

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on March 12, 2003, in Room 423-S of the Capitol.

All members were present except: Representative Showalter - Excused

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

Conferees appearing before the committee:

Bill Pracht, East Kansas Agri-Energy  
Glen Caldwell, East Kansas Agri-Energy  
Dave Murphy, Kansas Riverkeeper for Friends of the Kaw  
Howard Brown, Fort Scott Livestock Market, Inc.  
Mervin Sexton, Manhattan Commission Co., Inc.  
Mark Mackey, Executive Secretary, Kansas Livestock Marketing Association  
Karl Mueldener, Director, Bureau of Water, Kansas Department of Health and Environment  
John Metzler, Kansas Water Environment Association  
Charles Benjamin, Kansas Chapter of the Sierra Club (written only)  
Sally Finney, Kansas Public Health Association, Inc. (written only)

Others attending: See attached list

Minutes of the March 5 and 10 meetings were distributed. Members were asked to notify the committee secretary of any corrections or additions prior to 5:00 p.m. March 14, or the minutes will be considered approved as presented.

Bill Pracht and Glen Caldwell explained how East Kansas Agri-Energy was organized by 122 regional farm producers, businesses, and individuals as a limited liability company in October 2001 to pursue the possibility of building an ethanol production plant in Garnett, Kansas. They provided an overview of their funding, feasibility studies, and other research activities. The organization now is offering units for sale to investors throughout Kansas and Missouri. EKAЕ will seek to raise \$14.4 million from private investors before seeking commercial financing for the remainder of the \$36 million project. The plant will take approximately 12 months to build after financing is complete and will employ about 30 people.

The proposed facility will be designed to produce an estimated 20 million gallons of fuel ethanol per year, and is expected to require 7.5 million bushels of corn and sorghum annually to meet its production level. Co-products of ethanol production, including 64,000 tons of dried distillers grains with solubles (DDGS) and 63,000 tons of marketable carbon dioxide, will be marketed each year. They stated that East Kansas Agri-Energy will provide producers the opportunity to capture added value from the commodities they grow, as well as provide an investment vehicle for the "main street" investor to participate in an activity that will provide economic development for rural Kansas. (Attachment 1)

**Hearing on SB 131 - Exclusion of livestock auction barns and other livestock markets from confined feeding facility requirements.**

Chairman Johnson opened the hearing on **SB 131**. Raney Gilliland explained that this bill would amend a section of law dealing with definitions relating to the regulation of sources of potential water pollution. Specifically, the bill would exempt public livestock markets from the definition of "confined feeding facility." In addition, the bill would establish a definition for the term "public livestock market." The term would include livestock markets, livestock auction markets, sale rings, stockyards, community sales, and livestock

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE at 3:30 p.m. on March 12, 2003, in Room 423-S of the Capitol.

markets where federal veterinary inspection is regularly maintained. He noted that the Secretary of Health and Environment is given very broad authority to regulate the waters of the state. Copies of Kansas Statute 47-1001 and Kansas Administrative Regulation No. 28-18-2 were distributed to assist the committee in understanding the bill.

Dave Murphy, Kansas Riverkeeper for Friends of the Kaw, appeared as a neutral conferee on **SB 131**. He believes the proposed changes would severely undermine the purpose of current Kansas and federal laws. The proponents of this bill claim that their facilities have no potential to discharge, if that is so, he believes new federal regulations should be allowed to take effect through the normal regulatory process to satisfy both the federal regulations and the needs of these livestock sale barns. **SB 131** would exempt sale barns from state regulation, but not from federal statutes, thus any sale barn that causes a discharge would be subject to a lawsuit in federal court and would have virtually no defense. ([Attachment 2](#))

Howard Brown, Fort Scott Livestock Market, Inc., testified in support of **SB 131** stating that livestock markets are not feed yards or growing yards where cattle are held and fed over a period of weeks or months. He agrees that waste management at markets is important in protecting our natural resources, but needs to be accomplished with codes or regulations that match the nature of the business. ([Attachment 3](#))

Mervin Sexton, Manhattan Commission Co., Inc., appeared in support of **SB 131** to exclude livestock markets from confined feeding facility requirements. In December 2001, he received a notice of noncompliance as his facility has a water pollution potential. He believes this bill will help in cases such as his, where there is no fault found, but is penalized for unfounded potential. ([Attachment 4](#))

Mark Mackay, Executive Secretary, Kansas Livestock Marketing Association, testified in support of **SB 131**. He said that livestock auction markets are unique in size, scope, and operation from what is typically referred to as a concentrated animal feeding operation. Livestock markets operate very intermittently, typically one to two days a week, versus a production facility that operates nearly continuously year around. He believes that continuing to regulate these two very different sectors of the livestock industry as though they were operationally the same, unfairly penalizes livestock markets. ([Attachment 5](#))

Karl Mueldener, Director, Bureau of Water, Kansas Department of Health and Environment, spoke in opposition to **SB 131**. He stated that livestock markets are a source of water pollution and related health issues which the state has addressed through the wastewater permitting program. He said that while sale barns are not necessarily feeders, the waste generated is the same. He said that while the state's statutory definition of a confined feeding facility uses the word "feeding," the issue at hand is managing the wastes generated by livestock.

He reported that federal laws and regulations covering sale barns are similar to those in Kansas. EPA defines an Animal Feeding Operation as a location where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period. He said the size of a livestock facility, in animal units, has several impacts. Generally, livestock facilities are designated state or federal, with federal permits required for those at or greater than 1000 animal units. If less than 1000 animal units, the facility may be permitted in Kansas if found to present a significant pollution source.

Mr. Mueldener reported that bacteria is the most common water pollution problem in Kansas waters and livestock wastes are well documented as a source of bacteria. Considering the characteristics of the waste from sale barns, and the overall problem in Kansas with bacteria, the Department believes the existing regulatory structure addressing water pollution from sale barns is appropriate. He and John Harsch answered committee questions. ([Attachment 6](#))

John Metzler, Kansas Water Environment Association, appeared in opposition to **SB 131**. He said that these markets, in effect, are short term confined feeding facilities which have the potential like any other confined feeding facility to contribute significant quantities of ammonia, nitrogen, phosphorus, and fecal coliform to waters of the state. He said that if these facilities are not regulated, there will be a significant threat to public health and the aquatic environment. ([Attachment 7](#))

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE at 3:30 p.m. on March 12, 2003, in Room 423-S of the Capitol.

Charles Benjamin, on behalf of the Kansas Chapter of the Sierra Club, submitted written testimony in opposition to **SB 131**, noting that their members are very concerned about the poor quality of Kansas' surface water. Stating that KDHE has addressed this source of potential pollution since the 1970s through the wastewater permit program, the Sierra Club believes this type of regulation should continue. (Attachment 8)

Sally Finney, Kansas Public Health Association, Inc., provided written testimony in opposition to **SB 131**. The Association supports continuation of the Kansas Department of Health and Environment's livestock inspection program. She states that water is basic to human life, and protecting the health of Kansans by preventing water contamination is a proven public health strategy. (Attachment 9)

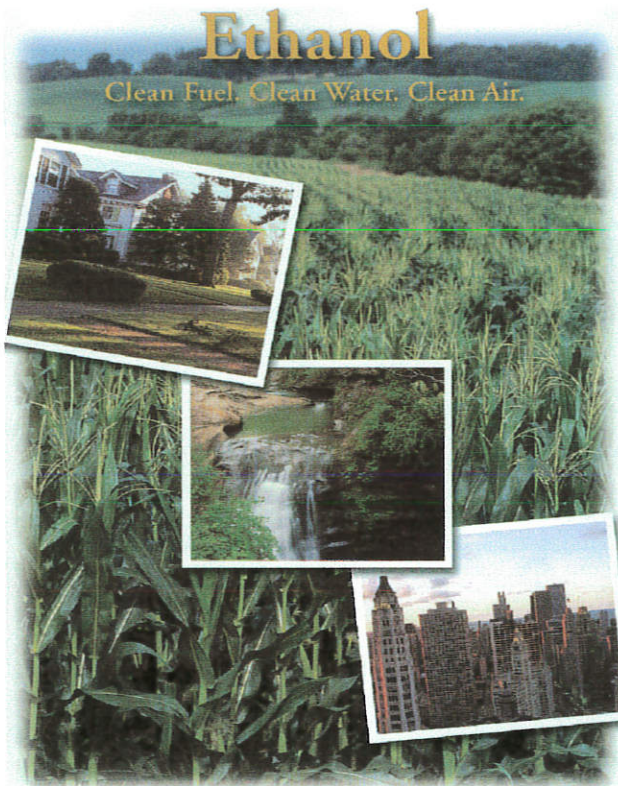
The hearing on **SB 131** was closed. The Chairman asked Karl Mueldener, Director, Bureau of Water, KDHE, and Mark Mackey, Kansas Livestock Marketing Association, to work out a possible solution and report back to the committee on Wednesday, March 19.

The meeting adjourned at 5:25 p.m. The next meeting is scheduled for March 17, 2003.

# HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: March 12, 2003

NAME	REPRESENTING
DAVE MURPHY	FRIENDS OF THE KDW
John Hasky	KDHE
Karl Muedener	"
Greg Krissiek	KS Corn / KS Grain Soybean Producers
Roy Hammond	KDOCH
Howard; Bobbie Brown	Fair-Trade Lives to be Marketed
John Metzler	KWEA
Jere White	KCBA-KGSP
Barbara Meyer	Intern Rep. Gatewood
Merwin L. Lepton	MANHATTAN COMM. CO., INC.
MARK MACKAY	LIVESTOCK MARKETING ASSN.
GLENN CALDWELL	EAST KANSAS AGRICULTURE
Rebecca Reed	KS Dept of Agriculture
Kecia Frevert	Personal Interest
John E. Cline	Manhattan Comm. Co. Inc.



# EKAE, LLC

## Kansas Legislative Ag Committees

[www.ekaellc.com](http://www.ekaellc.com)

---

**More Than A Good  
Idea....  
A Good Investment!**



## Presentation Overview

- EKAE, LLC - History / Vision
- What is Ethanol?
- Why Ethanol? A value added opportunity for Eastern Kansas and Western Missouri.
- Our Team - Fagen / ICM
- Risk Assessment
- Financials
- Why should I be an owner / investor in EKAE, LLC?



