

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on January 24, 2002 in Room 231-N of the Capitol.

All members were present except: Representative Ted Powers - excused
Representative Clay Aurand - excused
Representative Daniel Thimesch - excused

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

Conferees appearing before the committee: Dr. Ronald Hammerschmidt, Director, Division of Environment, KDHE, 1000 SW Jackson, Ste 400, Topeka, KS 66612-1367
Karl Mueldener, Director, Bureau of Water, KDHE, 1000 SW Jackson, Ste 420, Topeka, KS 66612
Theresa Hodges, Environmental Field Services, KDHE, 1000 SW Jackson, Ste 430, Topeka, KS 66612

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She opened the floor for bill introductions.

Janet Stubbs, Kansas Building Industry Association, requested a bill to clarify what happens to policies of groundwater management districts that have the force and effect of law but are not promulgated as regulations, as required under KSA 82a-1903. (See attachment 1)

Rep. Vaughn Flora made a motion the bill by KBIA be introduced. Rep. Becky Hutchins seconded the motion. Motion carried.

Janet Stubbs, Kansas Building Industry Association, requested a bill to define the terms "substantial adverse impact on the area" and "direct impairment." (See attachment 2)

Rep. Vaughn Flora made a motion the bill by KBIA be introduced. Rep. Dan Johnson seconded the motion. Motion carried.

Bill Sneed, Kansas Construction and Demolition Landfill Association, requested a bill concerning Solid and Hazardous Waste; relating to Construction and Demolition Landfills; amending KSA 65-3402 and repealing the existing sections. (See attachment 3)

Rep. Vaughn Flora made a motion the bill by the C&D Landfill Association be introduced. Rep. Bill Light seconded the motion. Motion carried.

The Chairperson welcomed Dr. Ronald Hammerschmidt, Director, Division of Environment, Kansas Department of Health and Environment, to the committee. He introduced Karl Mueldener, Director, Bureau of Water, KDHE. Mr. Mueldener reviewed the implementation of **Sub for SB 204** from the 2001 Legislative session.

Sub for SB204: Classified stream segments and designated uses of classified stream segments.

US Geological Survey includes: (a) **SB204** in Section 1 defines classified streams. One definition includes streams with a 10 year median flow equal to or in excess of 1 cfs based on US Geological Survey work. (b)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on January 24, 2002.

A contract with the USGS was signed in July, 2001, and the work is underway. (c) The USGS work will identify stream segments flows based on; (1) actual measured flows and ; (2) where actual stream flow measurements are absent, flows will be extrapolated based on parameters such as drainage area, latitude, and topography of the basin.

Draft regulations are now being reviewed by the Attorney General and Department of Administration. Changes are intended to be minimal to existing regulations, i.e, limited to removing conflicts with **SB204** from the existing regulations. Anticipate public release this month, January 2002, and adoption possible by July, 2002. Triennial review is coincidentally scheduled for this year. Review of Water Quality Standards is required every 3 years by Federal law. Items for consideration include: changes in stream classification, particularly removing some dry streams from the register, conversion to e-coli criteria from the existing fecal criteria.

Stream segments actually inhabited by threatened and endangered aquatic species are defined as classified stream segments under **SB204**. The Kansas Department of Wildlife and Parks and the U S Fish and Wildlife Service have been requested to furnish information on streams where T&E aquatic species have been recorded. Both agencies have indicated some data will be provided in response to the request. (See attachment 4)

Chairperson Freeborn thanked Mr. Mueldener for his presentation and welcomed Theresa Hodges, Director, Bureau of Environmental Field Services, KDHE. Ms. Hodges briefed the committee on **SB204** concerning Designated Use Attainability Analysis. **SB204** set two milestones for KDHE related to use attainability analyses. (1) October 15, 2001 KDHE published a list identifying the streams for which: (a) recreational UAAs had been conducted. (b) recreational use has been determined not attainable. (c) recreational UAAs have not been completed. List published October 12, 2001. (2) December 1, 2001 KDHE to publish UAA protocols as guidance document; task completed November 30, 2001. Published on KDHE web site, <http://www.kdhe.state.ks.us/befs/index.html#resources>.

Other tasks include: (1) The 2001 Legislature allocated \$100,000 for contracting for the development of a protocol for the cost/benefit analysis required for classifying non-flowing streams that lack T&E species, NPDES discharges, but that do have remnant pools that serve as important ecological refugia. (2) KDHE has: (a) Solicited proposals from Kansas universities, but did not receive any proposals. (b) Expanded the solicitation to a national search, but did not receive any proposals. (c) Convened a meeting to discuss viable approaches for evaluation the net benefits of classifying streams that show pooling during periods of zero flow and serve as important ecological refugia.

Annual update of Kansas Surface Water Register. (1) Notice of intent to revise Register was published in *Kansas Register*, December 6, 2001. (2) Notification letters were also sent to BACs, KAC, League of Municipalities, Conservation Districts, SCC, KWO, KDA, KDWP and 58 other interested persons. Two written comments and one telephone comment were received. KDHE is moving forward to revise the Register and proceed with the regulatory process, which also includes a 60-day public comment period. (See attachment 4) A map was distributed, "Recreational Use Attainability Analyses Field Work 2001". (See attachment 5) Committee discussion and questions followed.

The Chairperson thanked the Kansas Department of Health and Environment for their review and the committee and guests for their attention.

The meeting adjourned at 4:25 p.m. The next meeting is scheduled for Tuesday, January 29, 2002.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: January 24, 2002

NAME	REPRESENTING
Bill Sneed	C & D Landfield Assn.
Denny Koch	POWINGWY SHATON WRTG
Keri Elert	KS Dairy Association
MIKE TATE	KDHE
Ron Hammerschmidt	KDHE
Theresa Hodges	KDHE
Karl Meldermer	"
Nicole Fisher	

KANSAS BUILDING INDUSTRY ASSOCIATION

January 24, 2002

To: House Environment Committee

We respectfully request introduction of a bill to clarify what happens to policies of groundwater management districts that have the force and effect of law but are not promulgated as regulations, as required under K.S.A. 82a-1903.

