

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:00 a.m. on March 21, 2000 in 245-N of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

David Pope, Chief Engineer, Director, Water Resources Program, Kansas Department of Agriculture
Representative Carl Holmes, 125 District
Margaret Fast, Kansas Water Office
Ron Hein, Safety-Kleen Operation

Others attending:

See attached list.

With a motion from Senator Morris and a second from Senator Goodwin the minutes of March 15, 2000 were approved as written.

The hearing was opened on **HB 2985**—Appropriation of water for use in another state; conditions.

David Pope, Chief Engineer, Division of Water Resources, presented testimony for information purposes. He said, whether to amend the statutes in question was a policy question, and as all other duties and responsibilities that KDA has, the department will do its best to administer the laws enacted by the legislature. If the proposed legislation was consider to be passed it would be appropriate to include the following amendment as a new item (3) in Section 1 (b); (3) the proposed diversion and transportation of water will not allow waste apportioned to the state of Kansas by interstate water compact to be used in another state Attachment 1). Responding to questions regarding the amendment he gave several examples of when this would apply.

Representative Carl D. Holmes, 125th District, gave a brief history of why he asked to have the bill introduced. He said the bill is designed to prevent the transfer of water to another state if statutes and common law of the importing state were violated for an illegal use or purpose (Attachment 2).

The hearing on **HB 2985** was closed.

Senator Morris moved to adopted the amendment recommended by David Pope, and **HB 2985** be passed as amended. The motion was seconded and it carried.

The discussion was opened on **HB 2861**-Waste tire program.

Senator Vratil moved to amend the bill to allow waste tires cut into two or more parts to be used as daily cover material for a landfill (Attachment 3). Senator Huelskamp seconded the motion. The committee discussed the merits of using the cut tires in landfills, and why only one cut. The motion carried.

A letter from Edward R. Moses, Kansas Cement Council, submitted a letter supporting **SB 658** that was introduced at the request of Ron Hein on behalf of Safety-Kleen Corporation. The letter states the purpose of **SB 658** is to clarify definitions regarding hazardous waste facilities (Attachment 4). Senator Vratil then moved to amended the provisions off **SB 658**, which defines the term “hazardous waste facility.” from the current defined term “hazardous waste disposal facility.” into **HB 2861**. The motion was seconded by Senator Biggs. Discussion followed.

Responding to a question Ron Hein, said the provisions of **SB 658** only apply to one facility in the state.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The vote was taken and the amendment was adopted. Senator Vratil then move that **HB 2861** be passed as amended. Senator Morris seconded the motion. The motion carried.

Chairperson Corbin referred to **Sub for HB 2144**. Margaret Fast, Kansas Water Office responded to questions regarding amendments they were offering (Attachment 5). Senator Biggs moved that the Water Office's amendments be adopted. Senator Goodwin seconded the motion. Senator Huelskamp asked that the action be delayed for one day, so that he could have an opportunity to look over the amendments and digest the changes recommended. Chairperson Corbin agreed to do so, and referred to **HB 2823** for committee discussion.

The committee discussed the bill and its relationship to SB 571. Senator Vratil was asked if he thought the bill would set off another series of litigation. He said it had the potential to do that.

Senator Huelskamp moved that **HB 2823** be passed. Senator Morris seconded the motion. The motion carried.

Chairperson Corbin referred to **HB 2103**—Possession of hunter education certificate required while hunting. Members of the committee discussed at length the pro and cons of allowing the public to attest to having taken the hunters education course. Senator Biggs moved that **HB 2103** be passed. The motion was seconded by Senator Huelskamp. The motion carried.

The meeting adjourned at 8:56 a.m., and the next scheduled meeting will be on March

STATE OF KANSAS

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KANSAS DEPARTMENT OF AGRICULTURE

**TESTIMONY BEFORE THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
REGARDING HOUSE BILL NO. 2985**

March 21, 2000

by

David L. Pope

Chief Engineer

Division of Water Resources

Kansas Department of Agriculture

Mr. Chairman and Members of the Committee, thank you for the opportunity to present testimony regarding House Bill No. 2985. I appear on behalf of Secretary of Agriculture, Jamie Clover Adams, and myself as Chief Engineer of the Division of Water Resources. House Bill No. 2985 amends K.S.A. 82a-726, which is our current law dealing with the use of water in another state.