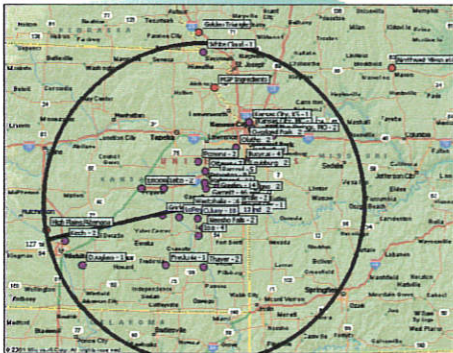
History...

## How We Got Here...

- December 2000 – Anderson County Economic Development pre-feasibility study completed
- January 2001 – EKAE formed - 137 interested individuals contributed \$1000 to the continuation of the project
- May 2001 – Full feasibility study completed
- October 2001 – EKAE, LLC formed
- January 2002 – Seed stock capital drive conducted – 122 members contributed \$5000 to the continuation of the project
- July 2002 – Filed prospectus with SEC
- January 2003 – SEC authorized the prospectus for the sale of membership units
- February 10, 2003 - Equity Drive Begins!



## EKAE Initial 122 Member Distribution



History...

## Grants and Support

- \$6000 - Anderson County Economic Development – commissioned the pre-feasibility study
- \$7000 - Kansas Corn Commission
- \$5000 - Kansas Grain Sorghum Commission
- \$5000 - Kansas Cooperative Development Center
- \$75,000 Kansas Department of Commerce and Housing Agriculture Value Added Center Award
- \$3000 - Anderson County Economic Development Donation
- \$450,000 USDA Value Added Development Grant
- \$207,000 - City of Garnett – 23 Acres
- EKAE is seeking to utilize tax incentives, training grant, and high performance incentive program.



Vision...

## Board Of Directors



Bill Pracht,  
Chairman  
Westphalia, KS

Officers



Roger Brummel,  
Vice - Chairman  
Garnett, KS



Vision...

## Board Of Directors



Jill Zimmerman,  
Treasurer  
Garnett, KS

Officers



Dan Morgan  
Board Secretary  
Greeley, KS



Vision...

## Board of Directors



**Scott Burkdoll,**  
Rantoul, KS



**Glenn Caldwell,**  
Garnett, KS



**Jim Westagard,**  
Richmond, KS



Vision...

## Board Of Directors



**Doug Strickler,**  
Iola, KS



**Dan Guetterman,**  
Bucyrus, KS




**Don Meats,**  
LeRoy, KS




Vision...

## Personnel



**Diane Allen**  
Project Coordinator  
Garnett, KS


A special thanks to  
**Bill Barnes**  
And  
**The Anderson Co. Economic  
Development Committee**



Vision...

## EKAE, LLC Mission Statement


- East Kansas Agri-Energy, LLC will be fully dedicated to development of renewable energy products for the 21<sup>st</sup> century. It is our goal to develop an ethanol production facility in the Garnett, Kansas area. The latest construction and processing technology will be used to insure protection of the environment and enhancement of the community.
- We intend to make sufficient profit to generate a fair return to our investors and to finance continued growth and development. We are committed to increasing employment and building a stronger economy for our agriculture producers and all members of our surrounding communities.



What...


## What is Ethanol?

- Ethyl alcohol is a clear, colorless, flammable oxygenated fuel.
- Is the result of the fermentation of sugar and starch.
- Added to ordinary gasoline to create blends containing up to 10% ethanol. All automakers approve its use.
- **EKAE will produce 20,000,000 gallons / year.**




What...

## One Bushel of Corn Will Yield



■ Ethanol Denatured	2.8 gallons
■ Dried Distiller Grains with Solubles	18 lbs
■ Carbon Dioxide	18 lbs



What...

## Dried Distillers Grains with Solubles

- Co – Product from Ethanol Production
- Highly Palatable Feed Ingredient
- Typical Analysis: 27% Protein, 11% Fat, & 9% Fiber
- Available at 70%, 50%, or 10% Moisture
- **EKAE will Produce 64,000 tons / yr**



What...

## DDGS



### FEEDLOT

- Excellent Feed Component
- Starter, growing and finishing diets

### DAIRY

- Recognized as quality protein source in dairy rations
- No loss in production or butterfat compared to soybean & corn ration



### SWINE/POULTRY

- On going research indicates positive impacts for utilization in swine and poultry diets



Why...

## DDGS Demand

- 64,000 Tons Dry DDGS Produced / Year
- 427,400 Head of Total Cattle in an 11 County Area Surrounding the Plant
  - Equates to 0.82 Lbs. / Head / Day
- An Additional 490,000 Cattle in Missouri Agricultural District 10



## Why Ethanol In Eastern Kansas & Western Missouri?



Why...

## Let's Keep \$\$ at Home!!



"Add Value"



Vs.

"Export"



Why...

## 14 County Production KS & MO

	Sorghum (Bushels)	Corn (Bushels)	Total (Bushels)
Anderson	1,076,000	2,346,000	3,422,000
Allen	1,096,000	1,516,000	2,612,000
Bourbon	332,000	940,000	1,272,000
Coffey	1,173,000	1,704,000	2,937,000
Douglas	234,000	2,549,000	2,783,000
Franklin	759,000	2,052,000	2,811,000
Johnson	166,000	1,119,000	1,285,000
Linn	387,000	952,000	1,339,000
Miami	348,000	1,185,000	1,533,000
Osage	1,398,000	1,357,000	2,755,000
Woodson	1,189,000	1,339,000	2,528,000
<b>Kansas Totals</b>	<b>9,158,000</b>	<b>17,119,000</b>	<b>25,277,000</b>
Cass, MO	174,000	2,931,000	3,105,000
Bates, MO	406,000	4,846,000	5,252,000
Vernon, MO	1,254,000	3,185,000	4,439,000
<b>KS + MO Totals</b>	<b>9,992,000</b>	<b>28,081,000</b>	<b>38,073,000</b>

USDA, 2000 Data






Why...

## Benefits Agriculture


- Brings Value Added Agriculture Opportunities to Eastern Kansas and Western Missouri
- Provides additional markets for regionally grown corn and grain sorghum
- Historical basis for Eastern Kansas is 20 cents under Chicago Board of Trade (CBOT)
- Research indicates that ethanol production will narrow the basis 5 to 10 cents per bushel for locally grown feed grains. (AUS Consultants)



Why...

## Benefits The Farmer


- A \$0.10 / Bu. Increase in Feed Grain Prices Equals \$3,800,000 Higher Returns to KS & MO Farmers
- EKAE Will Process 7.5 mill. Bushels of Corn & Sorghum per Year
- 7.5 mill Bushels = Approximately 20% of Production within 50 miles



Why... **The Value-Added Impact**

Product	Annual Quantity	Unit Price	Revenue	Revenue Bushel
Ethanol	20 million gallon	\$1.25	\$25,000,000	\$3.33
DDGS	63,000 tons	\$90.00	\$5,670,000	\$.75
Total				<b>\$4.08</b>
Grain		\$2.38		-\$2.38
<b>Value Added</b>				<b>\$1.70</b>
Ethanol	30 million gallon	1.25	\$37,000,000	\$3.31
DDGS	96,000 tons	\$90.00	\$8,640,000	\$.76
Total				<b>\$4.07</b>
Grain		\$2.38		-\$2.38
<b>Value Added</b>				<b>\$1.69</b>


Source: BBI International, LLC



Why... **The Value-Added Impact**

- \$1.70 - \$1.98 value-added to grain equals approximately \$8.3 - \$9.7 million additional direct revenue from a 20 mgy plant. When multiplied by generally accepted agricultural multipliers of 2.4, that equates to a \$19.9 - \$23.3 million dollar annual economic impact on the rural economy of host county and surrounding counties.

Source: BBI International, LLC




Why... **Benefits Local Communities**

- Construction will take about 12 months and have about 100 – 150 workers on-site
- EKAE will employ 32 individuals
  - Annual Payroll of \$1.29 million
  - Economic impact of \$10.4 million



Why... **Environmentally Friendly**

- Helps offset greenhouse gas emissions caused by burning fossil fuels
- Reduces carbon monoxide and other toxins that pollute the air
- Ethanol is biodegradable and does not contaminate ground water supplies, like its competitor MTBE, which competes with ethanol as a fuel oxygenate.
- As many as 20 states have either banned or restricted the use of MTBE



**Why... States That Have Acted to Ban, Restrict, or Label MTBE Use**

Source: EIC International

**Why... Ethanol Can Lessen our Dependence on Imported Oil**

US Currently Imports 56% of Oil  
Expected to be 70% by 2010

**Why... Projected U.S. Ethanol Demand**

**Why... U.S. Fuel Ethanol Production**

**Why... US & Kansas Ethanol Production**

**Current U.S. Production Capacity**

- 2.7 Billion Gallon Capacity
- 69 Production Facilities
- 9 Under Construction

**Ethanol Production Capacity Under Construction, 2002**

**U.S. Ethanol Production Facilities**

Kansas currently has five plants with a total production capacity of over 60 million gallons. Located in Colwich, Garden City, Alchison, Russell and Leoti.

**Why... Political Support**

"Ethanol and biofuels are fuels of the future for this country. These fuels are gentle on the environment. They are fuels that can be renewed year after year, and fuels that can expand our farm economy. These fuels are made right here in America so they can't be threatened by any foreign power."

President George W. Bush, January 2002

Why... **Consumer Support**


**“ 73% of Americans believe the U.S. should develop new energy sources to diminish it's dependence on mideast oil supplies”**

Source: Newsweek Poll November 2002



Why... **Future Uses of Ethanol**

- Fuel Cells
  - Used to power vehicles and produce electricity.
  - Operate on hydrogen, which can be reformed or extracted from fuels such as ethanol
  - Provides higher efficiencies, fewer emissions and better performance than most other fuels including gasoline
  - Can use the existing fueling infrastructure
- E-Diesel
  - A mixture of 15% ethanol, 5% blending agent and 80% #2 diesel fuel.
  - Positive research and demonstrations in trucks, farm equipment and buses have indicated great promise.