This statute was passed in the 1999 Session as part of S.B. 287. Attorney General's opinion 99-44 addresses the question of what happens when GMD policies with the force and effect of law are not promulgated as regulations and says that, "In conclusion, New Section 12 of S.B. 287 requires consolidation into rule and regulation those GMD standards and policies of general application which have the effect of law and are not contained in current promulgated regulations, and it voids those standards not in compliance."

Suggested language to clarify this issue:

"If any such standard, statement of policy or general order described in subsection (b)(1) is submitted as required by that subsection and is not adopted by rule and regulation of the chief engineer, it shall be void and of no effect."

*House Environment
1-24-02
Attachment 1*

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[Index](#)[Current Happenings](#)[Listen In Live!](#)[Helpful Hints](#)[Site](#)

[Home](#) > [Kansas Statutes](#) > Kansas Statute No. 82a-1903

82a-1903

Chapter 82a.--WATERS AND WATERCOURSES

Article 19.--ADMINISTRATIVE MATTERS

82a-1903. Rules and regulations of chief engineer; adoption of certain measures as rules and regulations. (a) (1) On or before November 15, 1999, the chief engineer of the division of water resources of the department of agriculture, in accordance with K.S.A. 77-420 and amendments thereto, shall submit to the secretary of administration and the attorney general proposed rules and regulations containing all current standards, statements of policy and general orders that: (A) Have been issued or adopted by the chief engineer; (B) are of general application and have the effect of law; and (C) are not contained in current rules and regulations adopted by the chief engineer.

(2) If any standard, statement of policy or general order described in subsection (a) (1) is not submitted as required by subsection (a), such standard, statement of policy or general order shall be void and of no effect after November 15, 1999, until adopted by rules and regulations.

(b) (1) On or before March 1, 2000, each groundwater management district shall submit to the chief engineer of the division of water resources of the department of agriculture recommended rules and regulations containing all current standards, statements of policy and general orders that: (A) Have been issued or adopted by such district; (B) are of general application within the district and have the effect of law; and (C) are not contained in current rules and regulations adopted by the chief engineer.

(2) If any standard, statement of policy or general order described in subsection (b)(1) is not submitted as required by that subsection, such standard, statement of policy or general order shall be void and of no effect after March 1, 2000, until adopted by rules and regulations.

History: L. 1999, ch. 130, § 12; May 6.



The Information Network of Kansas

Kansas Attorney General Opinions

September 7, 1999

ATTORNEY GENERAL OPINION NO. 99- 44

The Honorable Jim Morrison

State Representative, 121st District

P.O. Box 366

Colby, Kansas 67701

Re: Waters and Watercourses--Groundwater Management Districts--District Powers; Rules and Regulations

Synopsis: Groundwater Management Districts (GMDs) may continue, after March 1, 2000, to adopt local standards and policies as authorized by the Kansas Groundwater Management District Act as long as the standards and policies adopted are not of general application and do not have the effect of law. GMDs may also continue to develop local standards for submission to the Chief Engineer in accordance with New Section 12 of 1999 House Substitute for Senate Bill No. 287. For this reason the legislation does not conflict with the authority of GMDs to adopt and enforce local standards and policies pursuant to K.S.A. 82a-1028(n). The legislation requires consolidation into rule and regulation those standards and policies of general application which have the effect of law, and it voids those standards and policies not in compliance with this requirement. Cited herein: K.S.A. 77- 420; 82a-1028; L. 1999, Ch. 130, § 12.

* * *

Dear Representative Morrison:

You inquire whether 1999 Substitute for Senate Bill No. 287 (S.B. 287) creates a conflict with K.S.A. 82a-1028(n). Specifically, you ask whether groundwater management districts (GMDs) may continue, after March 1, 2000, to develop local standards and policies as authorized by the Kansas Groundwater Management District Act.

New Section 12 of S.B. 287 states:

"(b) (1) On or before March 1, 2000, each groundwater management district shall submit to the chief engineer of the division of water resources of the department of agriculture recommended rules and regulations containing all current standards, statements of policy and general orders that: (A) Have been issued or adopted by such district; (B) are of general application within the district and have the effect of law; and (C) are not contained in current rules and regulations adopted by the chief engineer.

"(2) If any standard, statement of policy or general order described in subsection (b)(1) is not submitted as required by that subsection, such standard, statement of policy or general order shall be void and of no effect after March 1, 2000, until adopted by rules and regulations."

The new section requires GMDs to submit adopted local rules, standards, statements of policy and orders which have the effect of law and are not already contained in rules adopted by the Chief Engineer, and it makes void those that are not in compliance by March 1, 2000.

The language of the statute appears plain; we will, for this reason, utilize the overriding principle of statutory construction that if legislative intent can be ascertained from the plain language of the statute, it governs and must be given effect.⁽¹⁾ The plain language of S.B. 267 clearly mandates submission of local standards and policies to the Chief Engineer in order to consolidate all of the standards, policies and orders having the effect of law into a unified set of rules adopted and filed in accordance with K.S.A. 77-420.⁽²⁾

At issue is whether this mandate to consolidate conflicts with the power of GMDs to adopt local standards and policies as authorized by the Kansas Groundwater Management District Act after March 1, 2000. Two subsections in K.S.A. 82a-1028 are pertinent.