This current statute does allow water to be diverted and transported for use in another state, if the proposal complies with certain conditions. Current law requires any person proposing to use water in another state to make application and receive a permit to appropriate water for beneficial use or approval of a change to an existing water right from the Chief Engineer. It further requires that the Chief Engineer approve the application if all provisions of the Kansas Water Appropriation Act (K.S.A. 82a - 701 *et seq.*), the Water Transfer Act (K.S.A. 82a 1501 to 1506), and any other state law pertaining to such diversion, transportation and use of water, are met. The Chief Engineer shall approve such application upon such terms, conditions and limitations as necessary to protect the public interest.

A Water Transfer is defined as the diversion and transportation of water in a quantity of 2000 acre feet or more per year for beneficial use at a point of use outside a 35 mile radius from the point of diversion. Proposed uses for out of state use that involve larger quantities and longer distances would require a Water Transfer Act proceeding, but it would not apply to any transfer just across the line.

In order to protect the health and safety of Kansans, the law requires that an express condition be added to these water rights that says, "should any such water be necessary to protect the public health and safety of the citizens of this state, such application may be suspended, modified or revoked by the chief engineer."

House Bill No. 2985 amends current law by adding a provision that requires the Chief Engineer to approve an application for out of state use only if he or she finds the statutes and common law of the state where the water will be used do not prohibit the proposed use of such water. It further requires the Chief Engineer to rely on a determination by the Attorney General of the other state as to whether the proposed use would be prohibited in that state.

By way of background information, some permits and approval of changes to existing water rights have been issued for use of water in an adjacent state, but this has occurred infrequently. Information compiled by the Division of Water Resources, from the water rights computer data base, indicates that 12 entities have multi-state use involving 36 water rights. In each case, there is some operational connection across state lines where water is used in both states. Each of these operational connections are either municipal systems or rural water districts that have boundaries that extend beyond state lines, or local farm units that have land ownership in an adjacent state.

The statute involved here was last amended in 1984 in response to a United States Supreme Court case that determined that groundwater is subject to the commerce clause of the United States Constitution. Basically, the decision indicated that a state could not prohibit the use of groundwater in another state unless it uses the same criteria it uses for consideration of applications for permit to appropriate water in it's own state. The court included an exception that apparently would allow the proposed use of water to be denied, or revoked in the future, if the water proposed to be transported out of state is necessary to protect the health and safety of the state where the water is to be diverted from. Prior to 1984, Kansas allowed the transport of water only to states with a reciprocating agreement that allowed water from that state to be transported for use into Kansas.

Neither current law nor the proposed legislation explicitly deal with situations where interstate river compacts exist between two or more states. If you are inclined to pass this proposed legislation, I believe it would be appropriate to include the following amendment as a new item (3) in Section 1 (b):

(3) the proposed diversion and transportation of water will not allow water apportioned to the State of Kansas by an interstate water compact to be used in another state.

This language would make clear that someone could not take water explicitly apportioned to the State of Kansas and use it in another state. For example, this would mean someone could not take a Kansas water right, that allows the use of water delivered to the State of Kansas pursuant to the terms of a compact, and propose to use the water in another state. The State of Kansas has fought long and hard to enforce the terms of at least two of our compacts to secure water for the use of our citizens. It would then seem inconsistent for some of that same water to be allowed to be used out of state. I do not believe such a restriction would conflict with the U. S. Supreme Court case referred to above, since an interstate river compact is a Federal law and should be viewed as an exception to the Commerce Clause provision in question.

This information regarding the interstate transfers of water has been provided for your information. Whether to amend the statute in question is a policy question. As with all the other duties and responsibilities that KDA has, the department will do it's best to administer the laws enacted by the legislature.

I appreciate the opportunity to comment on this bill. I will be happy to respond to any questions you might have regarding this topic.

COMMITTEE ASSIGNMENTS

CHAIRMAN: UTILITIES COMMITTEE
 CHAIRMAN: FISCAL OVERSIGHT COMMITTEE
 MEMBER: AGRICULTURE & NATURAL RESOURCES
 BUDGET COMMITTEE
 MEMBER: SELECT COMMITTEE ON
 INFORMATION MANAGEMENT
 MEMBER: JOINT COMMITTEE ON ADMINISTRATIVE
 RULES AND REGULATIONS
 MEMBER: NATIONAL CONFERENCE OF STATE
 LEGISLATURES—ASSEMBLY OF
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Testimony
 presented to
 Senate Energy & Natural Resources Committee
 on **HB 2985**
 March 21, 2000

Chairman Corbin and committee members:

I requested this bill after an attempt was made to transport groundwater from my district to Oklahoma to circumvent Oklahoma law regarding a hog farm location. Oklahoma turned down the farms water application due to the distance from a recreation area. The company then had an employee apply for a Kansas water right and the application indicated the water would be transported by pipeline to Oklahoma to circumvent the Oklahoma law. I made a request of Kansas Department of Agriculture attorneys for denial of the application and they said they would not support denial even if the water was being used for an illegal purpose in another state by that states law. They said Kansas law required granting the permit, providing it met Kansas regulations, even if its purpose was to circumvent another states statutes and/or court orders. I then was in contact with Oklahoma legislators and the Oklahoma Attorney Generals office as to what action they would take if Kansas granted the water right. They indicated to me they would sue Kansas in Federal court if Kansas granted the water right. The company dropped support for the application after it created a public relations nightmare. The employee did not respond to an additional

Senate Energy & Natural Resources

Attachment: 2

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information request by the Division of Water Resources and the application is now dropped for lack of requested information.

As a result of the actions of attorneys of the Department of Agriculture, I started working on a bill draft to correct the problem. I contacted several legislators and state agencies with a bill draft several weeks ago. HB 2985 is about the third bill draft. The agencies indicate HB 2985 would do the following:

The bill is designed to prevent the transfer of water to another state if statutes and common law of the importing state were violated for an illegal use or purpose.

The bill is designed to allow the transfer of water to another state if the water use is a legal use or if the importing state lacked available water and the water use is a legal use.

The current law governing transfer of water to another state was first passed in 1976 and amended in 1984. I believe that when this law was previously passed, no one anticipated that Kansas water could be used to circumvent another states law. In drafting this legislation, it is my desire to apply the law only to illegal use by any applicant transporting water from Kansas.

I appreciate your time and would ask for your favorable support of HB 2985.

Representative Carl D. Holmes

Carl Dean Holmes

Sen Until

Session of 2000

HOUSE BILL No. 2861

By Committee on Environment

2-3

9 AN ACT concerning waste tires; amending K.S.A. 1999 Supp. 65-3424,
10 65-3424f, 65-3424g and 65-3424m and repealing the existing sections. 65-3424a,
11

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

13 Section 1. K.S.A. 1999 Supp. 65-3424 is hereby amended to read as
14 follows: 65-3424. As used in K.S.A. 65-3424 through 65-3424i, and
15 amendments thereto, unless the context otherwise requires:

16 (a) "Abatement" means the processing or removing to an approved
17 storage site of waste tires which are creating a danger or nuisance.

18 (b) "Beneficial use" means the use or storage of waste tires in a way
19 that creates an on-site economic benefit, other than from processing or
20 recycling, to the owner of the tires.

21 (c) "Contaminated waste tire" means a tire which, as determined in
22 accordance with rules and regulations adopted by the secretary, is recov-
23 ered in a project to abate a waste tire accumulation and is so coated by
24 or filled with dirt, mud, sludge or other natural substances as to render
25 the tire substantially unsuitable for processing.

26 (d) "Landfill" means a disposal site in which the method of disposing
27 of solid waste is by landfill, dump or pit and which has a solid waste
28 disposal area permit issued under K.S.A. 65-3401 et seq., and amend-
29 ments thereto.

30 (e) "Mobile waste tire processor" means a person who processes
31 waste tires at other than a fixed site.

32 (f) "Municipal landfill" means a landfill where residential waste, or
33 residential and other nonhazardous waste, is placed for disposal.

34 (g) "Person" means any individual, association, partnership, limited
35 partnership, corporation or other entity.

36 (h) "Process" means bale or cut or otherwise alter whole waste tires
37 so that they are no longer whole.

38 (i) "Secretary" means the secretary of health and environment.

39 (j) "Store" or "storage" means the placing of waste tires in a manner
40 that does not constitute disposal of the waste tires. Storage includes the
41 beneficial use of waste tires as silo covers and such other beneficial uses
42 as the secretary determines do not create health or environmental risks.

43 (k) "Tire" means a continuous solid or pneumatic rubber covering

Sen Until Amendment

Senate Energy & Natural Resources

Attachment: 3

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1 ~~encircling~~ *used to encircle* the wheel of a vehicle or aircraft, or an inner-
2 tube of such a covering.

3 (l) "Tire retailer" means a person in the business of selling new or
4 used replacement tires at retail.