**Experienced Team**


- Fagen, Inc. – Design/Builder
- ICM, Inc. – Process Engineer
- Christianson & Associates PLLP –John Christianson, Accountant
- Bill Hanigan – Legal Counsel
- Eide Bailey & Associates – Auditor
- EKAE will hire Ethanol Marketer, DDGS Marketer and Energy Consultant.




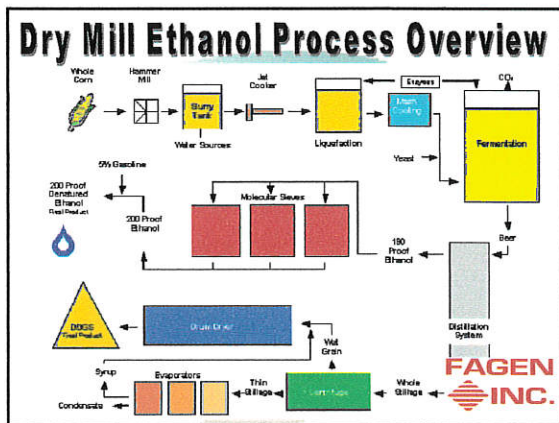
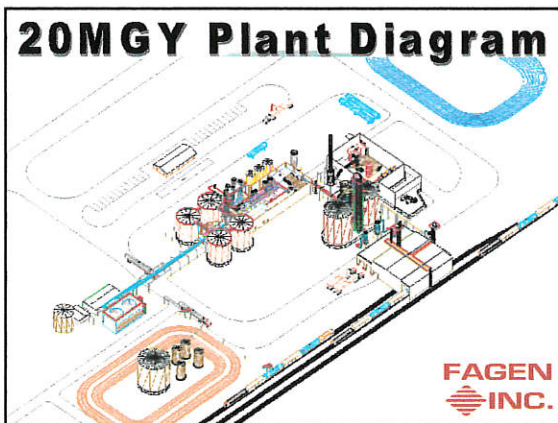
**Ethanol Plant Participation**

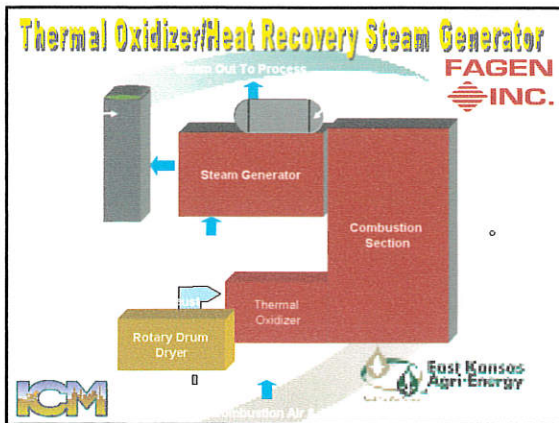
Since 1986, Fagen, Inc. has participated in bringing more ethanol capacity online than any other company. We have been involved in the construction and development of over 31 ethanol plants nationwide.

Fagen, Inc. has built over 70% of the U.S. ethanol capacity in the past five years.



○ Completed  
★ Under Construction  
▲ Under Development



### Ethanol Leadership - ICM

- Received First Ethanol Plant License from BATF
- Thermocompressor Driven Evaporator Design
- DDGS Dryers
- Methanator Wastewater Treatment Equipment

FAGEN INC.

ICM

### Performance Guarantees

- Volume (Denatured) - 20 MGY (Nameplate Capacity)
- Yield (Denatured) - 2.80 Gallons/Bushel
- BTU Usage (Steam & Dryer) - 37,000 BTU/Gallon
- Staffing - 32 Employees
- Electrical Usage - 0.85 Kilowatt/Gallon

FAGEN INC.

ICM

East Kansas Agri-Energy

# Risk Assessment

Before you invest you should read the prospectus.

East Kansas Agri-Energy

Risk Assessment... **EKAE, LLC**  
**Limited Liability Company (LLC) Issues**

- Proportionate voting rights
- Open to residents of Kansas and Missouri
- **NO** Grain delivery requirement for investors
- Investors must meet suitability criteria listed in prospectus

East Kansas Agri-Energy

Risk Assessment... **Escrow Procedures**

- Board's option to terminate escrow between \$9 - \$18 million
- Commitment to subscriptions requires 10% payment at signing with promissory note for balance
- 90% due within 20 days of board's decision to terminate escrow
- Failure to terminate escrow results in funds returned with interest

East Kansas Agri-Energy

Risk Assessment...

## Members Tax Responsibility

- LLC does not pay income tax
- Taxes are paid by members on a proportionate basis
- Dividend payments are decided by EKAE board
- Passive Income - members not subject to Self Employment Tax of 15.3%



Risk Assessment...

## Unit Liquidity

- After startup, no more than 49% of shares may be traded in any one year.
- EKAE will establish a qualified matching service.
- Transfer of member units must be board approved.
- No single member may own more than 25% of total units.



Risk Assessment...

## Production Costs

4 Major Inputs

- 10 Yr. Avg. Corn & Sorghum Price
  - US Corn = \$2.32 US Sorghum = \$2.21
  - KS Corn = \$2.38 KS Sorghum = \$2.11 (source USDA NASS)
- Natural Gas Price (Kansas)
  - 1993 to 2000 Avg. \$3.03/mcf
  - 2001 to 2015 Exp. Avg. = \$3.44/mcf (source IEA)
- Water
  - Nominal to \$.50 per 1000 gallons City of Garnett
  - First time a ethanol plant to use treated waste water
- Electricity
  - \$0.045 per kWh



## Financials

**Christianson & Associates, PLLP**  
 CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

Currently Employed By  
 18 Ethanol Plants



Financials....

## Breakeven Assumptions

Ethanol Plant Size	20,000,000 Gal / Yr
Capital Cost	\$1.50 / Gal
Cost of Rail	\$2,000,000
Ethanol Selling Price	\$1.15 / Gal
Ethanol Trans. Cost	\$0.07 / Gal
Ethanol Yield	2.65 Gal Eth. / Bu Grain
Grain Purch. Price	\$2.25 / Bushel
DDGS Selling Price	\$95 / Ton
CO2 Selling Price	
Electricity Use	1.4 kWh / Gal Ethanol
Electricity Price	\$0.045 / kWh
Natural Gas Use	37,000 CF / Gal
Natural Gas Price	\$3.75 / MCF
Water Use	10 Gal / Bu



Financials....

## Breakeven Assumptions

Water Price	\$0.50 / 1000 Gal
Waste Water Effluent	5 Gal / Bu
Waste Water Trtmt Cost	\$4.00 / 1000 Gal
Denaturant (Gasoline)	5% of Ethanol
Denaturant Price	\$0.80 / Gal
Chemicals & Enzymes	\$0.09 / Gal Ethanol
Number of Employees	32
Maintenance Materials	2.5% of Equipment Cost
Property Tax & Insurance	1.25% of Depr. Expense
Debt to Equity Ratio	50% Debt - 50% Equity
Debt Term & Interest Rate	10 Yrs at 7.5%
KS Producer Credit	\$0.075 / Gal on 15 MGY - 7 Yrs
Fed. Small Producer Payment	\$0.10 / Gal on 15 MGY - 2007



Financials.... **Breakeven Matrix**

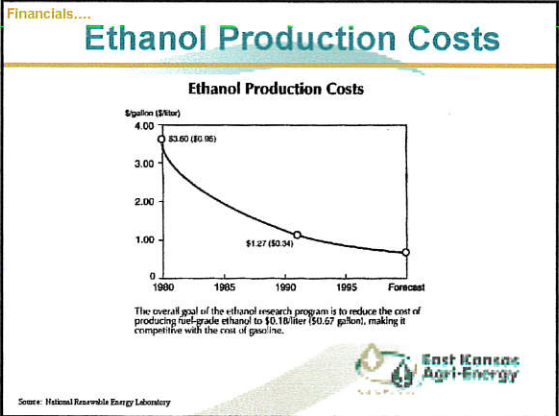
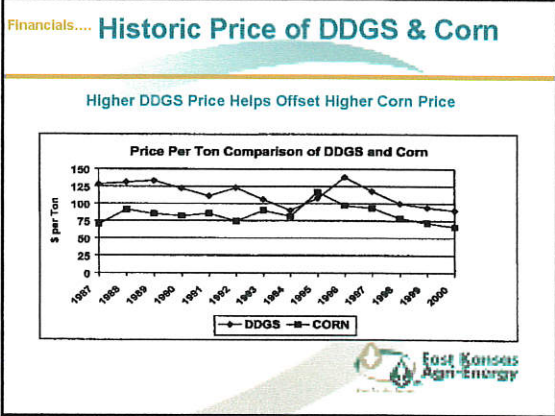
Profit or Loss per Gallon of Ethanol Produced (20,000,000 Gal / Yr)

	Corn								Ethanol \$7/Gal
	\$1 Bu	\$0.85	\$0.95	\$1.05	\$1.15	\$1.25	\$1.35	\$1.45	
Year 2	\$3.00	(\$0.1453)	(\$0.0453)	\$0.0647	\$0.1647	\$0.2647	\$0.3647	\$0.4647	\$0.6547
	\$2.75	(\$0.0569)	(\$0.0442)	\$0.1442	\$0.2442	\$0.3442	\$0.4442	\$0.5442	\$0.6442
	\$2.50	(\$0.0379)	\$0.1337	\$0.2337	\$0.3337	\$0.4337	\$0.5337	\$0.6337	\$0.7337
	\$2.25	\$0.1232	\$0.2232	\$0.3232	\$0.4232	\$0.5232	\$0.6232	\$0.7232	\$0.8232
	\$2.00	\$0.2127	\$0.3127	\$0.4127	\$0.5127	\$0.6127	\$0.7127	\$0.8127	\$0.9127
	\$1.75	\$0.3022	\$0.4020	\$0.5022	\$0.6022	\$0.7022	\$0.8022	\$0.9022	\$1.0020