K.S.A. 82a-1028(n) authorizes GMDs to:

"adopt, amend, promulgate, and enforce by suitable action, administrative or otherwise, reasonable standards and policies relating to the conservation and management of groundwater within the district which are not inconsistent with the provisions of this act or article 7 of chapter 82a of the Kansas Statutes Annotated, and all acts amendatory thereof or supplemental thereto;"

In our opinion, S.B. 287 does not conflict with the authority of GMDs to adopt local standards and policies, but it does redefine what standards and policies must be submitted as recommended regulations pursuant to K.S.A. 82a-1028(o).⁽³⁾ The standards and policies which must be submitted for filing as regulations are those that 1) have been adopted by a GMD; 2) are of general application within the district and have the effect of law; and 3) are not otherwise contained in

current regulations promulgated by the Chief Engineer. The legislation does not abrogate the power of a GMD to develop and adopt local standards not of general application and not having the effect of law. In addition to defining what standards and policies must be recommended, the legislation reiterates the existing requirement found in K.S.A. 82a-1028(o), which authorizes a GMD to:

"recommend to the chief engineer rules and regulations necessary to implement and enforce policies of the board. Such rules and regulations shall be of no force and effect unless and until adopted by the chief engineer to implement the provisions of article 7 of chapter 82a of the Kansas Statutes Annotated, and all acts amendatory thereof or supplemental thereto. All such regulations adopted shall be effective only within a specified district; . . ."

Reiterating the existing requirement found in K.S.A. 82a-1028(o), it is plain to see how S.B. 287 redefines what standards must be submitted to the Chief Engineer in order to comply with K.S.A. 82a-1028(o) and S.B. 287. In conclusion, New Section 12 of S.B. 287 requires consolidation into rule and regulation those GMD standards and policies of general application which have the effect of law and are not contained in current promulgated regulations, and it voids those standards not in compliance. The legislation thus redefines what standards and policies must be submitted to the Chief Engineer as recommended regulations pursuant to K.S.A. 82a-1028(o). The legislation does not abrogate the power of a GMD to develop other local standards.

Very truly yours,

CARLA J. STOVALL

Attorney General of Kansas

Guen Easley

Assistant Attorney General

CJS:JLM:GE:jm

1. *State v. Scherzer*, 254 Kan. 926 (1994).
2. See New Section 12(a)(1) (by November 1999, the Chief Engineer is required to submit all current standards, policy and orders as rules and regulations for filing in accordance with K.S.A. 77-420).
3. See *Bruns v. Kansas State Board of Technical Professions*, 255 Kan. 728, 733 (1994) (internal policy having the effect of law but not promulgated as a rule and regulation is not enforceable.)

Kansas Attorney General Opinions

KANSAS BUILDING INDUSTRY ASSOCIATION

January 24, 2002

To: House Environment Committee

We respectfully request introduction of a bill to define the terms “substantial adverse impact on the area” and “direct impairment.”

Suggested language for definition of adverse impact and direct impairment:

“Substantial adverse impact on the area” as referred to in K.S.A. 82a-734 means exposing the groundwater table to evaporation that will cause a direct impairment to a groundwater or surface water right.”

“Direct impairment” means a raising or lowering of the groundwater table, or raising or lowering of streamflow, in a manner which is directly attributable to the operation of sand and gravel pits.

Rationale: These definitions are consistent with Kansas case law. Currently, statutes do not define these terms. Current regulations at K.A.R. 5-13-2 are not consistent with the statute at K.S.A. 82a-734, and have the effect of requiring many sand and gravel pits to obtain a water quality right, whereas they previously were not required to do so unless they would have a “substantial adverse impact.”

*House Environment
1-24-02
Attachment 2*

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82a-734

Chapter 82a.--WATERS AND WATERCOURSES Article 7.--APPROPRIATION OF WATER FOR BENEFICIAL USE

82a-734. Sand and gravel pits; reports; evaporation not beneficial use or diversion, when.

(a) An operator will notify the chief engineer of the division of water resources of the state board of agriculture of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

(b) Unless the chief engineer determines that it has a substantially adverse impact on the area groundwater supply, the evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall not be construed to be a beneficial use or diversion of water for the purposes of the Kansas water appropriation act, K.S.A. 82a-701 *et seq.*, and amendments thereto.

(c) Evaporation from sand and gravel pits, as calculated by the chief engineer, will be reported as an industrial use to the director of taxation for the purpose of assessing the water protection fee pursuant to K.S.A. 92a-954[*], and amendments thereto.

History: L. 1995, ch. 72, § 1; Apr. 6.

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Memorandum

TO: REPRESENTATIVE JOANN FREEBORN, CHAIR
HOUSE HEALTH & HUMAN SERVICES COMMITTEE

FROM: WILLIAM W. SNEED

RE: REQUEST FOR BILL INTRODUCTION; PROPOSED REVISIONS TO SOLID
AND HAZARDOUS WASTE ACT

DATE: JANUARY 24, 2002

Madam Chair, Members of the Committee, my name is Bill Sneed and I am Legislative Counsel for the Kansas Construction and Demolition Landfill Association. We appreciate this opportunity to introduce our proposal for legislation.

Over the last several months, the members of the Association have been meeting with officials of the Kansas Department of Health and Environment regarding possible amendments to the Act to be proposed to the Department's rules and regulations. The Department decided to bring a legislative proposal in lieu of immediate changes to their rules and regulations. After being informed of this, our Association commenced discussions on its own possible legislative changes. The attached bill draft follows the proposed changes approved by the Association.

Thus, on behalf of my client, I respectfully request that the attached proposal be introduced by the House Environment Committee. If you have any questions, please feel free to contact me.

Respectfully submitted,

William W. Sneed

WWS:kjb

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*House Environment
1-24-02
Attachment 3*

AN ACT concerning Solid and Hazardous Waste; relating to Construction and Demolition Landfills; amending K.S.A. 65-3402 and repealing the existing sections.

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

New Section 1. Construction and Demolition Landfills-Minimum Requirements.

