

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Vice-Chairman Tim Huelskamp at 8:30 a.m. on February 10, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research
Lisa Montgomery, Office of the Revisor of Statutes
Robert Myers, Committee Secretary

Conferees appearing before the committee:

Mark Hassman - Chairman Government Affairs, Kansas Pest Control Association
Doug Wareham - Senior Vice President, Kansas Agribusiness Retailers Association
Chris Wilson - Executive Director, Kansas Agricultural Aviation Association
Randy Hardy - President, Hardy Aviation Insurance, Inc.
Ken Johnson - Vice President, APAC Shears - Kansas
Woody Moses - Managing Director, Kansas Aggregate Producers' Association
David Pope - Chief Engineer, Kansas Department of Agriculture's Division of Water Resources

Others attending:

See Attached List.

SB 326: Licensure requirements for pesticide businesses.

Vice-Chairman Huelskamp opened the hearing on **SB 326**.

Mark Hassman appeared before the committee as a proponent of **SB 326**. He expressed, on behalf of the Kansas Pest Control Association, the opinion that current amounts of insurance, bonding and letters of credit necessary for obtaining a Pesticide Business License are too low. He further stated the belief that most companies would exceed the higher limits asked for by the bill, but that there are currently some that have less than the \$250,000.00 minimum coverage that it asks for. His stated concern was that, without the implementation of the bill, the claims of consumers would be impeded by insufficient resources in these cases of low minimum coverage. In ending, Mr. Hassman stated that Kansas ranks next-to-last with regard to requirements for insurance coverage (Attachment 1).

Doug Wareham appeared before the committee as a proponent of **SB 326**. He stated that the bill achieves an increase in the minimum thresholds of financial responsibility for pesticide business licensees that secure a certificate of liability insurance, surety bond or letter of credit. He further pointed out the statistic that those retail members maintaining a pesticide license generally carry a minimum of \$1,000,000.00 in commercial liability insurance, typically quoted on a basis of "premium per 1000 acres treated." Mr. Wareham continued by expressing concern for the growing percentage of custom application work that is being performed in Kansas by non-pesticide business licensed parties (i.e., farmers) that are not subjected to the liability and requirements proposed in the bill. Furthermore, he expressed the belief that many farmers that are performing custom application services have the false belief that these activities are covered by their farm/ranch insurance policies. In closing, he stressed the Kansas Agribusiness Retailers Association's belief that all applicators, licensed or not, should be required to meet the same minimum liability insurance requirements. Attached with Mr. Wareham's written testimony were the following two documents: State Farm Insurance Farm/Ranch Policy and Farm Bureau Farm and Ranch Policy (Attachment 2).

Chris Wilson appeared before the committee as an opponent of **SB 326**. She stressed the potentially negative effect that the bill could have on agricultural aviation in Kansas, due to the fact that insurance in this sector is on each individual aircraft, not on the business as a whole. In addition, she noted the requirement faced by these businesses to have comprehensive chemical coverage, stating though that it is unavailable at the increased level sought by the bill. Chris also expressed concern for the bills' proposed increase of other financial stability requirements, giving the example of fees paid to obtain a letter of

CONTINUATION SHEET

MINUTES OF THE SENATE AGRICULTURE COMMITTEE at 8:30 a.m. on February 10, 2004 in Room 423-S of the Capitol.

credit. She stated the concern that the increased licensure costs would make such letters of credit, as well as surety bonds or escrow accounts, cost prohibitive or unavailable for businesses. In closing, she asked that the committee allow further study of the bill. According to Chris, there is no need for change in the industry due to the already low occurrence of violations, as well as the generally small damage amounts seen in the event of a claim. Along with her written testimony, Chris submitted to the committee the Open Records Request that she had made to the Records Center regarding the number of pesticide business licenses using a letter of credit, escrow account, or surety bond (Attachment 3).

Randy Hardy appeared before the committee as an opponent of **SB 326**. He described the following three points as being the foundation of his opposition to the bill:

1. The \$250,000 limit of insurance required of the aerial application industry is simply unavailable. He further noted that if that level of insurance were to become available, then the already-high insurance rates would probably double.
2. The bill is cost prohibitive.
3. The higher insurance limits would affect the ability of those in the aerial applicator industry to hire new personnel (i.e., new pilots).