	Corn								Ethanol \$7/Gal
	\$1 Bu	\$0.85	\$0.95	\$1.05	\$1.15	\$1.25	\$1.35	\$1.45	
Year 3	\$3.00	(\$0.4496)	(\$0.3496)	(\$0.2496)	(\$0.1496)	(\$0.0496)	\$0.0514	\$0.1514	\$0.2514
	\$2.75	(\$0.3591)	(\$0.2591)	(\$0.1591)	(\$0.0591)	\$0.0409	\$0.1409	\$0.2409	\$0.3409
	\$2.50	(\$0.2686)	(\$0.1686)	(\$0.0686)	\$0.0304	\$0.1304	\$0.2304	\$0.3304	\$0.4304
	\$2.25	(\$0.1801)	(\$0.0801)	\$0.0199	\$0.1199	\$0.2199	\$0.3199	\$0.4199	\$0.5199
	\$2.00	(\$0.0906)	\$0.0094	\$0.1094	\$0.2094	\$0.3094	\$0.4094	\$0.5094	\$0.6094
	\$1.75	(\$0.0011)	\$0.0989	\$0.1989	\$0.2989	\$0.3989	\$0.4989	\$0.5989	\$0.6989

Christianson & Associates, PLLP  
East Kansas Agri-Energy



- Becoming a Member of EKAE, LLC**  
*Membership Unit Sales*
- Membership units \$1000 each
  - Minimum investment 10 units or \$10,000
  - Complete Subscription Agreement
  - 10% down payable to Garnett State Savings Bank, 5<sup>th</sup> & Oak, Garnett, KS
  - Balance due within 20 days of notice of escrow termination
  - Board members are the only registered agents to sell units
- East Kansas Agri-Energy

- Projected EKAE, Timeline**
- Unit Offering February / June
  - Financial Closing July 2003
  - Groundbreaking Fall 2003
  - 12-14 Months Construction
  - Start-Up Winter 2004
- East Kansas Agri-Energy

**We Want You To Join Us In Building East Kansas Agri-Energy, L.L.C.**

*"Let's Add Value!"*

East Kansas Agri-Energy

News release

GARNETT, Monday, January 27, 2003 - East Kansas Agri-Energy, LLC announced the beginning of the sale of membership units in a \$36 million ethanol production plant to be located in Garnett, Ks.

"This is a very exciting day for us," said Bill Pracht, chairman of EKAE. "After three years in planning and research, EKAE may now begin to offer units for sale to investors throughout Kansas and Missouri, and the first of more than 50 investor meetings throughout the region will begin in the next few weeks."

The proposed facility will be designed to produce an estimated 20 million gallons of fuel ethanol per year, and is expected to require 7.5 million bushel of corn and sorghum annually to meet its production level. The grain requirement for the plant represents the yield from approximately 85,000 production acres, or approximately 20 percent of the grain sold in recent years within a 50-square mile radius of the plant's proposed site, with an obvious regional economic impact.

Western Missouri producers as well should see a positive economic effect from the plant, Pracht said "Today's announcement that our membership sale is proceeding is the best news for farmers in our region in who knows how long," Pracht said. "It should be a great opportunity for investors, and we're also very proud to be involved in a renewable fuels project that will help our country decrease our dependence on foreign oil imports, particularly with the current state of international affairs."

The plant will take approximately 12 months to build after financing is complete and will employ about 30 people, Pracht said, with a wage and salary scale above the local average.

EKAE will seek to raise some \$14.4 million from private investors before seeking commercial financing for the remainder of the \$36 million project.

Memberships are available to individuals and businesses residing in Kansas and Missouri at a purchase price of \$1,000 per unit with a 10 unit minimum.

Memberships will be available as of February 10, and public meetings to learn about the public offering will be held Feb. 10- March 21 throughout Eastern Kansas and Western Missouri, with dates and times to be advertised locally. Anyone with questions about those scheduled meetings or membership opportunities can call EKAE toll free at 1-877-352-3552, or locally at 785-448-2888.

East Kansas Agri Energy was organized by 122 regional farm producers, businesses and individuals as a limited liability company in October 2001. The organization was initiated to pursue the ethanol project through feasibility studies and other research, after initial investigations from the Anderson County Economic Development committee showed the Garnett area had a number of the assets required for plant construction and operation.

**EKAE EQUITY  
MEETING SCHEDULE**

WEDNESDAY	February 26, 2003	1:30 P.M. Madison Senior Center	MADISON
WEDNESDAY	February 26, 2003	7:00 P.M. Coffey County Courthouse, Basement Meeting Rm	BURLINGTON
THURSDAY	February 27, 2003	1:30 P.M. Chicken House Restaurant	OLPE
THURSDAY	February 27, 2003	7:00 P.M. Ramada Inn, I-35 & Industrial Road	EMPORIA
FRIDAY	February 28, 2003	1:30 P.M. Lyon County Extension Center, 618 Commercial	EMPORIA
MONDAY	March 3, 2003	1:30 P.M. The Fox Hall	LOUISBURG
MONDAY	March 3, 2003	7:00 P.M. Community Building	LA CYGNE
TUESDAY	March 4, 2003	1:30 P.M. Bunker Hill Community Center	MOUND CITY
TUESDAY	March 4, 2003	7:00 P.M. Community First Bank-915 W Fort Scott Street	BUTLER, MO
WEDNESDAY	March 5, 2003	1:30 P.M. Senior Center-Activities Room, 811 6th Street	OSAWATOMIE
WEDNESDAY	March 5, 2003	7:00 P.M. Miami County Fairgrounds, Building 4	PAOLA
THURSDAY	March 6, 2003	1:30 P.M. Banker's Tea Room-104 South Main Street	SPRINGHILL
THURSDAY	March 6, 2003	7:00 P.M. Smokehouse-19300 Metcalf	STILLWELL
FRIDAY	March 7, 2003	1:30 P.M. Jess & Jim's Steakhouse, 1 block West of Holmes on 135th Street	KANSAS CITY
MONDAY	March 10, 2003	1:30 P.M. Farm Credit Services, 1903 Hwy 291	HARRISONVILLE, MO
MONDAY	March 10, 2003	7:00 P.M. Holiday Inn, I-35 @ exit 215	OLATHE
TUESDAY	March 11, 2003	1:30 P.M. American Legion, 315 Meadowbrook Circle	GARDNER
TUESDAY	March 11, 2003	7:00 P.M. Holiday Inn-Holidome & Convention Center- 200 McDonald	LAWRENCE
WEDNESDAY	March 12, 2003	1:30 P.M. Don's Steak House, 2176 E 23rd	LAWRENCE
WEDNESDAY	March 12, 2003	7:00 P.M. The Lodge- 502 Ames Street	BALDWIN
THURSDAY	March 13, 2003	1:30 P.M. 4-H Bldg @ Leavenworth County Fairgrounds	TONGANOXIE
THURSDAY	March 13, 2003	7:00 P.M. Mid-America Bank, 401 Delaware	LEAVENWORTH
FRIDAY	March 14, 2003	1:30 P.M. Main Building @ 4-H Fairgrounds	VALLEY FALLS
MONDAY	March 17, 2003	1:30 P.M. St Mary's Coop Elevator	ST MARY'S
MONDAY	March 17, 2003	7:00 P.M. Capital Plaza Hotel, Emerald III Room, 1717 SW Topeka Blvd.	TOPEKA
TUESDAY	March 18, 2003	1:30 P.M. Capital Plaza Hotel, Emerald III Room, 1717 SW Topeka Blvd.	TOPEKA
TUESDAY	March 18, 2003	7:00 P.M. Celebration Hall @ The Franklin County Fairgrounds	OTTAWA
WEDNESDAY	March 19, 2003	1:30 P.M. Masonic Lodge	BURLINGAME
WEDNESDAY	March 19, 2003	7:00 P.M. Gadabout Hall -First Bldg East of The Landmark Nat'l Bank	OSAGE CITY
THURSDAY	March 20, 2003	1:30 P.M. Lyndon Community Center	LYNDON
THURSDAY	March 20, 2003	7:00 P.M. Kansas State Bank-Meeting Room	OVERBROOK
FRIDAY	March 21, 2003	1:30 P.M. Community Building-Anderson County Fairgrounds	GARNETT
WEDNESDAY	March 26, 2003	7:00 P.M. Kansas Farm Bureau-2627 KFB Plaza, Manhattan, KS	MANHATTAN

1-12





## **East Kansas Agri-Energy, L.L.C. (EKAE) was formed to:**

- Develop an ethanol production facility near Garnett, Kansas, with a capacity of 20 million gallons per year.
- Market the co-products of ethanol production including some 64,000 tons of dried distillers grains with solubles (DDGS) and 63,000 tons of marketable carbon dioxide each year.
- Create a demand for value-added processing of 7 to 7.5 million bushels of local corn and grain sorghum production each year.
- Provide agricultural producers the opportunity to capture added value from the commodities they grow.
- Provide an investment vehicle for the "main street" investor to participate in an activity that will provide economic development for rural Kansas.

## **Ethanol: America's homegrown fuel alternative.**

**E**thanol is a clean-burning fuel source made from renewable biomass sources such as corn and grain sorghum. Ethanol is sold to petroleum marketers who add it to ordinary unleaded gasoline in order to increase octane, reduce exhaust emissions and meet clean air standards.

