticipates updating the design standards in the Year 2000. He reviewed staff training; said to comply with statutes KDHE conduct statewide swine operator certification training meetings, and they also held five swine producer outreach meetings during the year. The research being done a Kansas State University was touched on briefly. KDHE continues to address public comments on a daily basis primarily focused on the swine industry. Their agency is committed to the protection of valuable and vulnerable water resources of the state (Attachment 2).

Greg Foley responded to questions on non compliance , vegetative area filters, and proof of ownership. Karl Mueldener responded to questions about lagoon covers. Dr. Ron Hammerschmidt responded to questions about their data base and the authority of the secretary to mandate permeable liners in animal units smaller than 3,714 that are located in sensitive groundwater areas. Responding to a question concerning why KDHE was sending letters requesting the names of neighbors within a mile radius of swine operations, Dr. Hammerschmidt said it was probably a part of the requirement for a permit renewal.

The meeting adjourned at 8:58 a.m. The next meeting will be January 27, 2000.

SENATE ENERGY & NATURAL RESOURCES
 COMMITTEE GUEST LIST

Please Sign in
 Black Ink

DATE: 1-26-2000

NAME	REPRESENTING
Dak Lambley	Ks. Dept of Agrico
Garry Keefer	Ks Dept of Ag
Dwight Metzler	Metzler Group
Jim Allen	Sea board
JOHN BOTTENBERG	KPPA
Mike Jensen	Ks Park
Tom Bubno	Allena Assoc.
James M. Ferrell	HEAP
Ally Linsky	Ks. Public Health Assn.
Rich McKee	KLA
Vonnie Barone	Member, Child
David Miles	Associated Press
Judy Mohr	16. Assn of Counties
Paul Johnson	KCC
GREG A. Foley	KDHE
Margaret Fast	KWO
John Galmje	KDA

TESTIMONY PRESENTED
TO THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
JANUARY 19, 2000 - SENATE BILL 388
SHARON FALK, MANAGER
BIG BEND GROUNDWATER MANAGEMENT DISTRICT #5

Thank you Chairman Corbin and committee members for the opportunity to appear before you today.

Senate Bill 388 sets forth the framework for water banking in the State of Kansas. This bill addresses the fundamental issues needed to allow the formation of five pilot banks in the State.

The water banking concept, developed by the Special Task Force, should be considered by the legislature as a viable tool in the management of water rights. It adds flexibility to the current system while assuring a reduction in water use.

As many know, a partnership was formed in the early nineties to address the water resource issues in the Rattlesnake Creek Basin. The plan, which has been accepted by the Chief Engineer, will go forward now with GMD #5 implementing several of the individual programs. The partnership determined that water rights banking should be considered as a component in the plan and is needed to reduce water usage. An example of how we hope to use this program will be to move water use from near the stream to other areas less effected by pumping. We view this strictly as a voluntary program for the water users of our district.

The Groundwater Management District is committed to resolving the issues in this Basin. The District is ready to work with the Chief Engineer - Division of Water Resources to develop the needed rules and regulations in the District, necessary to ensure that the provisions of this bill are carried forth.

In closing, we feel the water rights banking legislation will add the needed flexibility to the current system, ensure a reduction in water use and allow the movement of water from sensitive groundwater areas to less sensitive areas. This is a program that the water users in the basin would like to utilize while the state would still maintain considerable oversight. Therefore, we feel it is critical that we be given the opportunity to make this program work for us.

Thank you again Chairman Corbin and Committee members for your time. I will be glad to answer any questions that you may have.

Senate Energy & Natural Resources

Attachment: /

Date: 1-26-2000



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DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Clyde D. Graeber, Secretary

**Update on the Progress
of the
Livestock Waste Management Program
Pursuant to HB 2950
of the
1998 Legislative Session**

**Presented to the
Senate Energy and Natural Resources Committee**

Mr. Chairman and members of the Senate Energy and Natural Resources Committee, I am pleased to appear before you today to provide an update on the progress of the Livestock Waste Management Program. In 1998, the legislature passed HB 2950 which provided direction for the Kansas Department of Health and Environment to enhance the Livestock Waste Management Program (LWMP) relative to confined animal feeding operations, specifically for swine production facilities.

The Kansas Department of Health and Environment (KDHE) has the mission to protect and improve the health and environment of Kansans through regulation of waters of the state. Our agency's philosophy is to implement the laws as intended by adopted statutes and regulations. The LWMP has the charge to work with entities involved in animal agriculture to educate and implement statutory and regulatory requirements to maintain and/or achieve environmental compliance to protect the waters of the state.

Environmental requirements have changed since KDHE initiated the LWMP in 1968. However, HB 2950 provided an open door for a broad scale review of the state's program. Since the program's inception, staff have strived to ensure that the best available technology is understood and utilized in protecting the environment of Kansas.

Regulations:

In calendar year 1999, KDHE did not develop or propose any new regulations for adoption. The priority of the program focused on implementation of the existing laws and newly adopted regulations. KDHE anticipates updating the design standards (the guidelines for facility design) in the Year 2000. The new guidelines will be placed on public notice for comments and will be published after I have made formal adoption.

The LWMP has acclimated well to the changes in the program. Staffing has been added, consistent training has been provided, database management systems have been created, application and permit review procedures have been streamlined, and inspections and reporting requirements have been enhanced. LWMP staff conducted 1,255 inspections in the Federal Fiscal Year 1999 on federal, state, and certified facilities. Inspections are only one facet of the program KDHE must perform in concert with plan review, technical assistance, and public interaction to name a few. We investigated complaints, discharges, site appraisals, and post-construction inspections. The central office team focuses on the fine tuning of program implementation

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guidance, enhancements to the newly developed database, continued training efforts to internal and external customers, and the review and oversight of the entire permitting program. In addition, all public comments received on agricultural permits are reviewed and administratively routed for concurrence. Multiple public hearings on proposed permits have been conducted by KDHE when deemed appropriate.