5 (m) "Used tire" means a tire that: (1) Has been removed from a wheel
6 following a period of use ~~and has been determined by its owner to have~~
7 ~~reuse potential as a tire or remains on a wheel removed from a vehicle or~~
8 ~~aircraft following a period use; and (2) has been determined to have value~~
9 *in accordance with rules and regulations established pursuant to subsec-*
10 *tion (e)(7) of K.S.A. 65-3424b, and amendments thereto.*

11 (n) "Vehicle" has the meaning provided by K.S.A. 8-1485 and amend-
12 ments thereto and includes implements of husbandry, as defined by
13 K.S.A. 8-1427 and amendments thereto.

14 (o) "Waste tire" means a whole tire that: (1) *Has been removed from*
15 *a wheel following a period of use or remains on a wheel removed from a*
16 *vehicle or aircraft following a period of use; and (2) is no longer suitable*
17 *for its original intended purpose because of wear, damage or defect.*

18 (p) "Waste tire collection center" means a site where used or waste
19 tires are collected from the public or from customers of a business prior
20 to being offered for recycling or disposal.

21 (q) "Waste tire processing facility" means a fixed site where equip-
22 ment is used to process waste tires.

23 (r) "Waste tire site" means a site at which 1,000 or more whole waste
24 tires are accumulated. "Waste tire site" does not include: (1) A site that
25 is an integral part of a permitted waste tire processing facility; (2) an
26 accumulation of tires on the premises of a tire retreading business, for
27 use in the business; (3) an accumulation of tires on the premises of a
28 business that, in the ordinary course of business, removes tires from mo-
29 tor vehicles; or (4) an accumulation of tires on the premises of a tire
30 retailer, accumulated in the normal course of the tire retailer's business.

31 Sec. 2. K.S.A. 1999 Supp. 65-3424f is hereby amended to read as
32 follows: 65-3424f. (a) The secretary shall establish a program to make
33 abatement grants to private companies, cities and counties which, indi-
34 vidualy or collectively, submit to the secretary plans approved by the
35 secretary. Abatement grants shall be used for: (1) Projects to abate waste
36 tire accumulations in existence before July 1, 1990, but no grants for such
37 projects shall be used for any tires accumulated, or added to an existing
38 accumulation, on or after July 1, 1990; and (2) programs to allow free
39 lawful disposal of waste tires not generated in the ordinary course of a
40 business, but not more than one such program shall be conducted per
41 county. Not more than one abatement grant shall be awarded to abate
42 the same waste tire accumulation unless it can be demonstrated by the
43 applicant that the waste tire accumulation exceeded initial quantity esti-

1 mates or that unknown circumstances, identified by the applicant, in-
2 creased project difficulty and cost. No abatement grant payment shall be
3 made on or after July 1, 2002. In awarding abatement grants, the secretary
4 shall give preference to projects which include waste tire recycling or
5 energy recovery. The secretary may authorize waste tire landfilling under
6 abatement grant projects if the waste tires are contaminated or if no
7 practical in-state markets are identified. ~~The secretary shall delay waste~~
8 ~~tire abatement grant projects until July 1, 1998, when possible to maxi-~~
9 ~~mize the distribution of grant funds through the in-state market stimu-~~
10 ~~lation program identified in paragraph (d).~~

11 ~~—(b) The secretary shall establish a program to make base grants to~~
12 ~~counties which, individually or collectively, submit to the secretary plans~~
13 ~~approved by the secretary. Base grants shall be used to survey the county~~
14 ~~or counties to identify and develop an inventory of waste tire accumula-~~
15 ~~tions in the county or counties. Applications for base grants shall be sub-~~
16 ~~mitted to the secretary before January 1, 1997, and no base grant payment~~
17 ~~shall be made on or after January 1, 1998.~~

18 ~~—(c) (b) The secretary shall establish a program to make enforcement~~
19 ~~grants to counties which, individually or collectively, submit to the sec-~~
20 ~~retary plans approved by the secretary. Enforcement grants shall be used~~
21 ~~to pay the county's or counties' costs of assessing and enforcing compli-~~
22 ~~ance with this act and rules and regulations adopted under this act and~~
23 ~~to educate the public on the provisions and purposes of this act. Enforce-~~
24 ~~ment grants shall be for an amount not exceeding 75% of the costs in-~~
25 ~~curred by the county or counties for eligible costs.~~