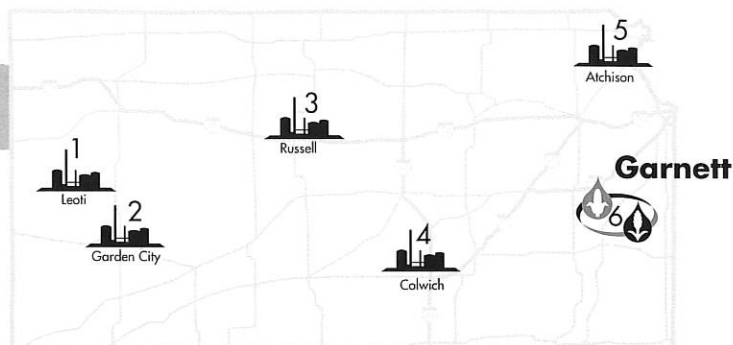
Ethanol is an oxygenate. When added to ordinary unleaded gasoline, ethanol increases the oxygen content of the fuel—leading to more complete combustion and reduced tailpipe emissions. Every major automaker in the world approves the use of E-10 Unleaded (a blend of 10% ethanol and 90% ordinary gasoline). Additionally, thousands of flexible fuel vehicles (FFV) are on the road that can operate on any blend of ethanol and gasoline up to 85% ethanol—or E-85.

Since ethanol is made from renewable resources that we produce here in the United States, it also helps America reduce its reliance on imported oil. Ethanol helps extend gasoline supplies and reduce the amount of oil required to make a gallon of fuel.

Ethanol was used to power automobiles as early as 1909, but it has really come into its own in the last quarter century. All of the gasoline in Minnesota contains ethanol—and ethanol-blended gasoline is helping cities such as Denver, Phoenix, Las Vegas and Albuquerque meet federal clean air standards. More than half the gasoline sold in Iowa and some 40% of the gasoline sold in Nebraska is E-10 Unleaded.

## Ethanol production in Kansas.

Kansas has been producing ethanol since 1939. There are currently five ethanol production plants in the state, ranging from 1.5 million gallons to 40 million gallons in annual capacity. The EKAE plant as proposed would be among the largest ethanol production facilities in Kansas.



(MGPY = million gallons per year)

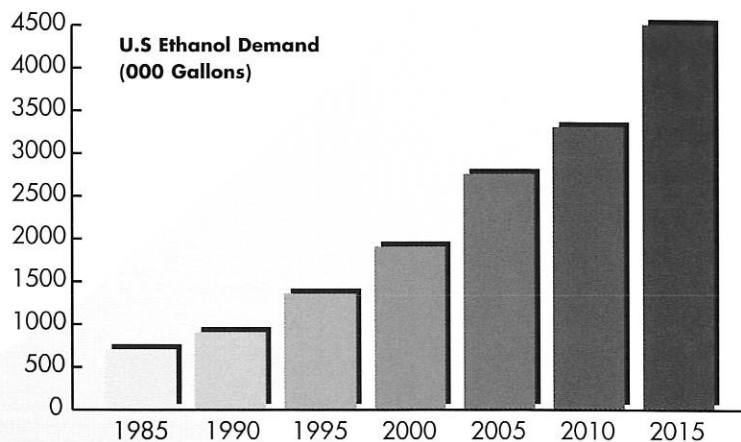
- ESE Alcohol**, Leoti, 1.5 MGPY - seed corn
- Reeve Agri-Energy**, Garden City, 12 MGPY - corn/grain sorghum
- U.S. Energy**, Russell, 40 MGPY - grain sorghum/wheat starch/corn
- High Plains Corp/Abengoa**, Colwich, 20 MGPY - corn/grain sorghum
- MGP Ingredients Inc.**, Atchison, 9 MGPY - corn/wheat starch

## The future for ethanol.

Americans continue to drive more miles each year and consume more fuel—and each year, more and more of that fuel contains ethanol. From 1999 to 2002, ethanol production in the U.S. increased from 1.47 billion gallons to more than 2.1 billion gallons annually. The Energy Information Administration projects ethanol demand to grow to more than 4.5 billion gallons by 2015.

Congress is currently considering a Renewable Fuels Standard (RFS) as part of a comprehensive energy bill for the nation. Under the RFS as proposed, refiners will be required to increase their use of renewable fuels such as ethanol to five billion gallons by 2012.

Even without the advent of the RFS, the prospects for ethanol are bright. Ethanol's chief competitor in the oxygenate market is MTBE, an ether derived from petroleum. MTBE has been found to contaminate groundwater and has been banned in several states, including Kansas and Missouri, and is being phased out in others. In fact, the federal energy bill currently being considered includes a complete ban on MTBE within four years. Ethanol is the primary oxygenate alternative to fill the huge void that will occur.



Source: Energy Information Administration

## Creating a huge market for area grain producers.

The primary grain inputs for the EKAE plant will come from eleven Kansas counties and three counties in Missouri. Together, these fourteen counties produce nearly 10 million bushels of grain sorghum and 28 million bushels of corn annually—some 38 million total bushels each year.

Approximately 2.8 gallons of denatured ethanol can be produced from a bushel of grain.

Producing 20 million gallons of ethanol each year at the EKAE plant will require 7 to 7.5 million bushels of grain inputs. In other words, the EKAE plant could use some 20% of the total grain production in the fourteen area counties.

Research indicates that ethanol production adds a minimum of 5¢ to 10¢ per bushel to the value of grain.



### Sorghum and Corn Production within 50 Miles of Garnett, KS (2000 USDA data)

County	Sorghum (bushels)	Corn (bushels)	Sorghum + Corn (bushels)
Anderson	1,076,000	2,346,000	3,422,000
Allen	1,096,000	1,516,000	2,612,000
Bourbon	332,000	940,000	1,272,000
Coffey	1,173,000	1,764,000	2,937,000
Douglas	234,000	2,549,000	2,783,000
Franklin	759,000	2,052,000	2,811,000
Johnson	166,000	1,119,000	1,285,000
Linn	387,000	952,000	1,339,000
Miami	348,000	1,185,000	1,533,000
Osage	1,398,000	1,357,000	2,755,000
Woodson	1,189,000	1,339,000	2,528,000
<b>Kansas Totals</b>	<b>8,158,000</b>	<b>17,119,000</b>	<b>25,277,000</b>
Cass, MO	174,000	2,931,000	3,105,000
Bates, MO	406,000	4,846,000	5,252,000
Vernon, MO	1,254,000	3,185,000	4,439,000
<b>KS + MO Totals</b>	<b>9,992,000</b>	<b>28,081,000</b>	<b>38,073,000</b>

Annual Feedstock Requirements Utilizing Sorghum or Corn and % of local Kansas plus Missouri feedstocks  
(based on a 2.65 gallon/bushel conversion factor for non-denatured ethanol)

## Ethanol plants produce more than ethanol.

**D**istillers dried grains with solubles (DDGS) is a co-product of dry grind ethanol production. DDGS is used in livestock rations, primarily for ruminant animals such as dairy and beef cattle—but it is also fed to swine and poultry. DDGS is high in protein, fiber and fat—providing an excellent source of nutrition and energy for livestock.

One key to profitability in the DDGS market is proximity to customers. The feasibility study affirms that there is a considerable number of livestock production facilities within a reasonable distance from the plant—creating the opportunity to provide livestock producers with a high value, competitively priced feed. Total cattle in a 50-mile radius of Garnett is about 427,400 head, with another 490,000 cattle nearby in Missouri. This presents an excellent market for the 64,000 tons of DDGS produced by the proposed ethanol plant each year.

EKAE intends to build a rail spur to the plant site, facilitating the timely and competitive transport of both ethanol and DDGS to markets within and outside Kansas.

Carbon dioxide (CO<sub>2</sub>) is another co-product of ethanol production. CO<sub>2</sub> has value in a number of manufacturing and industrial applications. The EKAE plant has the capacity to produce some 63,000 tons of CO<sub>2</sub> annually. At this time, EKAE does not plan to market CO<sub>2</sub>, though this option is available in the future.



## An investment in rural economic development.

Ethanol production is perfectly suited for rural Kansas. The raw materials needed for ethanol production—corn and sorghum—are grown in abundance. Additionally, the markets for ethanol and DDGS are close at hand.

Ethanol production offers considerable economic development opportunities for rural Kansas—providing employment in areas where good jobs can be hard to come by. The value added to agricultural commodities allows farmers to improve their profitability. The capital investment and successful operation of an ethanol plant also helps broaden the tax base for rural communities.



## Financial/Project Highlights

- A total of 122 producers have contributed \$5000 each in seed money for this project—evidence of the broad base of producer support and commitment.
- EKAE has received a \$450,000 grant from the 2002 Value-Added Agricultural Product Market Development program through the U.S. Department of Agriculture.
- EKAE intends to qualify for the 7.5 cents-per-gallon tax credit offered by the State of Kansas. This incentive program is limited to 15 million gallons of ethanol production annually for a period of seven years.
- EKAE also intends to qualify for the Federal Small Producer Credit of 10 cents-per-gallon on the first 15 million gallons of production each year (\$1.5 million/yr). This tax credit is due to expire in 2007.
- EKAE intends to qualify for the USDA Commodity Credit Corporation (CCC) Bio-Energy program which provides 40% of the feedstock for the first full year of production. Each new plant is eligible for up to \$7.5 million.
- Bryan and Bryan International, an independent industry consultant, performed feasibility studies for the venture—with quite favorable results.
- EKAE has assembled a team of experienced engineers, consultants and other professionals with specific and proven experience in ethanol production.

### Project Details

**Annual Plant Capacity:** 20 million gallons of ethanol  
64,000 tons of dried distillers grains with solubles (DDGS)  
63,000 tons of carbon dioxide

**Plant Location:** Golden Prairie Industrial Park  
Garnett, Kansas

**Grain Demand:** 7 to 7.5 million bushels annually

**Project Cost:** \$36,000,000

**Projected Annual Revenue:** \$29,080,000

**Direct Employment:** 32 new jobs

## Projected Financial Performance

### Annual Sales

Product	Yearly Volume	Unit Cost	Gross Revenue
Ethanol	20,000,000 gallons	\$1.15/gal	\$23,000,000.00
DDGS	64,000 tons	\$95/ton	6,080,000.00
Carbon Dioxide (optional)	63,000 tons	N/A	0
<b>TOTAL PROJECTED SALES</b>			<b>\$29,080,000.00</b>

#### State of Kansas Incentive

(7.5¢/gal. for first 15 million gallons per year.).....\$1,125,000/yr. for 7 yr.

#### Federal Small Producer Credit

(10¢/gal. for first 15 million gallons per year.).....\$1,500,000/yr.