In closing, he suggested that the law be re-written in order to separate the nonchemical and the chemical portions. Mr. Hardy submitted to the committee a piece of written testimony that further elaborates on the main points of his argument (Attachment 4).

Upon the urging of Chairman Schmidt, representatives of both sides of the debate over **SB 326** agreed to have further discussions in an attempt to reach an agreement on the issue.

SB 409: **Sand and gravel pits; when net evaporation of water is a beneficial use or diversion of water; perfection of water right.**

Chairman Schmidt opened the hearing on **SB 409**.

Ken Johnson appeared before the committee as a proponent of **SB 409**. He stressed the importance of sand as one of the most common construction materials in the world. Furthermore, he touched upon the fact that sand mining, and its consequent water use, cannot be readily moved or relocated. He stated that he supports the bill because it both allows for the continued mining of a vital commodity and complies with the Kansas Water Appropriations Act. Included with his written testimony were both the Economic Impact of the Kansas Aggregate Industry, as composed by Chris Haugsness; and the testimony of Leland E. Rolfs, of the Kansas Department of Agriculture, before the Special Committee on the Environment on October 14, 1999 (Attachment 5).

Woody Moses appeared before the committee as a proponent of **SB 409**. He spoke of the current requirement that sand and gravel operators must secure an amount of water sufficient to cover the net evaporation that is estimated to occur over the life of a project (K.A.R. 5-13-5). He further stated that in many cases the life of a project may last up to one hundred years, thus not cooperating with the allowance of an operator to perfect water for only up to forty years (K.A.R. 5-13-11). He stated that it is on this discrepancy in time periods that his opposition to the bill is based. More specifically, Mr. Moses made note of his disagreement with the forty year time limit. In addition to his written testimony, he submitted the following: the Kansas Geological Survey's Progress Report on Aggregate and Groundwater Resources Task Force; a copy of House Bill 2251, as well as Kansas Administrative Regulations 5-13-5, 5-13-10, and 5-13-11; and finally, a letter from William J. Gilliland, L.G. of the Water Appropriation Program to the ALSOP Sand Company, Inc. in Concordia (Attachment 6).

David Pope appeared before the committee as an opponent of **SB 409**. He declared the proposed bill to be unnecessary, as well as saying that it would set a bad precedent by amending the Kansas Water Appropriation Act with regard to the perfection of water rights. He stated his belief that the bill would give special treatment to one industry, allowing its avoidance of the requirement that diversion works have been completed and that water is actually applied to beneficial use as authorized by the permit to appropriate water. Mr. Pope stated that a result of this failure to determine whether or not beneficial water use is taking place would be the appropriation of water to sites where no development is occurring at all.

CONTINUATION SHEET

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In closing, he questioned the ability to administer the provisions of the bill during periods of water shortage (Attachment 7).

Chairman Schmidt asked of David Pope that he later provide for the committee a list of particulars with regard to potential problems resulting from such periods of water shortage.

Patrick T. Lehman, on behalf of the Northwest Kansas Groundwater Management District #4, submitted written testimony to the committee in opposition to **SB 409** (Attachment 8).

The next meeting is scheduled for Wednesday, February 11, 2004.

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SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-10-04

| NAME | REPRESENTING |
|-------------------|--|
| David Pope | KDA/DWR |
| Rex Buchanan | Ks. Geological Survey |
| Hal Hudson | KPCA |
| Mark Hassman | KPCA |
| Ron Appletoft | WaterOne |
| Victor Klotz | KAPA |
| Wendy Harms | KAPA |
| Gary Rainbolt | Larned sand & Gravel |
| Hal Rainbolt | Larned Sand & Gravel |
| THOMAS BURLINGHAM | KDA |
| Brian Harman | Leavenworth leadership class |
| Scott Cenefake | KS Assoc. of Counties |
| BRAD HARRELSON | KFB |
| Kent Askren | KFB |
| FRANK RYERB | USAIG |
| Randy Haedy | Haedy Aviation Insurance |
| Chris Wilson | KAAA |
| Eric Krug | K-FED |
| Bob Edwards, Jr. | Leavenworth - Leavenworth Leadership Class |

