

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on January 24, 2001, in Room 423-S of the Capitol.

All members were present.

Committee staff present: Raney Gilliland, Legislative Research Department
 Gordon Self, Revisor of Statutes Office
 Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Rebecca Reed, Special Assistant to the Secretary, Kansas Department of Agriculture
Jere White, Business Administrator, Kansas Corn Commission and Kansas Soybean Commission
Ken McCauley, Chairman, Kansas Corn Commission
Neil Martin, Chairman, Kansas Soybean Commission
Kevin Lickteig, Business Administrator, Kansas Grain Sorghum Commission
John Ratzlaff, Chairman, Kansas Grain Sorghum Commission
David Frey, Business Administrator, Kansas Wheat Commission

Others attending: See attached list

Minutes of the January 17 meeting were distributed. Chairman Johnson asked members to notify the committee secretary of any corrections or additions prior to 5:00 p.m., January 31, or they will be considered approved as presented.

Copies of the U.S. Environmental Protection Agency's proposed guidelines affecting confined animal feeding operations (CAFOs) were distributed. (Attachment 1)

Randy Allen, Kansas Association of Counties, requested a committee bill to update and strengthen the Kansas Noxious Weed Law. Representative Feuerborn moved to introduce this legislation as a committee bill. Seconded by Representative Dahl, the motion carried.

Rebecca Reed, Special Assistant to the Secretary, Kansas Department of Agriculture, introduced the business administrators of the four Kansas grain commodity commissions privatized by the 2000 Legislature - Kansas Corn Commission, Kansas Grain Sorghum Commission, Kansas Soybean Commission, and the Kansas Wheat Commission. Copies of the annual reports, bylaws and operating procedures, roles and responsibilities, budgets, and financial information of the commissions can be obtained from the Kansas Department of Agriculture or the commissions.

Ken McCauley, Chairman, Kansas Corn Commission (Attachment 2); John Ratzlaff, Chairman, Kansas Grain Sorghum Commission; Neil Martin, Chairman, Kansas Soybean Commission (Attachment 3); and David Frey, Administrator, Kansas Wheat Commission, presented their respective annual reports, outlined their goals and objectives, highlighted major projects, and reviewed their individual budget and financial information. They all support the structure change and believe that it will allow their commissions to operate more efficiently and effectively.

The meeting adjourned at 4:45 p.m. The next meeting is scheduled for January 29, 2001.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: JANUARY 24, 2001

NAME	REPRESENTING
Kevin Lickteig	KS Grain Sorghum Commission
John Ratzlaff	KS. Grain Sorghum Commission
Relvas Reed	KDA
Neil Martin	KS Soybean Commission
Jere White	KC GA - KGSPA
Ken McCauley	KS. Corn Commission
Greg Krissick	KS Corn Growers Assoc
Naved Fay	KS. Wheat Comm -
Sushin Wolshin	KS Coop Council
Bill Fuller	Kansas Farm Bureau
Leslie Kaufman	Kansas Farm Bureau
Randy Allen	Kansas Association of Counties
Connie Fischer	KPOC & H - Ag. Division
Marsha Boswell	KS Wheat Commission
Dusti Fritz	KS Wheat Commission
Jeff Caster	KS Grain Sorghum Commission
Dennis Snow	KS Soybean Association
Todd Johnson	KLA
Bill Brady	KS Gov't Relations



EPA Proposed Guidelines Affecting CAFOs

Issue: The U.S. Environmental Protection Agency (EPA) is proposing regulations to reduce the amount of water pollution from “large” livestock operations. The proposed regulations define confined animal feeding operations (CAFOs) as facilities with as few as 300 animal units. This proposal to revise current Clean Water Act permit requirements and effluent guidelines would affect a number of (CAFOs) in Kansas and the United States. EPA currently administers Clean Water Act regulations that affect Kansas feedlots: the National Pollutant Discharge Elimination System (NPDES) permits and Effluent Guidelines. This is an important issue for Kansas agriculture as a whole.

What to Expect

Regional EPA inspections and follow-up enforcement have increased in the last 12 to 18 months. In addition, presentations at national conferences have projected that the number of inspections will increase in the future. This will have significant impact if or when the proposed regulations are in effect.

Proposed revisions to the NPDES regulations and effluent guidelines for CAFOs were signed December 15, 2000, and published in the Federal Register on January 12, 2001. The public comment period began on the day they were published and is open for comment for 120 days. More information is available from the CAFO Hotline at (202) 564-0766.