(Due to expire in 2007)

#### USDA—CCC Bio-Energy Program

Up to \$7.5 million for the first full year of production.

### Equity Investment

The total project cost is estimated at \$36 million. East Kansas Agri-Energy, L.L.C. intends to raise 40% of that amount or \$14.4 million through equity investment from producers and other investors. Raising 40% of the total project cost in private investment should allow EKAE to secure financing for the remaining amount.

Investment units are available for \$1000.00 each—with a minimum purchase of 10 units.

**For more information on the ethanol industry, visit these sites:**

American Coalition for Ethanol	<a href="http://www.ethanol.org">www.ethanol.org</a>
American Bioenergy Association	<a href="http://www.biomass.org">www.biomass.org</a>
Bryan & Bryan International	<a href="http://www.bb ethanol.com">www.bb ethanol.com</a>
Clean Fuels Development Coalition	<a href="http://www.cleanfuelsdc.org">www.cleanfuelsdc.org</a>
E-10 Unleaded	<a href="http://www.e10unleaded.com">www.e10unleaded.com</a>
Nebraska Ethanol Board	<a href="http://www.ne-ethanol.org">www.ne-ethanol.org</a>
Renewable Fuels Association	<a href="http://www.ethanolrfa.org">www.ethanolrfa.org</a>
The National Renewable Energy Laboratory	<a href="http://www.nrel.gov">www.nrel.gov</a>
U.S. Department of Energy Office of Energy Efficiency & Renewable Energy	<a href="http://www.eren.doe.gov">www.eren.doe.gov</a>

*This shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation, or sale would be unlawful under the securities laws of any such state. The offer is made only by the prospectus, a copy of which may be obtained from East Kansas Agri-Energy, L.L.C., 210-1/2 East 4th Avenue, Garnett, KS 66032.*

*Statements made in this publication about East Kansas Agri-Energy, L.L.C.'s future production, operations, availability of tax credits, or other future prospects, other than statements of historical fact, are forward-looking statements and are subject to a number of uncertainties that could cause actual results to differ materially from the statements made, including risks associated with the ethanol industry generally, and the ability of the company to timely meet all requirements of financing and construction of the plant. See the EKAE Prospectus for information about risks of EKAE's public offering.*

## EKAE Board of Directors

**Bill Pracht, Chairman**  
Westphalia, KS  
Crop production/Rancher

**Roger Brummel, Vice Chairman**  
Garnett, KS  
Owner, Brummel Farm Service

**Jill Zimmerman, Treasurer**  
Garnett, KS  
EKAE Equity Drive Coordinator

**Daniel Morgan, Secretary**  
Greeley, KS  
Crop production/Rancher/Crop  
advisor

**Scott Burkdoll**  
Rantoul, KS  
Livestock producer/  
Oil & gas production

**Glenn A. Caldwell, Jr.**  
Garnett, KS  
Crop production/Oil production

**Daniel L. Guetterman**  
Bucyrus, KS  
Farmer/Grain merchandising

**Don Meats**  
LeRoy, KS  
Ag banker

**Doug Strickler**  
Iola, KS  
Crop production/Dairy production

**Jim Westagard**  
Richmond, KS  
Crop production/Cattle production

## Mission Statement

East Kansas Agri-Energy, L.L.C. will be fully dedicated to development of renewable energy fuel products for the 21st Century. It is our goal to develop an ethanol production facility in the Garnett, Kansas area. The latest construction and processing technology will be used to ensure protection of the environment and enhancement of the community.

We intend to make sufficient profit to generate a fair return to our investors and to finance continued growth and development. We are committed to increasing employment and building a stronger economy for our agriculture producers and all members of our surrounding communities.

## Additional Management/Development Team Members

**Fagen, Inc.** (Granite Falls, MN) Serving as co-developer of this project, Fagen, Inc. has been involved in the construction of more ethanol plants than any other company in the industry. They have been the principal contractor on more than one dozen ethanol projects—and have consulted on nearly 30 projects.

**ICM, Inc.** (Colwich, KS) A full service engineering, manufacturing and merchandising firm, ICM, Inc. is expected to be the principal subcontractor on the project. The company has been involved in the design and operation of several ethanol plants and has been a leader in DDGS technology.

**Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, PLC** (Des Moines, IA) This firm serves as legal counsel for the project. The firm's specialties include agribusiness law and compliance with rapidly changing business and regulatory environments.

**Christianson and Associates, PLLP** (Willmar, MN) C&A is a leader in providing financial services to agribusiness. The firm will provide accounting, financial and tax consulting services for the project. Their experience includes financial consulting and auditing services for 16 ethanol production facilities and more than two dozen ag cooperatives.



P.O. Box 225, 210½ E. 4th Ave.  
Garnett, KS 66032  
Phone: 785.448.2888  
Fax: 785.448.2884  
Toll Free: 877.352.3552  
E-mail: ekae@ECKSOR.net

[www.ekaelc.com](http://www.ekaelc.com)





Re: Senate Bill 131

My name is Dave Murphy. I am the Kansas Riverkeeper for Friends of the Kaw  
Thank you for the opportunity to be heard.

The concerns that caused SB 131 to be written are related to how animals at livestock sale barns are counted by KDHE. We believe the current method of counting animal units is sound. In order to make an informed decision on this matter it is important for the committee to understand how the current system is working.

For example, here is how the system works today:

On average, animals stay at livestock sale barns for 2 - 3 days on average. For the sake of this discussion let's say that XYZ Sales keeps their animals for only 2 days on average. Let's say that, at XYZ Sales, they average of 50 cattle per week and that they have 50 sales per year. According to Table 2-1 of the "Livestock Waste Facilities Handbook", the design bible for engineers, 1000 pound beef cattle produce 60 pounds of manure per day on average (more when stressed). Although the animals are typically not fed at these sale barns, they are very stressed and will excrete just about everything in their digestive tract. Many cattle producers call the sale barns "shrink barns" because their animals loose 2 to 5 percent of body weight, depending upon the stress load, through excrement.

In part 40 of the Code of Federal Regulations (CFR) sub-part 122.23, the Environmental Protection Agency (EPA) defines a concentrated animal feeding operation as follows:

An animal feeding operation (AFO) is a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
- Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Whether feeding occurs or not, the issue is whether the animals are maintained for 45 days or more in any 12 month period. Further, one may argue that sale barns don't feed animals, however, doesn't the statute proposed for amendment address waste management from livestock vs. how, when, and where a producer feeds livestock. This then brings focus on the real issue, are livestock sale barns, of a certain size or larger, a significant pollution potential or not? KDHE has addressed what a significant pollution potential is in administrative regulations.

A scenario that may illustrate the pollution potential issue:

2 days x 50 cattle per sale x 50 sales per year x 60 pounds of manure per animal = 300,000 pounds of manure per year. I remind you that this is an unrealistically low number, yet it is still very significant. The state has the responsibility to protect our water from this kind and amount of pollution. But wait, There is more. What about the process water? What about the bedding (if any).

Many sale barns have impermeable surfaces and no vegetation cover. Even if the solids are being picked up and hauled off site for application at agronomic rates the urine and the process water has nowhere to go except either into a lagoon or a stream. If the waste is entering a stream then a permit

should be required. If the waste is going into a lagoon a permit should also be required as per current regulations via a man-made conveyance:

Now consider a larger sale barn called ABC Livestock Sales:

500 cattle per week x 2 1/2 days average time on the lot x 52 sales per year x 60 lbs of manure per day = 3,900,000 pounds of manure, plus bedding, plus process/rinse water. Now that is a lot of manure.

New federal regulations in CFR 122, 123 and 412 were published on February 12, 2003 in the Federal Register. These new regulations allow large CAFOS to "Make a Demonstration of No Potential to Discharge" (CFR 122.23(f)) to their state water quality agency by fulfilling certain requirements. Under this clause a CAFO, by virtue of filling out the appropriate forms and demonstrating that "the operation has no potential to discharge" a CAFO could be exempted from NPDES requirements on a case by case basis. It seems more appropriate to let the normal regulatory process work to adopt this new language than to create a blanket exemption that would very likely result in unintended pollution of our water.

What I am suggesting is that the proposed legislation would be like trying to fix a good watch with a 12-pound sledgehammer. I am reminded of a Chinese Proverb, "If we do not change our direction, we are likely to end up where we are headed".

Current Kansas law (K.S.A. 65-171d) was written "For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect designated uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgement be necessary to... (2) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or faculties owned or operated, or both, by them; and (3) establish water quality standards of the waters of the state to protect designated uses.

The changes proposed in SB 131 severely undermine the purpose of current Kansas and federal laws. A broad-brush exemption of sale barns fails to establish adequate safeguards for:

- Public health;
- The short term and long term effects on surface water or groundwater;
- The potential impact on downstream beneficial uses;
- Social and economic benefits including property values in neighborhoods with residential homes, offices, schools, churches;
- Public water intakes and private wells; and
- The public's right to comment on facility expansions

The proponents of this bill claim that their facilities have no potential to discharge. If that is so then the new federal regulations should be allowed to take effect through the normal regulatory process. The problem will resolve itself in due course without risk to our water and without undue cost to the interested sale barns.

We ask you to put the hammer away. The new federal regulations were just set forth. Please allow the state's regulatory process to tweak the state's regulations to satisfy both the new federal regulations and the needs of these livestock sale barns. This is what current Kansas statutes call for.

SB 131 would exempt sale barns from state regulation but not from federal statutes. Thus any sale barn that causes a discharge would be subject to a lawsuit in federal court and would have virtually no defense. This puts these folks in a very uncomfortable and dangerous position.

Thank you for considering our comments.

Sincerely,

Dave Murphy, Kansas Riverkeeper  
913-406-2260  
[riverkeeper@kansasriver.com](mailto:riverkeeper@kansasriver.com)  
P.O. Box 328  
Shawnee Mission, KS 66201-0328

**FORT SCOTT LIVESTOCK MARKET, INC.**

OLD HWY 54 WEST  
PO BOX 270  
Fort Scott, Kansas 66701  
◆  
Phone (620) 223-4600  
Fax 620-223-4785

February 24, 2003

RE: Senate Bill No. 131, By Committee on Natural Resources

This proposal is a long needed step forward in the regulation of waste management at public livestock markets. Here is why I feel this ACT is important to the market industry and to Kansas livestock producers.