- (a) Each construction and demolition landfill shall: (1) be fenced or have other appropriate barriers to restrict access to the landfill when it is not open; (2) have controlled access at all times the landfill is open to accept waste; (3) have appropriate signage regarding the operations of the landfill; and (4) cover all exposed construction and demolition waste at least once every 30 days.
- (b) Except for construction and demolition landfills described in subsection (d), all construction and demolition landfills shall: (1) not be located within a 100-year flood plain; (2) not be located so as to cause the destruction or adverse modification of critical habitat for any endangered species as provided in K.S.A. 32-958; and (3) not be located within 150 feet of the property line without the consent of the adjoining landowner. The department shall waive any of the requirements in this subsection (b) upon a demonstration by the landfill's owner or operator that site specific conditions render them inappropriate.
- (c) Any construction and demolition landfill which has its lowest point of waste disposal five feet or less above the geologic unit in which the first encountered aquifer is located shall be required to manage or to prevent the pollution of the waters of Kansas.
- (d) Except as provided in this subsection or subsection (a), the department shall not impose, by rule or permit, restrictions or conditions on the use or operation of construction and demolition landfill (including any waste disposal phase of a construction and demolition landfill in such permit for which an amendment (and not renewal) to the landfill's construction and demolition permit is not required) for which permits have been issued by the Department prior to the effective date of this act in addition to those restrictions or conditions in effect on January 1, 2002.

New Section 2. Construction and Demolition Landfills-Response Actions. When the Department determines through scientific analysis and demonstration that a construction and demolition landfill has or can reasonably be expected to cause harm to the waters of the state, the Department can require the owner or the operator of the landfill to take appropriate response actions including, without limitation, groundwater monitoring, groundwater remediation, methane gas collection, and/or the orderly closure of any phase of the construction and demolition landfill which has been the source of the release and require any future phases at that construction and demolition landfill utilize a compacted soil liner.

New Section 3. Construction and Demolition Landfills-Rulemaking. The Department shall establish rules, guidances, and policies to regulate the design, permitting, construction, operation,

closure, and post-closure care of construction and demolition landfills. The Department shall establish these rules, guidances, and policies with the advice of the Construction and Demolition Landfill Technical Advisory Council.

(a). The technical advisory council shall consist of: Two representatives of the Kansas Association of Counties; Two representatives of the Kansas league of Municipalities; Two representatives of the Kansas Construction and Demolition Landfill Association; and three individuals knowledgeable about construction and demolition landfills selected by the governor.

(b). The technical advisory council shall do all of the following:

(1). Work jointly with the Department to develop rules, guidances, and policies to regulate the design, permitting, construction, operation, closure and post-closure care of construction and demolition landfills;

(2). Prepare with the Department a joint report by December 31, 2002, for the legislature regarding the status of the rule drafting;

(3) shall review and report its recommendations on any legislative bill amending, supplementing, or affecting the statutes governing construction and demolition landfills or rules and regulations adopted thereunder or affecting the administration of such act or rules and regulations, which is introduced in the legislature and which is requested to be reviewed and reported on to a standing committee of either chamber of the legislature to which the bill is referred, upon the request of the chairperson of such committee;

(4) select a chairperson and vice chairperson from its members to preside at its meetings; and

(5) Meet no less than quarterly.

(c) The members of the technical advisory council shall serve without compensation, but, when attending meetings of the advisory council, or subcommittee meetings thereof authorized by the advisory council, shall be paid mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

Section 4. K.S.A. 65-3402 is hereby amended to read as follows:

65-3402. 65-3402. Definitions. As used in this act, unless the context otherwise requires:

(a) "Solid waste" means garbage, refuse, waste tires as defined by K.S.A. 65-3424, and amendments thereto, and other discarded materials including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Solid waste does not include hazardous wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments thereto, recyclables or the waste of domestic animals as described by subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

(b) "Solid waste management system" means the entire process of storage, collection, transportation, processing, and disposal of solid wastes by any person engaging in such process as a business, or by any state agency, city, authority, county or any combination thereof.

(c) "Solid waste processing facility" means incinerator, composting facility, household hazardous waste facility, waste-to-energy facility, transfer station, reclamation facility or any other location

where solid wastes are consolidated, temporarily stored, salvaged or otherwise processed prior to being transported to a final disposal site. This term does not include a scrap material recycling and processing facility.

(d) "Solid waste disposal area" means any area used for the disposal of solid waste from more than one residential premises, or one or more commercial, industrial, manufacturing or municipal operations. "Solid waste disposal area" includes all property described or included within any permit issued pursuant to K.S.A. 65-3407, and amendments thereto.

(e) "Person" means individual, partnership, firm, trust, company, association, corporation, individual or individuals having controlling or majority interest in a corporation, institution, political subdivision, state agency or federal department or agency.

(f) "Waters of the state" means all streams and springs, and all bodies of surface or groundwater, whether natural or artificial, within the boundaries of the state.

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

(h) "Department" means the Kansas department of health and environment.

(i) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water.

(j) "Open dumping" means the disposal of solid waste at any solid waste disposal area or facility which is not permitted by the secretary under the authority of K.S.A. 65-3407, and amendments thereto, or the disposal of solid waste contrary to rules and regulations adopted pursuant to K.S.A. 65-3406, and amendments thereto.

(k) "Generator" means any person who produces or brings into existence solid waste.

(l) "Monitoring" means all procedures used to (1) systematically inspect and collect data on the operational parameters of a facility, an area or a transporter, or (2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soils on or in the vicinity of a solid waste processing facility or solid waste disposal area.

(m) "Closure" means the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volume specified in the permit and preparing the area for the long-term care.

(n) "Postclosure" means that period of time subsequent to closure of a solid waste disposal area when actions at the site must be performed.

(o) "Reclamation facility" means any location at which material containing a component defined as a hazardous substance pursuant to K.S.A. 65-3452a and amendments thereto or as an industrial waste pursuant to this section is processed.

(p) "Designated city" means a city or group of cities which, through interlocal agreement with the county in which they are located, is delegated the responsibility for preparation, adoption or implementation of the county solid waste plan.

(q) "Nonhazardous special waste" means any solid waste designated by the secretary as requiring extraordinary handling in a solid waste disposal area.

(r) "Recyclables" means any materials that will be used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product. "Recyclables" includes, but is not limited to, paper, glass, plastic, municipal water treatment residues, as defined by K.S.A. 65-163 and amendments thereto, and metal, but does not include yard waste.