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-10-04

| NAME | REPRESENTING |
|------------------|---------------------------------|
| Aaron W. Harries | KS Agribusiness Retailers Assn. |
| Leslie Kaufman | Ks Co-op Council |
| Pat Lehman | GMD #4 |
| Chia Zuo | KLA |
| Dag Wareham | Kansas Ag Retailers Assn. |
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Serving the Pest Control
Industry of Kansas Since 1948

INC



**Statement by Mark Hassman, Chairman Government Affairs
Kansas Pest Control Association
On Senate Bill 326
Before the Senate Agriculture Committee**

February 3, 2004

Mr. Chairman and members of the committee, my name is Mark Hassman. I am currently the chairman of the Government Affairs committee of the Kansas Pest Control Association and Manager of Hassman Termite and Pest Control in both Salina and McPherson.

The Kansas Pest Control Association is a 54-year-old organization comprised of about 100 member Pest Management companies in Kansas. It is the primary Association in Kansas whose member companies perform a wide variety of structural pest control services for the residents of Kansas.

I am here today to offer comments on SB326. As you may recall this is the Bill that our Association requested during your January 13 committee meeting. We are in full support of this Bill.

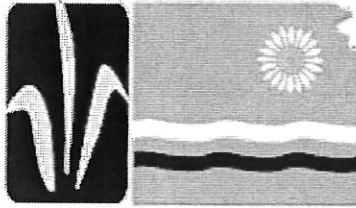
The current Statute places requirements on dollar amounts of insurance, bonding and letters of credit necessary for obtaining a Pesticide Business License. It is the Kansas Pest Control Association's opinion that these levels are too low. With the average price of an existing residence close to the \$100,000.00 range and medical expenses on the rise, it seems only prudent that the residents of Kansas should have some assurance that the statutes provide that pesticide applicators demonstrate adequate fiscal responsibility to obtain a business license.

In all honesty, many companies, in fact most companies, will exceed the higher limits that this Bill asks for. There are even some insurance companies that will not write a policy for less than \$300,000.00 minimum coverage. But there are also some who have less than the \$250,000.00 coverage SB326 asks for. The trusting Kansas consumer would not find this out until the time comes to file an action or claim against a company. Only then will they realize that there are not enough resources to cover claims.

To also provide you with a comparison, in the surrounding states, Kansas ranks next to the last in requirements for insurance coverage. Colorado is number one with a requirement of \$400,000.00. And in fact, according to the Kansas Department of Agriculture, Kansas currently ranks 49th in the Union. Nebraska requires no insurance or bonds.

We urge you to pass this Bill. I would be willing to entertain questions.

Senate Agriculture
February 10, 2004
Attachment 1



STATEMENT OF THE
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION

SUBMITTED TO THE
SENATE AGRICULTURE COMMITTEE
REGARDING SENATE BILL 326
SENATOR DEREK SCHMIDT, CHAIR

FEBRUARY 3, 2004

DOUG WAREHAM
SENIOR VICE PRESIDENT

KARA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 - 785-234-0461 - Fax: 785-234-2930

*Senate Agriculture
February 10, 2004
Attachment 2*

Mr. Chairman and Members of the Senate Agriculture Committee I am Doug Wareham appearing on behalf of the Kansas Agribusiness Retailers Association (KARA). KARA's membership includes nearly 750 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. I appear before you in support of Senate Bill 326.

In its present form, Senate Bill 326 simply increases the minimum thresholds of financial responsibility for pesticide business licensees that secure either a surety bond, certificate of liability insurance or letter of credit. After some investigation, I discovered that our retail members that maintain a pesticide business license generally carry a minimum of \$1,000,000 in commercial liability insurance. I also discovered price/cost quotes for this type of liability coverage are typically quoted on a basis of "Premium Per 1000 acres Treated". Kansas' leading insurer of agribusiness operations provided the following sample quote for a \$1,000,000 commercial policy for an agribusiness retailer:

- \$225/thousand acres treated (no deductible)
 - \$.225 cents per acre treated
- \$179/thousand acres treated (\$5,000 deductible)
 - \$.179 cents per acre treated

Liability insurance costs are a significant cost component for agribusiness retailers that often perform custom application services on tens of thousands of acres annually. We are confident that the agribusiness firms we represent are securing adequate liability protection to ensure the financial protection of their customers, their business and any adjacent landowner that might be impacted by their actions. Unfortunately, we also believe there is reason for this committee and the Department of Agriculture to be concerned that a growing percentage of custom application work in Kansas is being performed by non-pesticide business licensed parties (farmers) that are not subjected to the minimum liability insurance requirements in current Kansas law or those proposed in this bill.