Markets are not feedyards or growing yards where cattle are held and fed over a period of weeks or months to, as their name says, feed or grow cattle. Following is a list of why Markets should not be classified with feedyards.

1. Of the cattle Fort Scott Livestock markets each year at least 75% of those are at the Market less than 8 to 10 hours, as opposed to a feedyards 24 hour 7 days a week.

2. Those cattle at the Market less than 10 hrs are penned dry, recieving no feed or water during their time at the market.

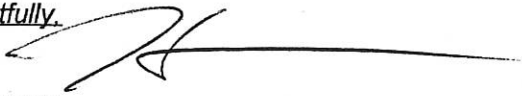
3. Of the remaining cattle less than half will be placed in a pen where hay & water is available over night. Some cattle are rotated in and back out of water pens, others simply stand dry till their sale. The cattle that do go to hay & water pens recieve a maintainance ration of free choice prairie hay, grain is fed only on the sellers request.

4. The average headcount per seller at our auction is less than 10 which indicates why 80 to 90 % of the cattle we auction recieve no feed at the Market, it would be an impossible task. We are not a feedyard, our facilities are built to hold sort and move cattle through the auction.

The above information is simply to show the committee the differance between cattle in a Market and a Feedyard. From these basic differances you can see that regulations made for feedyards do not fit or work when applied to a public livestock market.

I agree waste management at Markets is important in protecting our natural resources but it needs to be accomplished with codes or regulations that match the nature of the business. We are currently in a no man's land, regulated as production agriculture, yet not eligible for any funding to help meet the standards imposed because we are not production agriculture. I'm hoping that Kansas sees the need for a change on how Markets are regulated.

Respectfully,

  
Howard M Brown  
gen mgr  
Fort Scott Livestock Market Inc.

House Agriculture Committee  
March 12, 2003  
Attachment 3

# MANHATTAN COMMISSION CO INC.

8424 E Hwy 24  
Manhattan, Kansas 66502  
U.S.A.

Phone 785 776-4815  
Fax 785 776-0815

February 19, 2003

SENATE AG COMMITTEE  
RE: BILL 131

TESTIMONY OF MERVIN L. SEXTON  
OWNER MANHATTAN COMMISSION CO INC.

Manhattan Commission Co, Inc. is located at the Pottawatomie County end of Manhattan, Kansas, on East Hwy 24. We are a livestock auction selling cattle on a weekly basis for farmers & ranchers from neighboring counties to both local & out of state buyers, and have been doing so since we started in 1954.

During our 49 years in operation we have always prided ourselves with being told we were one of the cleanest & nicest facilities of our kind. As in any business this goal has required added expense in both manpower required to keep the facility scraped & washed down as well as maintaining two spreaders which are used to haul remnants of the auction to be recycled on farming land, local garden centers, and family gardens. To insure any run off is contained we built a lagoon which in all my years has never reached capacity, nor have we ever had a complaint of any sort as to smell, run off, flies, etc. Our office has had calls by other businesses & residents asking how we are able to control the fly problem, which we attribute to our stringent clean up policies.

December 17, 2001 we welcomed two Kansas Ag Waste compliance inspectors, December 31, 2001 we received a notice of non compliance as our facility has a water pollution potential.

Potential for water pollution is the key phrase which we find quite hard to understand. In all my years with this facility we have reached our potential as a thriving, reputable & respected agricultural business. I however do not feel we have ever polluted our communities water nor do we feel we will ever reach the potential to do as such. We have even gone so far as to have our lagoon contents tested by a independent water testing company, which they found no contaminants. (see attached test results)

I am asking this committee to consider the repercussions findings based on a potential for an occurrence can cause. Every branch of agriculture, whether it be a family farm, local livestock auction, or feedlot, can be affected by non compliance findings based on potential elements. Agriculture faces natural potentials daily, potentials such as drought, disease, flood, & lack of demand. We do not need the Health & Environment adding another "potential" to our growing list, a man made potential, the "potential" for water pollution.

I am proud to be a part of agriculture, as is every farmer & rancher, but we need any assistance by you, the Senate Ag Committee, to survive unnecessary man made hurdles which are being brought upon our industry. We ask your assistance with cases such as ours, where there is no fault found, but we are still penalized for unfounded potentials.

Respectfully Submitted:

Mervin L. Sexton  
Manhattan Commission Co

House Agriculture Committee  
March 12, 2003  
Attachment 4



05/30/2002

Manhattan Commission Company  
Attn: Mervin Sexton  
8424 E. Hwy 24  
Manhattan, KS 66502

Date Received: 05/22/2002  
Continental File No.: 7397  
Continental Order No.: 78991  
Your P.O./Project No.:

Dear Mr. Sexton:

This laboratory report consisting of 3 pages contains the analytical results for the following samples:

<u>CAS LAB ID #</u>	<u>SAMPLE DESCRIPTION</u>	<u>SAMPLE TYPE</u>	<u>DATE SAMPLED</u>
02052043	Lagoon	Liquid	05/22/2002

The footnotes contained in the attached laboratory reports are summarized below for your reference.

<u>CAS LAB ID #</u>	<u>TEST NAME</u>	<u>SAMPLE CONC.</u>
02052043	pH	7.52 H

H - Regulatory holding time for this analysis was exceeded.

The following summary provides the date and time sampled, the date and time analyzed, and the total time elapsed for each analysis with an EPA recommended holding time of forty-eight hours or less.

<u>CAS LAB ID #</u>	<u>ANALYSIS</u>	<u>DATE/TIME SAMPLED</u>	<u>DATE/TIME ANALYZED</u>	<u>ELAPSED HRS:MIN</u>
02052043	BOD	05/22/2002 1130	05/23/2002 0900	21:30
02052043	pH	05/22/2002 1130	05/22/2002 1404	2:34



4-2



05/30/2002

Thank you for choosing Continental for this project. If you have any questions, please contact me at (800)535-3076.

CONTINENTAL ANALYTICAL SERVICES, INC.

A handwritten signature in black ink, appearing to read "Brian T. O'Donnell".

Brian T. O'Donnell  
Project Manager



ISO Seal of Excellence

# Continental

Analytical Services, Inc.

Page: 3

Client: Manhattan Commission Company  
 Attn: Mervin Sexton  
 8424 E. Hwy 24  
 Manhattan, KS 66502

Date Sample Rptd: 05/30/2002  
 Date Sample Recd: 05/22/2002  
 Continental File No: 7397  
 Continental Order No: 78991  
 Client P.O.:

Lab Number: 02052043  
 Sample Description: Lagoon

Date Sampled: 05/22/2002  
 Time Sampled: 1130

<u>Analysis</u>	<u>Concentration</u>	<u>Units</u>	<u>Date</u>	
			<u>Analyzed</u>	<u>Book/Page</u>
Ammonia, Total, as N	8.	mg/L	05/28/2002	5047/283
BOD	85.	mg/L	05/23/2002	5220/263
Solids, Total Suspended	664.	mg/L	05/24/2002	5060/191
pH	7.52 H	std. units	05/22/2002	5107/266

<u>Analysis</u>	<u>Date Prepared</u>	<u>QC Batch</u>	<u>Analyst</u>	<u>Method(s)</u>
				Ammonia, Total, as N
BOD	N/A	020523-2	MDC	SM 5210B
Solids, Total Suspended	N/A	020524-1	MLL	SM 2540D
pH	N/A	020522-1	RDC	SM 4500H+B/9040B

H - Regulatory holding time for this analysis was exceeded.

Conclusion of Lab Number: 02052043

Laboratory analyses were performed on samples utilizing procedures published in Title 40 of the Code of Federal Regulations, Parts 136 or 141, or in EPA Publication, SW-846, 3rd edition, September, 1986 and the latest promulgated update. ND(), where noted, indicates none detected with the reporting limit in parentheses. Samples will be retained for thirty days unless otherwise notified.

CONTINENTAL ANALYTICAL SERVICES, INC.

*Clifford J. Baker*  
 Clifford J. Baker  
 Technical Manager







# KANSAS LIVESTOCK MARKETING ASSOCIATION

7509 TIFFANY SPRINGS PKWY., KANSAS CITY, MO 64153-2315 • (816) 891-0502

**Statement of the  
Kansas Livestock Marketing Association**

**To the  
House Agriculture Committee**

**Chairman Dan Johnson**

**With respects to S.B.131**

**Presented by  
Mark Mackey, Executive Secretary**

Thank you Mr. Chairman and committee members for giving us the opportunity to present our views regarding Senate Bill 131. Our Association has taken a position to support this bill.

Livestock auction markets are unique in size, scope and operation from what is typically referred to as a concentrated animal feeding operation {CAFO}. Markets are not production facilities. They do not raise, background or finish livestock. Their purpose is to provide a facility where buyer and seller can come together briefly to competitively bid on livestock that will be go on to a farm or ranch, a stocker operation, a feedlot for further feeding or a packing plant for slaughter and processing.

As a result of dramatic changes in the livestock industry over the past 20 years, the number and types of livestock sold through the markets has also changed. Where the markets once primarily sold cattle, sheep and hogs for slaughter, slaughter animals are now largely finished at feedlots or finishing houses. Today, markets primarily handle feeder calves, cull cows and bulls and, to a very small degree, finished/slaughter cattle, with a very small number of markets still handling cull sows and boars and some sheep and goats.

Livestock markets operate very intermittently—typically one to two days a week—versus a production facility, such as a feedlot or dairy, that operates nearly continuously or year around. The majority of livestock at a market are on site for less than 12-hours and very few of the animals more than 24-hours. A small number of the animals will arrive the day prior to the sale, with the majority arriving the day of the sale. Most of the animals will then be shipped out of the market to their ultimate destination by the end of sale day. Markets also typically close for at least two or more weeks a year.