Current CAFO Regulations

Under current regulations, CAFOs are defined as point sources of pollution and subject to NPDES permit regulations. The definition of CAFO primarily addresses livestock facilities with 1,000 or more animal units; however, if waste is discharged ONLY during a 25-year, 24 hour storm, a facility will not be considered a CAFO. Kansas has been delegated the authority to implement the NPDES Program and requires permitting of the facilities regardless of the discharge exemption for permitting purposes. The Kansas program recognizes chronic and/or catastrophic events as potential authorized discharges within the program. Smaller animal feeding operations (AFOs) that confine 300 to 1,000 animal units can also be designated as a CAFO if they are significant sources of pollution and have been incorporated within the current state program and issued individual permits.

A Brief Look at Proposed Changes

The proposed EPA regulations, under a “worst-case” scenario, would:

Remove the 25 year-24 hour exemption; Clarifies that 25 year-24 hour exemption is the design threshold and removed the interpretation dilemma in other states, and requires zero discharge design in swine and poultry facilities. *Zero discharge means no overflow regardless of the storm event or frequency.*

House Agriculture Committee
January 24, 2001
Attachment 1

Clarify the NPDES requirements pertaining to discharges to groundwater through a direct hydrological connection to surface water that include production areas. (Could potentially impose groundwater quality standards for alluvial aquifers.)

EPA proposes changes in the land application of manure from “large” confined animal feeding operations, which include any operation that is defined as a CAFO, to be subject to the following:

Include the land application area in the CAFO definition and the NPDES permit – thus making runoff from manure application a point source of pollution.

Make any runoff leaving facility or land application areas possibly subject to EPA enforcement if it impairs the waters of the U.S.

Require each CAFO to prepare and implement a site-specific permit nutrient plan (PNP) that is prepared or approved by a certified planner, that identifies the nutrients generated at the facility, determines the amount of nutrients needed by the planned crop rotation, and establishes agronomic rates of manure application. (See Attachment A - Permit Nutrient Plan Requirements)

Separation distance setback from surface water.

Clarify that the agricultural storm water exemption is applicable only in locations where CAFO manure is land-applied according to producer records of PNP compliance.

Soil testing - per field basis.

Phosphorus-based (P-index) land application not to exceed phosphorus needs of the intended crop.

Extensive record keeping.

Groundwater monitoring in hydrologically connected “production areas”.

If producer is giving nutrients away, producer must keep records of who waste was given to, and perhaps a nutrient analysis.

NRCS would be required to certify or train an individual who is willing to assume the liability of the approved plan.

Attachment A is only a small sample of the proposed requirements and may shed light on the language and content of the proposed rules. The actual document is greater than 400 pages in length with the first 370 plus pages defining the meaning of the last 40 pages, the actual regulation proposal.

Attachment A - Permit Nutrient Plan

Initial review of the proposed rule reflect that a Permit Nutrient Plan(PNP) is subject to the following requirements:

§ 412.31 Effluent limitations attainable by the application of the best practicable control.398 technology currently available (BPT).

Except as provided in 40 CFR §125.30 through §125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) For CAFO production areas:

(1) Except as provided in paragraph (a)(2) of this section, there must be no discharge of process wastewater pollutants into U.S. waters.

(2) Whenever rainfall causes an overflow of process wastewater, pollutants in the overflow may be discharged into U.S. waters during those periods subject to following conditions:

(i) The production area is designed and constructed to contain all process wastewaters including the runoff from a 25 year, 24 hour rainfall event; and

(ii) The production area is operated in accordance with the requirements of §412.37(a)(1) through (3) .

(b) For CAFO land application areas:

(1) Discharges resulting from the application of manure or process wastewater to land owned or under the control of the CAFO must achieve the following:

(i) Develop and implement a Permit Nutrient Plan (PNP) that includes the requirements specified at §412.37; and establishes land application rates for manure in accordance with §412.31 (b)(1)(iv).

(ii) The PNP must be developed or approved by a certified specialist.

(iii) The PNP must be written taking into account realistic yield goals based on historic yields from the CAFO, or county average data when historic yields are not appropriate. County average data may be used when a facility plants a crop that no yield data for that CAFO land application area has been obtained within the previous 10 years. CAFOs shall review the PNP annually and revise as necessary, and must rewrite the PNP at least once every five years.

(iv) Apply manure and process wastewater at a rate established in accordance with one of the three methods defined below. State approved indices, thresholds, and soil test limits shall be utilized such that application does not exceed the crop and soil requirements for nutrients:

Table 1 Phosphorus Index

Phosphorus Index Rating Manure and Wastewater Application Rate

Low Risk Application of manure and wastewater may not exceed the nitrogen requirements of the crop.