26 ~~(d) The secretary shall establish a competitive private sector grant~~
27 ~~program to stimulate the development of in-state waste tire recycling or~~
28 ~~energy recovery markets. The secretary shall solicit proposals in the fiscal~~
29 ~~year ending June 30, 1997, from private entities which demonstrate the~~
30 ~~long-term technical and economic feasibility of waste tire recycling or~~
31 ~~energy recovery projects based upon the receipt of startup funds only~~
32 ~~through this grant program. One or more grant awards may be made to~~
33 ~~applicants in the fiscal years ending June 30, 1997, and June 30, 1998, to~~
34 ~~pay up to 75% of the cost of constructing a new facility or modifying an~~
35 ~~existing facility to process, and burn for energy recovery or recycle, waste~~
36 ~~tires. In awarding grants pursuant to this subsection, the secretary may~~
37 ~~give preference to projects that do not directly compete with existing~~
38 ~~recycling and energy recovery projects.~~

39 ~~(e) (c) Private companies, cities and counties may join together, pool-~~
40 ~~ing their financial resources, when utilizing their grants for the purposes~~
41 ~~described in subsection (a).~~

42 ~~(f) (d) The secretary may provide technical assistance, upon request,~~
43 ~~to a private company, city, county or group of private companies, cities~~

1 or counties desiring assistance in applying for waste tire grants or choosing
2 a method of waste tire management which would be an eligible use of
3 the grant funds.

4 (g) (e) The secretary shall submit to the legislature, on or before the
5 first day of the regular legislative session each year, a report of all grants
6 made pursuant to this section. The report shall include: (1) The total
7 contract amounts awarded for each type of grant in each fiscal year and,
8 of those amounts, the total amount awarded to individual counties, groups
9 of counties and private entities; and (2) with respect to each grant
10 awarded, the contract amount and type of grant, the recipient, a descrip-
11 tion of the project for which the grant was awarded, the number of tires
12 involved and the amount actually spent. The secretary shall submit the
13 report by filing it with the secretary of the senate, the chief clerk of the
14 house of representatives and the chairperson and ranking minority mem-
15 ber of each of the senate and house committees on energy and natural
16 resources.

17 Sec. 3. K.S.A. 1999 Supp. 65-3424g is hereby amended to read as
18 follows: 65-3424g. (a) There is hereby established in the state treasury
19 the waste tire management fund.

20 (b) Money from the following sources shall be credited to the waste
21 tire management fund:

22 (1) Revenue collected from the excise tax by K.S.A. 65-3424d and
23 amendments thereto;

24 (2) permit application and renewal fees provided for by K.S.A. 65-
25 3424b and amendments thereto;

26 (3) interest provided for by subsection (e);

27 (4) additional sources of funding such as reimbursements and appro-
28 priations intended to be used for the purposes of the fund;

29 (5) any recoveries from abatement and enforcement actions provided
30 for by K.S.A. 65-3424k and amendments thereto;

31 (6) any interagency fund transfers relevant to providing business de-
32 velopment grants for businesses engaged in recycling or utilizing waste
33 tires in resource recovery programs provided for by K.S.A. 65-3424f and
34 amendments thereto; and

35 (7) any other moneys provided by law.

36 (c) Moneys in the waste tire management fund shall be used only for
37 the purpose of:

38 (1) Making grants as provided by K.S.A. 65-3424f, and amendments
39 thereto;

40 (2) paying compensation and other expenses of employing personnel
41 to carry out the duties of the secretary pursuant to K.S.A. 65-3424 through
42 65-3424h, and amendments thereto, but not more than the following shall
43 be used for such purpose: (A) For fiscal years beginning before July 1,

1 2002, 16% or \$200,000, whichever amount is less, of the moneys credited
2 to the fund during the preceding fiscal year; and (B) for fiscal years be-
3 ginning on or after July 1, 2002, 32% or \$200,000, whichever amount is
4 less, of the moneys credited to the fund during the preceding fiscal year;

5 (3) action by the department before July 1, 2001, to abate waste tires
6 accumulated prior to July 1, 1990, or to abate a nuisance or risk to the
7 public health or the environment created or which could be created by
8 waste tires accumulated after July 1, 1990, if the owner or operator of the
9 site has not been identified or has not abated the nuisance;

10 (4) *action by the department before July 1, 2001, to abate waste tires*
11 *accumulated by a city or county as a result of a temporary waste tire*
12 *amnesty collection program, authorized by the department, to allow res-*
13 *idents of the city or county free disposal of waste tires generated by farm-*
14 *ing and ranching activities and waste tires not generated in the ordinary*
15 *course of any other business, provided that not more than one such am-*
16 *nesty program is conducted by the city or county after January 1999; and*

17 (4) (5) action by the department after July 1, 2001, to implement
18 interim measures to minimize nuisances or risks to public health or the
19 environment that are or could be created by waste tire accumulations,
20 until the responsible party or county can fully abate the site.