(s) "Scrap material processing industry" means any person who accepts, processes and markets recyclables.

(t) "Scrap material recycling and processing facility" means a fixed location that utilizes machinery and equipment for processing only recyclables.

(u) "Construction and demolition waste" means solid waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks, ~~and~~ utilities, *and similar activities*, untreated wood and untreated sawdust from any source; solid waste consisting of motor vehicle window glass; and solid waste consisting of vegetation from land clearing and grubbing, utility maintenance, and seasonal or storm-related cleanup. Such wastes include, but are not limited to, bricks, concrete and other masonry materials, roofing materials, soil, rock, wood, wood products, wall or floor coverings, plaster, drywall, plumbing fixtures, electrical wiring, electrical components containing no hazardous materials, *caulking tubes*, nonasbestos insulation and construction related packaging, *lunch bags, cups, boxes, bottles, and newspapers resulting from construction, remodeling, repair, demolition, and similar activities; chemical containers which have been emptied to the extent practicable; non-friable asbestos; friable asbestos, provided such waste is disposed in a designated area approved by the Department.* "Construction and demolition waste" shall not include, *except as provided above*, waste material containing friable asbestos *or free liquids*, garbage, furniture, appliances, electrical equipment containing hazardous materials, tires, *sealed garbage bags*, drums and containers even though such wastes resulted from construction and demolition activities. Clean rubble that is mixed with other construction and demolition waste during demolition or transportation shall be considered to be construction and demolition waste.

(v) "Construction and demolition landfill" means a permitted solid waste disposal area used exclusively for the disposal on land of construction and demolition wastes. This term shall not include a site that is used exclusively for the disposal of clean rubble.

(w) "Clean rubble" means inert uncontaminated construction and demolition waste which includes concrete and concrete products, reinforcing steel, asphalt pavement, brick, soil or rock.

(x) "Industrial waste" means all solid waste resulting from manufacturing, commercial and industrial processes which is not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant or is not beneficially used in a manner that meets the definition of recyclables. Industrial waste includes, but is not limited to: Mining wastes from extraction, beneficiation and processing of ores and minerals unless those minerals are returned to the mine site; fly ash, bottom ash, slag and flue gas emission wastes generated primarily from the combustion of coal or other fossil fuels; cement kiln dust; waste oil and sludges; waste oil filters; and fluorescent lamps.

(y) "Composting facility" means any facility that composts wastes and has a composting area larger than one-half acre.

(z) "Household hazardous waste facility" means a facility established for the purpose of collecting, accumulating and managing household hazardous waste and may also include small quantity generator waste or agricultural pesticide waste, or both. Household hazardous wastes are consumer products that when discarded exhibit hazardous characteristics.

(aa) "Waste-to-energy facility" means a facility that processes solid waste to produce energy or fuel.

(bb) "Transfer station" means any facility where solid wastes are transferred from one vehicle to another or where solid wastes are stored and consolidated before being transported elsewhere, but shall not include a collection box provided for public use as a part of a county-operated solid waste management system if the box is not equipped with compaction mechanisms or has a volume smaller than 20 cubic yards.

(cc) "Municipal solid waste landfill" means a solid waste disposal area where residential waste is placed for disposal. A municipal solid waste landfill also may receive other nonhazardous wastes, including commercial solid waste, sludge and industrial solid waste.

(dd) "Construction related packaging" means small quantities of packaging wastes that are generated in the construction, remodeling or repair of structures and related appurtenances. "Construction related packaging" does not include packaging wastes that are generated at retail establishments selling construction materials, chemical containers generated from any source or packaging wastes generated during maintenance of existing structures.

Section 5. This act shall take effect and be in force from and after its publication in the statute book.

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KANSAS

DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Clyde D. Graeber, Secretary

2002 Annual Report Regarding Status of Substitute Senate Bill 204 Implementation

On April 13, 2001, Governor Graves signed into law Substitute Senate Bill 204. This bill outlined a very aggressive scope of work for the Kansas Department of Health and Environment (KDHE). Staff defined a timeline for accomplishing the tasks and have successfully met the statutory deadlines.

Section 6 of Substitute SB 204 requires the Secretary of Health and Environment to report annually to the Governor and Legislature the status of completing the classification of streams as required in Section 3, and designated use attainability analyses as required in Section 4. Specific tasks accomplished to date include:

1. **Classification of Stream Segments.** Evaluation of stream segments for classification is primarily dependent on the US Geological Survey (USGS) completing work on a method for extrapolating stream flow for Kansas stream segments. In order to facilitate that work, KDHE staff met with USGS staff to develop a scope of work and funding mechanism. That work has proceeded at a rapid pace. The following is a brief summary of activities to date:
 - A. April 16, 2001 - KDHE and USGS staff met in Lawrence, Kansas to discuss the scope of work for the project.
 - B. April 23, 2001 - KDHE and USGS staff met in Topeka, Kansas to further refine the scope of work for the project.
 - C. May 1, 2001 - USGS provided a first draft proposal for completing the scope of work, including an estimate for the total cost for the work - \$286,000. The KDHE share for the work was set at \$191,000 and the USGS share at \$95,000.

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*HOUSE ENVIRONMENT
1-24-02
ATTACHMENT 4*

- D. May 10, 2001 - KDHE provided comments on draft proposal and requested minimal changes.
- E. May 14, 2001 - USGS made requested changes to the proposal.
- F. May 18, 2001 - KDHE initiated paperwork for a contract with USGS to complete the flow data project.
- G. May 22, 2001 - KDHE wrote EPA requesting that existing federal grant funding for Kansas be reallocated toward funding the USGS work.
- H. May 29, 2001 - KDHE requested a slight change in the proposal wording to ensure the provisions of SB204 were accurately addressed in the proposal. USGS concurred.
- I. June 19, 2001 - EPA concurred that KDHE could reallocate existing federal funding to pay the State share of the USGS contract.
- J. July 16, 2001 - Contract with USGS finalized. Term of contract - July 1, 2001 to June 30, 2003.
- K. September 4, 2001 - USGS submitted the draft Quality Assurance Project Plan (QAPP) outlining the methodology and quality assurance procedures to be followed in the completion of the project.
- L. September 6, 2001 - KDHE commented on the draft QAPP and requested minor changes to which USGS agreed.
- M. September 7, 2001 - KDHE approved final QAPP.
- N. December 7, 2001 - USGS submitted first billing for the project.
- O. December 11, 2001 - KDHE and USGS staff met in Topeka, Kansas to discuss USGS progress on project to date.