Unlike feedlots, livestock markets operations usually have a significant portion of their pens under roof. And, because of federal and state animal health and sanitation laws that apply to livestock market facilities, livestock market pens are required to be

cleaned on a regular basis, thus decreasing even further the chance for discharge of pollutants into waterways.

Lastly, markets are materially different from feedlots or confined housing facilities in that the livestock maintained at the market do not receive concentrated rations over an extended period of time. Animals, during their short confinement at the market, often get little or no water or feed ration at all, depending how long they are at the market. When they do, the ration is usually hay and, in a few instances, protein pellets. Cattle at a feedlot are typically fed about 24 pounds of a concentrated feed ration a day, for a feed conversion rate of eight pounds of feed for 1 pound of weight gain. At a market, depending on when the cattle come into the market and the age and condition of the cattle, a small percentage of the cattle may consume as much as 10-12 pounds of hay. However, unlike a feedlot, cattle at a market are provided hay to retain weight, not to put weight on them. It therefore is quite obvious that the manure generated by cattle maintained at a market once or twice a week for a few hours is considerably less than that produced by those same cattle at a feedlot, where they are fed seven-days a weeks during the duration of their time on feed (typically 120 days).

Also, because the livestock receive hay versus a concentrated ration, the manure is higher in roughage and lower in nutrients of concern to water quality. The type of cattle maintained at markets is also a factor in the nutrient levels and amount of manure generated. Feeder calves, weighing between three to nine hundred pounds, make up the majority of sales (as high as 90 percent) at the markets. Because these calves arrive at the market, in most cases, right off pasture, the manure generated by these animals is much lower in nutrients and decomposes at a much faster rate.

Given the unique operational nature of livestock markets and the types and numbers of livestock typically maintained at an auction yard over a 24-hour period, intermittent non-producing livestock market facilities should not be treated the same as feedlots. Continuing to regulate these two very different sectors of the livestock industry as though they were operationally the same, unfairly penalizes our industry and very likely will force a number of our mid-sized and smaller market facilities, which are already struggling to survive in a rapidly changing livestock industry, to shut their doors.

The Livestock Market Auctions in Kansas urges the Kansas Legislature to support this legislation.

Mark Mackey



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Testimony on  
Senate Bill No. 131  
to  
House Agriculture Committee  
Presented by Karl Mueldener  
Director, Bureau of Water  
March 12, 2003

Chairman Johnson, members of the committee, thank you for the opportunity to speak on SB 131. KDHE opposes the bill.

Livestock sale facilities, or sale barns, are a source of water pollution and related health issues which the state has addressed through the wastewater permitting program. State statutes and regulations include livestock facilities as facilities to be addressed by wastewater permitting. While sale barns are not necessarily feeders, the waste generated certainly is the same. The problem being addressed by the state is water pollution from the facility, regardless of the nomenclature. Though livestock are usually not at the sale barn long, the animals leave behind wastes needing attention. Impervious surfaces and wash water used for clean up can result in a waste stream needing attention.

Concerns brought up in regulating sale barns go to the issue that a sale barn is not a feeding facility. The apparent expectation is that this removes the need for pollution controls. While the state's statutory definition of a confined feeding facility uses the word "feeding," the issue at hand is managing the wastes generated by livestock. State statutes define the animal unit capacity as the maximum number of animal units which a confined feeding facility is designed to accommodate at any one time. State regulations follow on by defining animal units for sale barns as the annual sales divided by 52.

Federal laws and regulations covering sale barns are similar to those in Kansas. Sale barns are not called out specifically in the federal regulatory language, but they are certainly covered under the federal definition of an animal feeding operation. While state statutes and regulations now are clear in calculating animal units at sale barns, the federal system is less specific on the details of animal units

DIVISION OF ENVIRONMENT

Bureau of Water

CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE 420,

Voice 785-296-5500

Fax 785-296-0086

<http://www.kdhe.gov>

Printed on Recycled Paper

House Agriculture Committee

March 12, 2003

Attachment 6

at sale barns. However, EPA clearly defines an Animal Feeding Operation where the following conditions are met: Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage grow, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

The size of a livestock facility, in animal units, has several impacts. Generally livestock facilities are designated state or federal, with federal permits required for those at or greater than 1000 animal units. If the animal units are less than 1000 animal units, the facility may be permitted in Kansas if found to present a significant pollution source. Under the state regulatory system, the animal unit size of the facility is also relevant regarding separation distances in state statute. Comments have been made that some of these facilities might benefit from holding a permit in the case of neighbors expectations and demands beyond that required in the permit.

Bacteria is the most common water pollution problem in Kansas waters and livestock wastes are well documented as a source of bacteria. Steps must be taken to reduce the bacteria in the wastewater discharged. This disinfection process is accomplished through use of chlorine, ultra-violet light, or holding in lagoons for extended periods. Traditional livestock feeding facilities generally retain their wastewater with discharges allowed only during large rains. Non-point sources of pollution are encouraged to implement management practices which result in improved water quality. All these efforts are designed to help improve and protect the quality of Kansas' water. Due to bacterial impairments of Kansas waters, the state has prepared total maximum daily loads, or TMDL's. Most of the TMDL's prepared address bacteria. Subsequently, regulatory programs and voluntary cleanup efforts have placed a priority on efforts to reduce bacteria loadings to Kansas waters.

Considering the characteristic of the waste from sale barns, and the overall problem in Kansas with bacteria, we believe the existing regulatory structure addressing water pollution from sale barns is appropriate.

Testimony in Opposition to Senate Bill 131  
Exempting Public Live Stock Markets from Confined  
Feeding Facility Requirements

House Agriculture Committee Hearing  
March 12, 2003

The Kansas Water Environment Association (KWEA), a statewide organization representing over five hundred professionals working in the water quality field, offers the following testimony in opposition to Senate Bill 131:

1. The bill exempts public live stock markets from the definition of a confined feeding facility in KSA 65-171d. This would exempt such facilities from the Kansas Department of Health and Environment (KDHE) confined feeding facility program.
2. These markets, in effect, are short term confined feeding facilities, which have the potential like any other confined feeding facility to contribute significant quantities of ammonia, nitrogen, phosphorus, and fecal coliform to waters of the state. If these facilities are not regulated, there will be a significant threat to public health and the aquatic environment.
3. If these facilities are exempted, other sources of pollution, including other confined feeding operations, municipal and industrial wastewater treatment plants discharges, will likely be required to meet more stringent requirements to achieve the goals set out in Total Maximum Daily Loads (TMDLs) for impaired water bodies throughout the state. This is an unfair and inappropriate transfer of water pollution reduction requirements.
4. Many of these facilities are apparently located upstream of impaired water bodies with TMDLs. As such, these facilities may contribute to the continued impairment of the streams.

We thank the Committee for this opportunity to provide testimony on SB131.

Contact Person: John Metzler – (913) 681-3200, extension 2107

JAM:cj:0903034

Charles M. Benjamin, Ph.D., J.D.  
Attorney at Law  
P.O. Box 1642  
Lawrence, Kansas 66044-8642  
(785) 841-5902; 841-5922 facsimile

Testimony in Opposition to SB 131  
On behalf of the Kansas Chapter of the Sierra Club  
Before the Kansas House Agriculture Committee

March 12, 2003

I regret that I cannot be present at the hearing on this bill and therefore respectfully submit this written testimony for the Committee's consideration.

SB 131 would amend a section of law dealing with definitions relating to the regulation of sources of potential water pollution. Specifically, the bill seeks to exempt public livestock markets from the definition of "confined feeding facility." The term would include livestock markets, livestock auction markets, sale rings, stockyards, community sales, and livestock markets where federal veterinary inspection is regularly maintained.

Members of the Kansas Chapter of the Sierra Club are very concerned about the poor quality of Kansas' surface water. The surface water of Kansas legally belongs to all the people of Kansas. Sierra Club members believe that any impairment to the use of the waters of Kansas should not be born by the general public but should be prevented and remediated by those causing such pollution. A major impairment to the surface waters of Kansas is bacterial pollution from livestock. The pollution potential from a livestock market is significant and more bacteria can be produced from such a facility than the nearby municipality. KDHE has also responded to complaints from the general public about nearby livestock operations. KDHE has addressed this source of potential pollution since the 1970s through the wastewater permit program. We believe this type of regulation should continue.

We respectfully request that you reject this bill.



House Agriculture Committee  
March 12, 2003  
Attachment 8



**KANSAS PUBLIC HEALTH ASSOCIATION, INC.**  
*AFFILIATED WITH THE AMERICAN PUBLIC HEALTH ASSOCIATION*  
215 SE 8<sup>TH</sup> AVENUE  
TOPEKA KANSAS 66603-3906  
PHONE: 785-233-3103 FAX: 785-233-3439  
E-MAIL: [kpha@networksplus.net](mailto:kpha@networksplus.net)  
WEB SITE: [HTTP://KPHA.BLUESTEP.NET](http://KPHA.BLUESTEP.NET)

To: House Committee on Agriculture  
From: Sally Finney, CAE  
Re: SB 131  
Date: March 12, 2003

I am submitting this testimony on behalf of the Kansas Public Health Association to ask that you oppose Senate Bill 131. KPHA is a non-profit membership organization dedicated to promoting sound public health programs and policies in Kansas. This includes assuring the continued availability of safe drinking water for our citizens.

Water safety is a basic public health practice that began centuries ago when scientists came to recognize the connection between cholera epidemics in Europe and the United States with consumption of contaminated drinking water. Today's system of livestock facility inspections is designed to prevent the recurrence of old problems and the emergence of new ones, the likes of which we know can arise from unsafe practices at livestock facilities.

The Kansas Department of Health and Environment's livestock inspection program works, so we certainly support the continuation of their involvement in this process. That said, we also recognize that inspections could be carried out effectively by others, such as the U.S. Environmental Protection Agency should the committee deem this to be an option.

Water is basic to human life, and protecting the health of Kansans by preventing water contamination is a proven public health strategy. On behalf of the 500 members of the Kansas Public Health Association, I ask that you oppose SB 131.

House Agriculture Committee  
March 12, 2003  
Attachment 9