21 (d) All expenditures from the waste tire management fund shall be
22 made in accordance with appropriations acts upon warrants of the direc-
23 tor of accounts and reports issued pursuant to vouchers approved by the
24 secretary.

25 (e) On or before the 10th of each month, the director of accounts
26 and reports shall transfer from the state general fund to the waste tire
27 management fund interest earnings based on: (1) The average daily bal-
28 ance of moneys in the waste tire management fund for the preceding
29 month; and (2) the net earnings rate for the pooled money investment
30 portfolio for the preceding month.

31 Sec. 4. K.S.A. 1999 Supp. 65-3424m is hereby amended to read as
32 follows: 65-3424m. (a) The county official, or the official of a designated
33 city, responsible for solid waste management in each county shall report
34 to the secretary any known waste tire accumulation within the county not
35 later than: (1) October 1, 1996, if the accumulation is known before July
36 1, 1996; or (2) three months after the accumulation becomes known, if
37 unknown before July 1, 1996.

38 (b) After July 1, 2001, each county shall be responsible for abatement
39 of any waste tire accumulation within the county.

40 Sec. 5. K.S.A. 1999 Supp. 65-3424, 65-3424f, 65-3424g and 65-
41 3424m are hereby repealed.

42 Sec. 6. This act shall take effect and be in force from and after its
43 publication in the statute book.

(New Sec.) K.S.A. 1999 Supp. 65-3424a is hereby amended to read as follows: 65-3424a (3)(E) the use of waste tires material which has have been cut into sufficiently small two or more parts as daily cover material for a landfill; or

65-3424a,

.....

Kansas Cement Council

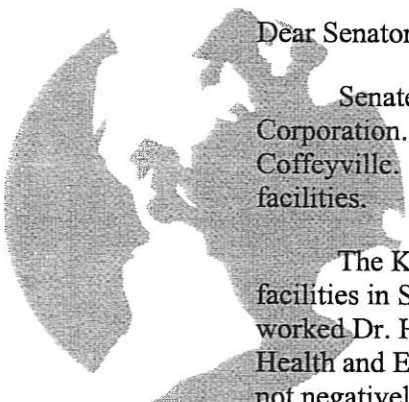
March 20, 2000

Sen. David Corbin
Room 120 South, State Capitol
Topeka, Kansas 66612

Rep. Joann Freeborn
Room 155-East, State Capitol
Topeka, Kansas 66612

Re: Senate Bill 658 – Definition of Hazardous Waste

Dear Senator Corbin and Representative Freeborn:



Senate Bill 658 was introduced at the request of Ron Hein on behalf of Safety-Kleen Corporation. Safety-Kleen owns and operates a commercial hazardous waste incinerator in Coffeyville. The purpose of SB 658 is to clarify definitions regarding hazardous waste facilities.

The Kansas Cement Council owns and operates three hazardous waste treatment facilities in Southeastern Kansas and as such would be affected by this bill. We have worked Dr. Hammerschmidt, Director, Division of Environment, Kansas Department of Health and Environment and Mr. Hein to assure the changes impact were appropriate and do not negatively impact our members.

The Kansas Cement Council will support SB 658, as it will provide needed clarifications and KDHE's assurance that passage will not change their current interpretation of statutes.

If you have any questions or concerns related to this bill, please do not hesitate to contact me at the numbers listed above.

Sincerely,



Edward R. Moses
Kansas Cement Council

Building a Cleaner Environment

Senate Energy & Natural Resources

Attachment: 4

Date: 3-21-2000 4-1

Substitute for HOUSE BILL No. 2144

By Committee on Environment

2-21

9 AN ACT concerning the multipurpose small lakes program; amending
10 K.S.A. 82a-1602 and 82a-1603 and repealing the existing sections.

11

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

13 Section 1. K.S.A. 82a-1602 is hereby amended to read as follows:

14 82a-1602. (a) In order to provide public water supply storage and water
15 related recreational facilities in the state there is hereby established a
16 multipurpose small lakes program. The program shall be administered by
17 the state conservation commission.