2. **Designated Use Attainability Analysis.** SB 204 set two milestones for KDHE to meet during this first year. These milestones were met as follows:

- A. October 12, 2001 - KDHE published lists identifying streams for which: 1) recreational use attainability analyses have been completed; 2) recreational use has been determined not attainable; and 3) recreational use attainability analyses have not been completed. The accompanying map (Attachment A) depicts the streams

listed in the above categories.

B. November 30, 2001 - KDHE published on the KDHE web site (<http://www.kdhe.state.ks.us/befs/index.html#resources>) a guidance document of protocols for conducting designated use attainability analyses for all uses defined in Section 1(c).

3. **Other Tasks Initiated.** Two additional tasks have been initiated to meet other requirements of Sub. SB 204:

A. Development of Cost/Benefit Analysis Procedure.

Section 1(a)(1)(D)(ii) requires KDHE to conduct a cost/benefit analysis for evaluating the net benefits of classifying non-flowing streams that lack any known threatened or endangered species, and lack any National Pollutant Discharge Elimination System discharges, but that do have remnant pools that serve as important ecological refugia. The 2001 Legislature provided \$100,000 for KDHE to contract for the development of a procedure to meet the criteria set in Sub. SB 204. The following is a brief summary of actions to date:

1. July 9, 2001 - Solicited proposal (Contract #264201) from Kansas universities for the development of a procedure to determine the cost/benefit associated with the classifications of streams in Kansas pursuant to Sub. SB 204. No proposals were received by closing date of July 20, 2001.
2. September 12, 2001 - Solicitation for cost/benefit analysis procedure expanded to national search (Request for Proposal #04033). No proposals were received by closing date of October 18, 2001.
3. January 10-11, 2002 - Convened a meeting to discuss viable approaches for evaluating the net benefits of classifying streams that show pooling of water during periods of zero flow and provide important refuges for aquatic life and permits biological recolonization of intermittently flowing segments. Meeting agenda and list of participants are attached (Attachment B). A summary of the meeting will be provided at a later date.

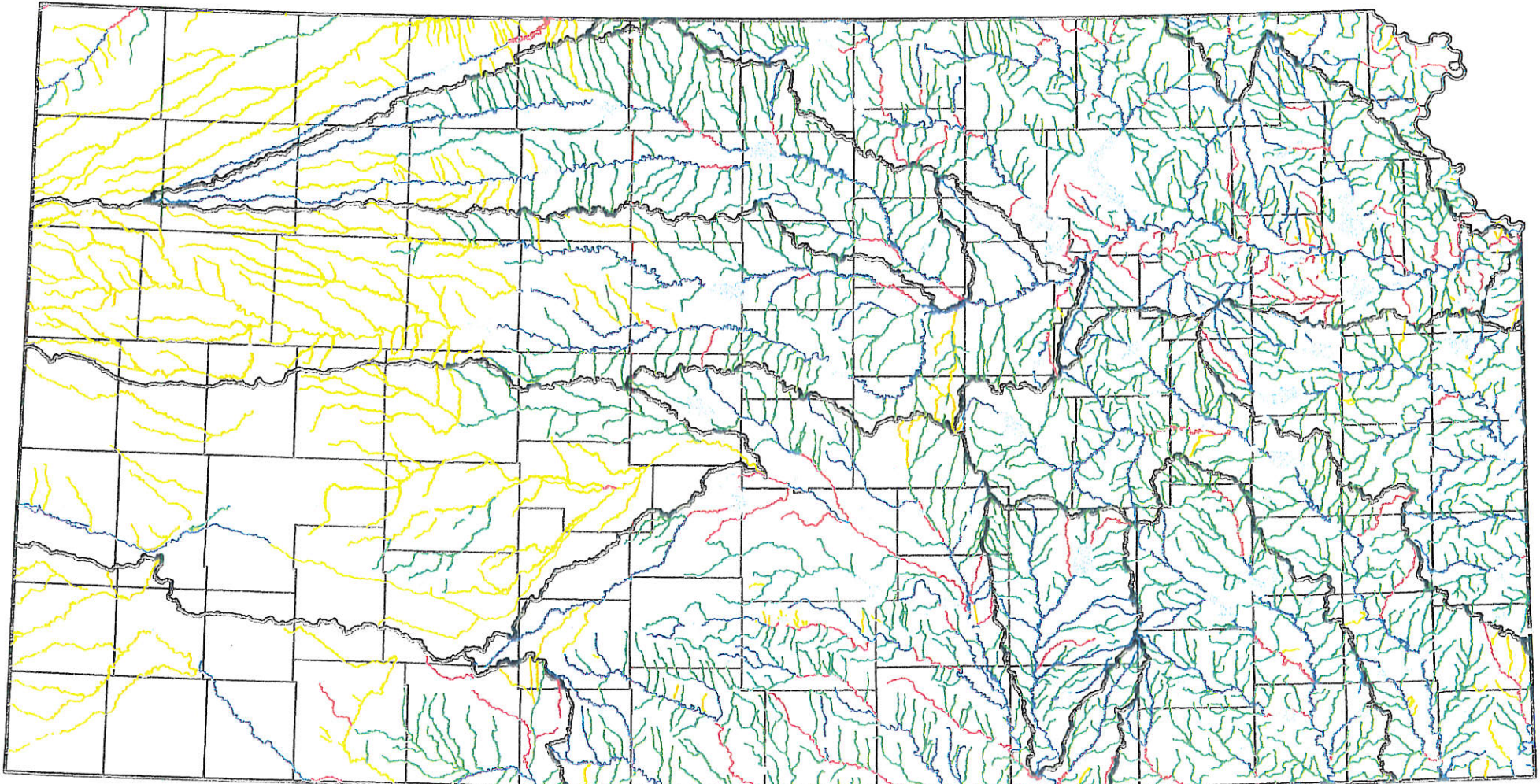
B. Annual update of Kansas Surface Water Register.