Medium Risk Application of manure and wastewater may not exceed the nitrogen requirements of the crop.

High Risk Application of phosphorus in manure and wastewater may not exceed the amount of phosphorus removed from the field with crop harvest.

Very High Risk No land application of manure or wastewater.

Table 2 Phosphorus Threshold

Soil Phosphorus Threshold Level Manure and Wastewater Application Rate

< 3/4 TH application Manure and wastewater may not exceed the nitrogen requirements of the crop.

> 3/4 TH, < 2 TH application Phosphorus in manure and wastewater may not exceed the amount of phosphorus

removed from the field with crop harvest..399

> 2 TH application No land application of manure or wastewater.400

Table 3 Soil Test Phosphorus

Soil Test Phosphorus Level Manure and Wastewater Application Rate

Low Application of manure and wastewater may not exceed the nitrogen requirements of the crop.

Medium Application of manure and wastewater may not exceed the nitrogen requirements of the crop

High Application of phosphorus in manure and wastewater may not exceed the amount of phosphorus removed from the field with crop harvest.

Very High No land application of manure and wastewater.

(2) Multi-year phosphorus applications are prohibited when either the P-Index is rated high, the soil phosphorus threshold is between 3/4 and 2 times the TH value, or the soil test phosphorus level is high as determined in paragraph (1) (iv) unless:

(i) Manure application equipment designed for dry poultry manure or litter cannot obtain an application rate low enough to meet a phosphorus based application rate as determined by the PNP In the event a phosphorus application occurs during one given year which exceeds the crop removal rate for that given year, no additional manure or process wastewater shall be applied to the same land in subsequent years until all applied phosphorus has been removed from the field via harvest and crop removal.

§ 412.37 Additional measures

(a) Each CAFO subject to this subpart must implement the following requirements:

(1) There must be routine visual inspections of the CAFO production area to check the following:

(i) Weekly inspections of all stormwater diversion devices, such as roof gutters, to ensure they are free of debris that could interfere with the diversion of clean stormwater;

(ii) Weekly inspections of all stormwater diversion devices which channel contaminated stormwater to the wastewater and manure storage and containment structure, to ensure that they are free of debris that could interfere with ensuring this contaminated stormwater reaches the storage or containment structure;

(iii) Daily inspections of all water lines providing drinking water to the animals to ensure there are no leaks in these lines that could contribute unnecessary volume to liquid storage systems or cause dry manure to become too wet;

(iv) Runoff diversion structures and animal waste storage structures must be visually inspected for: seepage, erosion, vegetation, animal access, reduced freeboard, and functioning rain gauges and irrigation equipment, on a weekly basis manure storage area to ensure integrity of the structure. All surface impoundments must have a depth marker which indicates the design volume and clearly indicates the minimum freeboard necessary to allow for the 25 year 24 hour rainfall event. The inspection shall also note the depth of the manure and process wastewater in the impoundment as indicated by this depth marker.

(2) Any deficiencies found as a result of these inspections shall be corrected as soon as possible. Deficiencies and corrective action taken shall be documented.

(3) Mortalities may not be disposed of in any liquid manure or stormwater storage or treatment system, and must be handled in such a way as to prevent discharge of pollutants to surface water.

(4) Land application of manure generated by the CAFO to land owned or controlled by the CAFO must be done in accordance with the following practices:

(i) Manure may not be applied closer than 100 feet to any surface water, tile line intake structure, sinkhole or agricultural well head.

(ii) The CAFO must take manure samples at least once per year and analyzed for nitrogen, phosphorus and potassium. Samples must be collected from all manure storage areas, both liquid and dry storage, as well as any wastewater or storm water storage. The CAFO must take soil samples once every three years if they apply manure to crop or pasture land under their control, and analyze the soil sample for phosphorus. Samples shall be collected in accordance with accepted Extension

protocols and the analyses must be conducted in accordance with the state nutrient management standard. These protocols shall be documented in the PNP.

(iii) Manure that is transported off-site must be sampled at least once a year for nitrogen, phosphorus and potassium. The results of these analyses must be provided to the recipient of the manure.

(iv) Manure application equipment must be calibrated prior to land application of manure and/or process wastewaters at a minimum of once per year.

(b) Record keeping requirements:

Each CAFO must maintain on its premises a complete copy of the current PNP and the records specified in paragraphs (b)(1) through (12) of this section. The CAFO must make the PNP available to the permitting authority and the Regional Administrator, or his or her designee, for review upon request. Records must be maintained for 5 years from the date they are created.