Staff Training(Internal Customers):

Staff training continues to be a key element to enable KDHE the opportunity to meet statutory and regulatory expectations. In late 1998, KDHE administrative staff identified the following priority areas for training needs:

- ◆ HB 2950
- ◆ Newly adopted Kansas Administrative Regulations
- ◆ Program Training/Reference Manual
- ◆ Networked Computer Operating Systems
- ◆ Electronic mail Communication Systems
- ◆ New Livestock Waste Management Database
- ◆ Introduction to computerized maps / Geographic Information Systems (and supporting technologies)

Training efforts began early last year with the distribution of the Livestock Waste Management Training Manual. The training manual included HB 2950 and the newly adopted Kansas Administrative Regulations.

Compliance Workshops(External Customers):

KDHE held five swine producer outreach meetings during the past year. These meetings were to help Kansas swine producers understand and comply with statutory and regulatory requirements. The meetings were held in Seneca, Linn, Garden City, Newton, and Manhattan. Swine producers were presented information and given the opportunity to comment or ask any questions regarding the new requirements.

In accordance with statutory requirements, KDHE conducted seven statewide swine operator certification training meetings. The meetings were held in Salina, Hays, Dodge City, Wichita, Chanute, Lawrence, and Topeka. KDHE tried to make it as convenient as possible for swine producers to attend by holding the meetings in cities where district offices were located. **The total attendance at the workshops was 166 facility operators; 165 certified swine facility operators successfully completed the six-hour course.**

Research:

KDHE has a commitment to review new technology or science that has the potential to impact the environment. The most significant research impacting the livestock industry in Kansas is the Animal Waste Lagoon Water Quality Study, a research report by Kansas State University. The study is a comprehensive environmental assessment of lagoons with three primary focus areas: (a) toxicity - what are the constituents in the lagoon that pose a threat to water quality and public health? (b) input loading - at what rate does waste seep from a lagoon under field conditions? and (c) aquifer vulnerability - how do soil properties, geology, and water table depth affect the risk of waste movement from the lagoon to the groundwater?

After review of the first two phases of the study, the department is analyzing and developing implementation strategies that may include individual waste storage structure liner prescriptions.

The third phase of the study will be released in calendar year 2000. KDHE will review the findings and recommendations of the study to determine the applicability to KDHE regulatory programs. If the findings of the study merit change in one or many KDHE programs, a comprehensive review will be performed to identify statutory and regulatory modifications/development that are necessary.

While we are not recommending changes to the statutes at this time, we believe that there may be some issues that quite possibly may warrant review by the legislature at some future date. One such issue that has come to our attention is proof of ownership of permitted facilities. Currently there are no requirements to own the land that a facility resides upon to obtain an Agricultural and Related Waste Permit. The agency believes an additional environmental safety net could be established if a facility that is leased or unowned is required to obtain a facility closure bond. This could provide protection for the environment and the landowner.

Another area that may deserve review is the possibility of enhancing the requirements that pertain to financial assurance for lagoon or pond closure. This enhancement could reduce the animal unit capacity of a facility that is required to have financial assurance. Currently the threshold is for swine facilities greater than 3,724 animal units.

Evaluation:

Multiple tools of evaluation were incorporated into the statutes for swine facilities in the 1998 Legislative session. Requirements with specific deadlines included Manure Management Plans (MMP), Nutrient Utilization Plans (NUP), Swine Facility Operator Certification (OC), Groundwater Monitoring and inspection frequency. All of these requirements addressed swine facilities greater than 1,000 animal units. An additional deadline exists for swine facilities greater than 3,724 animal unit, regarding the inclusion of Financial Assurance (FA) for lagoon or pond closure as contained in statute. KDHE developed a regulatory deadline for FA on facility closure for July 1, 1999. All of the subject facilities that chose the bonding option incorporated the facility closure and the lagoon or pond closure in the same bond.

Twenty-three (23) facilities greater than 3,724 animal units chose this option. The bond amounts ranged from \$72,618.07 to \$1,000,054.00. The total amount of surety currently being held under bond is \$6,535,497.53. One hundred forty one (141) permitted facilities were subject to the requirements of H.B.2950. The department sent multiple mailings to inform Permittee's of the requirements and included attachments of outlines defining minimum requirements and examples. The requirements apply to all active and inactive permitted facilities. Currently, six of the subject facilities remain out of compliance for at least one or multiple requirements of MMP, NUP, FA, or OC. The liner integrity verification requirements were applicable to swine facilities that were greater than 3,724 animal units. This component required lagoon liner integrity documentation or installation of groundwater monitoring wells. Seventy-one (71) facilities were notified multiple times of this statutory requirement.

Conclusion:

KDHE addresses public comments on a daily basis primarily focused on the swine industry; groundwater protection, depletion of valuable and vulnerable water resources, odor from facilities, factory/corporate farms, and local infrastructure that are perceived to have environmental, social and economic impacts. Many of the issues were researched and deliberated in the 1998 Legislative Session during the development of new laws for Kansas agriculture. KDHE appreciates the tremendous commitment each lawmaker exercises every session and recognizes that the art of crafting law is a challenge that defines the history as well as the future of Kansas.

This report is an abridged version of the formal program report provided to the committee prior to the session. I am more than welcome to entertain any questions at this time.