Section 5(h) requires that the Kansas Surface Water Register be updated annually. A notice of intent to revise the register was published in the *Kansas Register* on December 6, 2001. Notification letters were also sent to the Basin Advisory Committees, Kansas League of Municipalities, Kansas Association of Counties, Conservation Districts, Kansas Water Office, Department of Wildlife and Parks, Department of Agriculture, State Conservation Commission, and an additional list of 58 interested persons. This preliminary comment period ended January 4,

2002. The formal revision to the Kansas Surface Water Quality Register is currently being undertaken. This regulatory process will provide a 60 day comment period as prescribed by the Kansas Administrative Procedures.

Staff continue to work toward full implementation of Substitute Senate Bill 204 and future statutory timelines.

CLASSIFIED STREAMS: DESIGNATED RECREATIONAL USE STATUS USE ATTAINABILITY ANALYSIS STATUS (Sub. Senate Bill 204, Section 4(a))



Attachment A

DATA SOURCES:

Political boundaries: KCDB/KGS
Hydrological Unit Code (HUC8): NRCS
Technology: USEPA modified by KDHE
Stream designations & status: KDHE

KDHE/BEFS November 2001

- lakes
- primary contact recreation use adopted but no UAAs conducted
- primary contact recreation use not designated, UAAs not completed
- primary contact recreation use adopted, UAAs completed
- primary contact recreation use not attainable, UAAs completed
- county boundary
- stream basin boundary

Meeting Agenda / Topics

Issue

KDHE needs to develop an approach for evaluating the net benefits of classifying (i.e., designating uses and setting water quality standards for) non-flowing streams that lack any known T & E species, and lack any NPDES discharges, but that do have remnant pools that serve as important ecological refugia.

Thursday Jan 10, 2002

12:00 - 12:15

Introductions

12:15-1:00

Resource Description-----Mike Butler

1. Describe some examples of streams fitting the criteria, including their watershed/landscape setting and their hydrology.
2. Describe the potential scope of the area in Kansas where these streams are likely. Eco-regions
3. Potential impact on downstream water bodies.

1:00 -3:15

Ecological Considerations-----David Edds and Matt Heberling

1:00-2:00

1. How do these pools function ecologically?
 - a. Fish/amphibian survival
 - b. Support of associated riparian habitat
 - c. Wildlife use
 - d. Migratory waterfowl use

2:00-2:15

Break

2:15-3:15

2. What services to humans are provided by these streams and their pools?
 - a. Recreation (fishing, bird-watching, hunting, etc.)
 - b. Livestock watering
 - c. Support of downstream uses
 - d. Aesthetics/social values
 - e. Indirect use or non-use values (property value)

3:15-3:45

Regulatory Considerations-----Theresa Hodges

1. If the streams were classified, what uses would likely be designated?
2. What kinds of threats currently impair these pools/streams and their services/uses?
 - a. Nonpoint sources
 - b. Physical modification
 - c. Hydrological modification

3:45-5:00

Effects of Classification-----Facilitated Discussion

1. What regulatory processes would be used? (e.g., use designation, monitoring, listing, TMDL development)
2. What restoration alternatives are available? (e.g., agricultural BMPs, riparian zone restoration, stream channel restoration)
3. How efficacious are the restoration alternatives (what environmental benefits will be provided/restored)?
4. What other consequences will they have? (e.g., effects on agricultural production, employment effects)
5. What monies would be available (whose and how much)?

Friday Jan 11, 2002

9:00-12:00

Considerations for designing a cost/benefit analysis protocol/tool kit

Facilitated discussion to determine what categories to include when comparing the costs and benefits of "with classification" and "without classification" conditions.

1. Techniques for estimating environmental benefits of classification/restoration
 - a. Techniques for estimating ecological efficacy
 - b. Techniques for estimating economic value
2. Techniques for measuring costs of classification/restoration
3. Economic issues.

SB 204 Meeting, January 10-11, 2002

-Kansas City, KS-, EPA Region IV Office

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23	Bernardo, Dan	Kansas State University	785-532-6702	dbernar@agecon.ksu.edu



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

Report to House Environment Committee
Implementation of SB 204 from "01" Session
Presented by Karl Mueldener
KDHE, Bureau of Water
January 24, 2002

USGS Contract

- ▶ SB 204 in Section 1 defines classified streams. One definition includes streams with a 10 year median flow equal to or in excess of 1 cfs based on USGS work.
- ▶ A contract with the USGS was signed in July, 2001, and the work is underway.
- ▶ The USGS work will identify stream segments flows based on; 1) actual measured flows and; 2) where actual stream flow measurements are absent, flows will be extrapolated based on parameters such as drainage area, latitude, and topography of the basin.

Regulations

Draft regulations are now being reviewed by the Attorney General and Dept. of Administration.

- ▶ Changes are intended to be minimal to existing regulations, i.e, limited to removing conflicts with SB 204 from the existing regulations.
- ▶ Anticipate public release this month, Jan. 02, and adoption possible by July, 2002
- ▶ Triennial review is coincidentally scheduled for this year. Review of Water Quality Standards is required every 3 years by Fed law.

Items for consideration include: changes in stream classification, particularly removing some dry stream from the register, conversion to e-coli criteria from the existing fecal criteria.

T & E Species

Stream segments actually inhabited by threatened and endangered aquatic species are defined as classified stream segments under SB 204. The Kansas Department of Wildlife and Parks and the United States Fish and Wildlife Service have been requested to furnish information on streams where T&E aquatic species have been recorded. Both agencies have indicated some data will be provided in response to the request.