(1) Cover Sheet which includes the following information:

- (i) the name and location of the CAFO,
- (ii) name and title of the owner or operator
- (iii) name and title of the person who prepared the plan, 404
- (iv) date the plan was prepared,
- (v) date the plan was amended

(2) Executive Summary which includes the following information:

- (i) Total average herd or flock size
- (ii) Identification of manure collection, handling, storage, and treatment practices
- (iii) Amount of manure generated annually
- (iv) Identification of planned crops (rotation)
- (v) Realistic yield goal as described in §412.31(b)(1)(iii)
- (vi) Field condition as determined by the phosphorus index, soil test phosphorus, or phosphorus threshold (for each field unit that will receive manure)
- (vii) number of acres that will receive manure
- (viii) amount of manure transported off-site
- (ix) animal waste application rate (gallons or tons/acre)
- (x) identification of watershed or nearest surface water body

(3) Records documenting the inspections required under paragraph (a)(1) of this section.

(4) Records tracking the repairs performed on drinking water lines, automated feeding equipment, feed storage and silos, manure storage, manure treatment facilities, as well as maintenance of berms and diversions that direct clean stormwater away from any manure and other process wastewater.

(5) Records documenting the following information about manure application and crop production

- (i) Expected crop yield based on historical data for the CAFO for its land application area, or county average yield data when the CAFO does not have a prior history of crop yields
- (ii) The date(s) manure is applied,
- (iii) Weather conditions at time of application and for 24 hours prior to and following application,
- (iv) Results from manure and soil sampling,
- (v) Test methods used to sample and analyze manure and soil,
- (vi) Whether the manure application rate is limited to nitrogen, phosphorus, or some other parameter,
- (vii) The amount of manure and manure nutrients applied,
- (viii) The amount of any other nutrients applied to the field reported in terms of nitrogen, phosphorus and potassium (including commercial fertilizer, legume credits, and biosolids),
- (ix) Calculations showing the total nutrients applied to land,
- (x) Calibration of manure application equipment,
- (xi) The rate of application of manure,
- (xii) The method used to apply the manure, estimated nitrogen losses based on application method

used, and the route of nitrogen loss,

(xiii) The field(s) to which manure was applied and total acreage receiving manure,

(xiv) What crop(s) was planted,

(xv) The date that crops were planted in the field, and

(xvi) The crop yields obtained.

(6) Records of the total volume or amount of manure and process wastewater generated by all animals at the facility during each 12 month period. This must include milk parlor washwater and egg.405

washwater. The volume or amount may be determined through direct measurements or an estimated value provided all factors are documented.

(7) Records of rainfall duration, amount of rainfall, and the estimated volume of any overflow that occurs as the result of any catastrophic or chronic rainfall event.

(10) A copy of the emergency response plan for the CAFO.

(11) Records of how mortalities are handled by the CAFO.

(12) Name of state approved specialist that prepared or approved the PNP, or record and documentation of training and certification for owners or operator writing their own PNP.



**Annual Legislative Report
Kansas Senate and House Agricultural Committees
Testimony of Ken McCauley, Chairman
January 24, 2001**

Mr. Chairman and members of the committee, my name is Ken McCauley. My family and I farm near White Cloud, Kansas, and I am currently serving as the Chairman of the Kansas Corn Commission. I appreciate the opportunity to appear before you today and present the corn commission's annual legislative report.

These first six months have been exciting and fast-paced for the Kansas Corn Commission. Thanks to your efforts last session, HB 2674 was enacted into law and its major provisions took effect July 1, 2001. You will find in the attached written materials examples of the work and effort my fellow corn commissioners and I have taken to seriously assume the responsibilities provided by the new grain commission structure in Kansas. These steps have included:

- Upon the new provisions of the law becoming effective, which allow the commission to choose how to most efficiently govern itself in the private sector for the maximum benefit for Kansas corn producers, the KCC approved By-Laws, Officer and Commissioner Roles and Responsibilities, Commissioner Reimbursement Guidelines, and the FY 2001 Budget.
- The KCC performed a financial and cash-flow analysis to determine this year's operating needs and subsequently placed reserve funds in two certificates of deposit earning 7.07 percent and 6.77 percent per annum respectively. These CD's were invested pursuant to the pledging requirements statutorily required for public funds and have maturity dates timed to coincide with the commission's contractual requirements next becoming due. Thus, producer funds are maximizing their return while proactively meeting the commission's financial needs.