18 (b) Except as provided by subsection (c), the state conservation com-
19 mission shall adopt all rules and regulations necessary to implement the
20 provisions of this act.

21 (c) The Kansas water office shall adopt all rules and regulations gov-
22 erning recovery of the state's costs incurred in providing public water
23 supply storage in multipurpose small lake projects.

24 Sec. 2. K.S.A. 82a-1603 is hereby amended to read as follows: 82a-
25 1603. When used in this act:

26 (a) "Chief engineer" means the chief engineer of the division of water
27 resources of the state board department of agriculture.

28 (b) "Class I funded project" means a proposed new project or reno-
29 vation of an existing project located within the boundaries of an organized
30 watershed district which is receiving or is eligible to receive financial
31 participation from the state conservation commission for the flood control
32 storage portion of the project.

33 (c) "Class II funded project" means a proposed new project or reno-
34 vation of an existing project which is receiving or is eligible to receive
35 financial participation from the federal government.

36 (d) "Class III funded project" means a proposed new project or ren-
37 ovation of an existing project located outside the boundaries of an organ-
38 ized watershed district which is not receiving or is not eligible to receive
39 financial participation from the state conservation commission or the fed-
40 eral government except as provided in K.S.A. 82a-1606, and amendments
41 thereto.

42 (e) "Flood control storage" means storage space in reservoirs to hold
43 flood waters.

1 (f) "General plan" means a preliminary engineering report describing
 2 the characteristics of the project area, the nature and methods of dealing
 3 with the soil and water problems within the project area, and the projects
 4 proposed to be undertaken by the sponsor within the project area. Such
 5 plan shall include maps, descriptions and other data as may be necessary
 6 for the location, identification and establishment of the character of the
 7 work to be undertaken; a cost-benefit analysis of alternatives to the pro-
 8 ject, including but not limited to, nonstructural flood control options and
 9 water conservation and reuse to reduce need for new water supply stor-
 10 age; and any other data and information as the chief engineer may require.

11 (g) "Land right" means real property as that term is defined by the
 12 laws of the state of Kansas and all rights thereto and interest therein and
 13 shall include any road, highway, bridge, street, easement or other right-
 14 of-way thereon.

15 (h) "Multipurpose small lake project" means:

16 (1) A dam and lake containing (1): (A) Flood control storage; and (2)

17 (B) either public water supply storage or recreation features, or both; or

18 (2) renovation or reconstruction of an existing dam or lake to provide **at least two of**

19 the following: (A) Increased or restoration of flood control storage; or (B)

20 increased or restoration of public water supply storage. **Or (C) increased or restoration
 of recreation features**

21 (i) "Public water supply" means a water supply for municipal, indus-
 22 trial or domestic use.

23 (j) "Public water supply storage" means storage of water for municipal,
 24 industrial or domestic use.

25 (k) "Recreation feature" means water storage and related facilities for
 26 activities such as swimming, fishing, boating, camping or other related
 27 activities.

28 (1) "Sponsor" means (1) any political subdivision of the state which
 29 has the power of taxation and the right of eminent domain; (2) any public
 30 wholesale water supply district; or (3) any rural water district.

31 (m) "Water user" means any city, rural water district, wholesale water
 32 district or any other political subdivision of the state which is in the busi-
 33 ness of furnishing municipal or industrial water to the public.

34 Sec. 3. K.S.A. 82a-1602 and 82a-1603 are hereby repealed.

35 ~~Sec. 4. This act shall take effect and be in force from and after its~~
 36 ~~publication in the statute book.~~

37

New Section 4. KSA 82a-1604 is hereby amended to read as follows: (a) The state may participate with a sponsor in the development **or, construction or renovation** of a class I multipurpose small lake project if the sponsor has a general plan which has been submitted to and approved by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-1214, and

amendments thereto. If the Kansas water office determines that additional public water supply storage shall be needed in that area of the state within 20 years from the time such project is to be completed and a water user is not available to finance public water supply storage, the state may include public water supply storage in the project. The Kansas water office shall apply for a water appropriation right sufficient to insure a dependable yield from the public water supply storage. The Kansas water office shall be exempt from all applicable fees imposed pursuant to K.S.A. 82a-701 et seq., and amendments thereto, for such applications.

(b) If the Kansas Water Office determines that a renovation of a Class I multipurpose small lake is the most cost effective alternative for a public water supply source , the state may provide up to 50% of the engineering and renovations costs associated with such renovation.