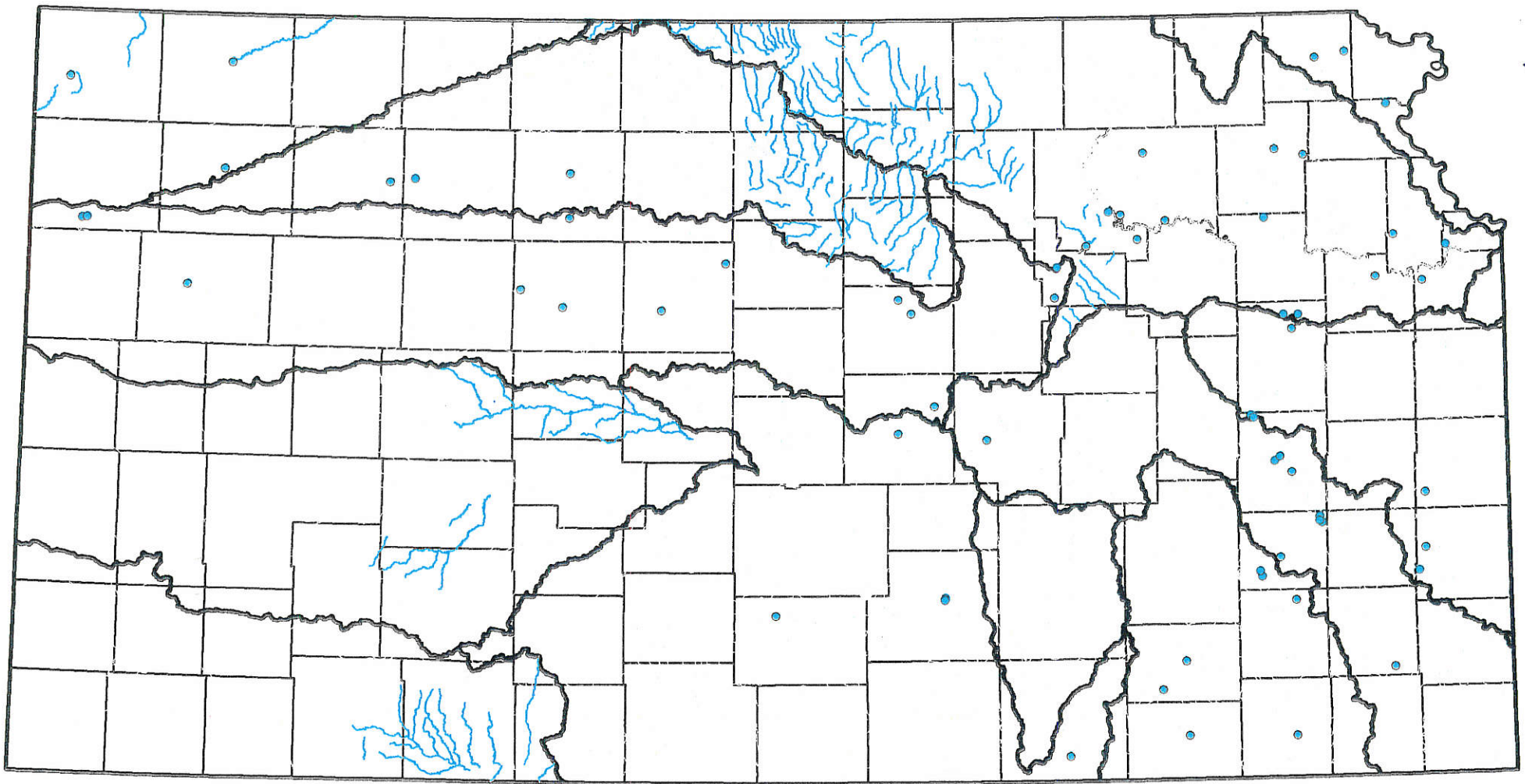
Briefing to House Environment Committee
Implementation of SB 204
Presented by Theresa Hodges
KDHE Bureau of Environmental Field Services
January 24, 2002

- **Designated Use Attainability Analysis**
SB 204 set two milestones for KDHE related to use attainability analyses.
 - October 15, 2001–KDHE published a list identifying the streams for which:
 - recreational UAAs had been conducted;
 - recreational use has been determined not attainable;
 - recreational UAAs have not been completed.List published October 12, 2001.
 - December 1, 2001–KDHE to publish UAA protocols as guidance document; task completed November 30, 2001. Published on KDHE web site, <http://www.kdhe.state.ks.us/befs/index.html#resources>.

- **Other Tasks**
 - The 2001 Legislature allocated \$100,000 for contracting for the development of a protocol for the cost/benefit analysis required for classifying non-flowing streams that lack T & E species, NPDES discharges, but that do have remnant pools that serve as important ecological refugia. KDHE has:
 - Solicited proposals from Kansas universities, but did not receive any proposals.
 - Expanded the solicitation to a national search, but did not receive any proposals.
 - Convened a meeting to discuss viable approaches for evaluating the net benefits of classifying streams that show pooling during periods of zero flow and serve as important ecological refugia.
 - Annual update of Kansas Surface Water Register.
 - Notice of intent to revise Register was published in *Kansas Register*, December 6, 2001.
 - Notification letters were also sent to BACs, KAC, League of Municipalities, Conservation Districts, SCC, KWO, KDA, KDWP and 58 other interested persons. We received 2 written comments and one telephone comment. We are moving forward to revise the Register and proceed with the regulatory process, which also includes a 60-day public comment period.

Recreational Use Attainability Analyses Field Work 2001

*House Environment
1-24-02
Attachment 5*



- field work completed in 2001 (lake sites)
- ▭ lakes
- ▭ field work completed in 2001
- ▭ stream basin boundary
- ▭ streams
- ▭ county boundary