- The KCC chose to contract with a private sector association for the administration of the checkoff's contracts and refunds. (You may recall that the provisions of HB 2674 directed assessment collection to continue through the Kansas Department of Agriculture). We established financial controls on both main and operating accounts and included requirements for two signatures for all disbursements and bonding of the two staff members of the contractor responsible for processing payments. I would also point out that the Executive Director of the contracting association does not appear on any banking signature card for commission accounts.
- The commission is maximizing its new flexibility and responsiveness to changing market opportunities with its investments in market development, corn utilization, and production research projects. Ethanol is a significantly growing opportunity for corn utilization that the commission has chosen to invest with other producer funds for feasibility analysis.
- We also have created a process by which those who choose not to participate in these voluntary programs can typically receive any refunds requested accurately within five days or less of receipt of the request at the commission's administrative office.

I hope that you can see that although this first annual legislative report is only for a transition of seven months, the Kansas Corn Commission is aggressively moving forward to position itself on behalf of Kansas producers to respond quickly to new market opportunities. We have created a flexible structure but also one containing both financial and oversight controls. I look forward to continuing this joint public/private venture on behalf of Kansas' corn producers for many years to come. Thank You.



**Annual Legislative Report
Kansas Senate and House Agricultural Committees
Testimony of Neil Martin, Chairman
January 24, 2001**

Mr. Chairman and members of the committee, my name is Neil Martin. My family and I farm near Columbus, Kansas. I am currently serving as the Chairman of the Kansas Soybean Commission. We appreciate the opportunity to appear before this committee today to share the soybean commission's annual legislative report.

The last six months have been very busy, a little challenging, and actually a lot of fun for the Kansas Soybean Commission. You will find in the notebook, numerous examples of work product that my fellow soybean commissioners and I have created in response to our new obligations created by the passage of HB-2674 last session. Among them are:

- The new law allows the commission to choose how to most efficiently govern itself in the private sector for the maximum benefit of the Kansas soybean industry. The KSC approved By-Laws, Officer and Commissioner Roles and Responsibilities, Commissioner Reimbursement Guidelines, and the FY 2001 Budget are enclosed. Quite candidly, the KSC met by conference call within 12 hours of the law taking effect to start making these decisions. This group is dedicated to the task!
- One of the benefits of HB-2673 provided the opportunity for the commissions to benefit from the investment of reserve funds. Previously the State of Kansas retained that benefit. The KSC undertook analysis to determine this year's operating needs and placed reserve funds in a certificate of deposit earning 6.69 percent per annum. These funds were invested pursuant to the statutorily pledging requirements and have a maturity date timed to coincide with the commission's contractual requirements next becoming due. Funds are maximizing their return while meeting the commission's financial needs.
- The KSC contracts with a private sector association for the administration of the checkoff's contracts. In fact we are contracting today with the same association, the Kansas Corn Growers Association, which performs the same functions for the Corn Commission. It has let the KSC meet our immediate needs in a

very efficient manner. We established financial controls on both main and operating accounts and included requirements for two signatures for all disbursements and bonding of the two staff members of the contractor responsible for processing payments. As with the Corn Commission, the Executive Director of the contracting association does not appear on any banking signature card for commission accounts.

The commission is maximizing its new flexibility and responsiveness to changing market opportunities with its investments in market development, soybean utilization, production research, and producer/consumer education projects. Biodiesel is a significantly growing opportunity for soybean utilization that the commission has chosen to invest producer funds into for feasibility analysis.

Since the Kansas program is part of the current national soybean checkoff program administered by USDA, refunds are not available to producers. But there is an additional series of compliance requirements to satisfy as a USDA designated qualified state soybean board. These requirements include additional auditing and financial stipulations the other Kansas grain commissions do not have to administer. The KSC has actively proceeded to establish a working relationship with the United Soybean Board including completion of the biannual USDA audit last fall and attendance at the annual compliance workshop and other national coordination meetings.

The KSC is also proceeding with the appointment of two additional commissioners to accomplish more complete representation of all soybean production areas. Soybean cropping patterns continue to expand across the state into new western areas providing opportunities for education of new producers and grain handlers in the soybean industry.

While we are really reporting for the first six months of this new program, I believe it is apparent that the Kansas Soybean Commission is positioning itself to benefit Kansas producers by being more responsive to new market and research opportunities. We have flexibility with financial and oversight controls. I believe that the legislature did a good thing last year and we are dedicated to the success of our program. Thank you.