(b) (c) The sponsor of such class I project shall be responsible for acquiring land rights and for the costs of operation and maintenance of such project. The sponsor participating in the construction of recreation features of a project shall pay for that portion of the project attributable to recreation. The state may provide up to 50% of the engineering and construction costs and up to 50% of the costs of land rights associated with recreation features. Subject to the provisions of subsection (a), the state may pay up to 100% of the engineering and construction costs of flood control and public water supply storage. All other costs of such project, including land, construction, operation and maintenance shall be paid by the sponsor.

(e) (d) The Kansas water office may recover the state's costs incurred in providing public water supply storage in such class I project by selling such storage and the associated water rights.

New Section 5. KSA 82a-1605 is hereby amended to read: (a) The state may participate with a sponsor in the development ~~or, construction or renovation~~ of a class II multipurpose small lake project if the sponsor has a general plan which has been submitted to and approved by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-1214, and amendments thereto. If the Kansas water office determines that additional public water supply storage shall be needed in that area of the state within 20 years from the time such project is to be completed and a water user is not available to finance public water supply storage, the state may include public water supply storage in the project. The Kansas water office shall apply for a water appropriation right sufficient to insure a dependable yield from public water supply storage. The Kansas water office shall be exempt from all applicable fees imposed pursuant to K.S.A. 82a-701 et seq., and amendments thereto, for such applications.

(b) In a class II project, the state may assume initial financial obligations for public water supply storage in watersheds by entering into long-term contracts with the federal government. In order to provide security to the federal government, the state may grant assignments of water rights, either appropriation rights or water reservation rights; assignments of rights under existing or prospective water purchase contracts; assignments, mortgages or other transfers of interests in real property held by the state and devoted to the specific small lake project for which security is sought; or may provide other security that is permissible under state law and acceptable by the

federal government. Instead of contracting to repay costs under long-term contracts, the state may pay all of the required costs of the public water supply storage in a lump sum.

(c) If the Kansas Water Office determines that a renovation of a Class II multipurpose small lake is the most cost effective alternative for a public water supply source, the state may provide up to 50% of the engineering and renovations costs associated with such renovation.

(e) (d) The sponsor of such class II project shall be responsible for acquiring land rights and for the costs of operation and maintenance of such project. The sponsor participating in the construction of recreation features of a project shall pay for that portion of the project attributable to recreation. The state or federal government may provide up to 50% of the engineering and construction costs and up to 50% of the costs of land rights associated with recreation features.

(d) (e) The Kansas water office may recover the state's costs incurred in providing public water supply storage in ~~new such~~ class II project by selling such storage and the associated water rights.

New Section 6. KSA 82a-1606 is hereby amended to read: (a) The state may participate with a sponsor in the development ~~or construction or renovation~~ of a class III multipurpose small lake project if the sponsor has a general plan which has been submitted to and approved by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-1214, and amendments thereto. If public water supply storage is included in the project, the sponsor of such class III project shall pay for 100% of the costs associated with the public water supply storage portion of such project unless the Kansas water office determines that additional public water supply storage shall be needed in that area of the state within 20 years from the time such project is to be completed and a sponsor is not available to finance 100% of the costs associated with the public water supply storage, the state may participate in the public water supply storage costs of the project. If the state participates in the public water supply storage costs, the Kansas water office shall apply for a water appropriation right sufficient to insure a dependable yield from public water supply storage. The Kansas water office shall be exempt from all applicable fees imposed pursuant to K.S.A. 82a-701 et seq., and amendments thereto, for such applications.

(b) The sponsor of such class III project shall be responsible for acquiring land rights and for the costs of operation and maintenance of the project. The sponsor participating in the construction of recreation features of a project shall pay for that portion of the project attributable to recreation. The state may provide up to 50% of the engineering and construction costs and up to 50% of the costs of land rights associated with recreation features. The state may pay up to 100% of the engineering and construction costs of flood control storage and public water supply storage. All other costs of such project, including land, construction, operation and maintenance, shall be paid by the sponsor.

(c) The Kansas water office may recover the state's costs incurred in providing public water supply storage in such class III project, and interest on such costs, by selling such storage and the associated water rights. Interest on such costs shall be computed at a rate per annum which is

equal to the greater of: (1) The average rate of interest earned the past calendar year on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board, less 5%; or (2) four percent.

(d) If the Kansas Water Office determines that a renovation of a Class III multipurpose small lake is the most cost effective alternative for a public water supply source , the state may provide up to 50% of the engineering and renovations costs associated with such renovation.

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