During the past year, the number of complaints our office has received regarding non-pesticide business licensed individuals performing custom application services has increased significantly. One can imagine the frustration of retail agribusiness owners and managers that have faced double-digit liability insurance premium increases the past three years, when they have at the same time witnessed a dramatic increase in custom application services being provided by non-licensed parties that are not required to maintain adequate liability insurance. We also believe many farmers that are performing custom application services are under the false assumption that their farm/ranch insurance policy will cover damage claims that arise from custom application business activities.

Yesterday, I visited the Kansas Insurance Commissioners Office and through a freedom of information request was able to secure policy information from two different insurance companies that offer farm/ranch policies. I obtained a complete farm and ranch policy for

Farm Bureau Mutual Insurance and I obtained one page from State Farm Insurance's Farm/Ranch Policy. I was informed that Kansas law requires insurance policies in Kansas to be filed with the Insurance Department and updated as the policies are updated. I also contacted Insurance Agents or Insurance Claims Department representatives for both State Farm Insurance and Farm Bureau Mutual Insurance and specifically requested information regarding the applicability of farm and ranch policies when custom application work is performed. I believe the information I gathered should be considered by this committee as you review Senate Bill 326 and consider other possible changes to K.S.A. 2-2448.

I would like to first draw your attention to the State Farm Insurance document (green sheet). State Farm's policy included a specific policy for Chemical Drift Liability and as you can see, the policy will only cover damages caused by chemicals that escape from the "insured location". This bodes the question: If this is the only policy in place for a non-licensed applicator that is performing custom application work at a farm location that is clearly not covered by the applicators personal farm/ranch policy and a spray drift claim arises, will the damaged party be compensated for those damages?

With respect to the Farm Bureau Mutual Insurance Farm and Ranch Policy (yellow attachment), there is a definition for "custom farming" found on page one of the document, which one might assume would cover the custom application of pesticides. There are also other references in the policy that might lead one to believe this policy would cover a spray drift or other property damage claim caused by a non-pesticide business licensed farmer that was performing custom application work. However, when I contacted a Farm Bureau Mutual Insurance Agent, I was informed that their farm/ranch policy would **not** cover claims that arise from the custom application of pesticides. I was informed that those types of activities would have to be insured by a commercial "business" policy.

I share this information today in the hopes that this committee will consider the growing number of non-pesticide business licensed parties that are performing custom application work in Kansas and the absence of a financial responsibility requirement in the Kansas Pesticide Law for this activity. KARA strongly believes that all parties that provide pesticide custom application services should maintain a pesticide business licensed with the Kansas Department of Agriculture. Furthermore, KARA believes all parties, licensed or otherwise, that provide custom application services on land they neither own or rent, should be required to meet the same minimum liability insurance requirements as required by K.S.A. 2-2448.

I appreciate the opportunity to appear in support of Senate Bill 326 and want to announce that we stand ready to work with members of this committee and other stakeholders to work toward a solution that will protect farmer customers and adjacent landowners that may need to someday depend upon the party they are receiving services from having adequate liability insurance protection. I would be happy to stand for questions.

Farm / Ranch Policy

APPROVED
& FILED

APR 21 1998

KATHLEEN SEBELIUS
COMM. of INSURANCE



EFFECTIVE

JUL 01 1998

KATHLEEN SEBELIUS
COMM. of INSURANCE

**SECTION II -
ADDITIONAL
COVERAGES (cont.)**

ment which does not exceed the limit of liability that applies.

2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by an **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**.

3. **Damage to Property of Others.**

a. We will pay for **property damage** to property of others caused by an **insured**.

b. We will not pay more than the smallest of the following amounts:

- (1) replacement cost at the time of loss;
- (2) full cost of repair; or
- (3) \$500 in any one **occurrence**.

c. We will not pay for **property damage**:

- (1) if insurance is otherwise provided in this policy;
- (2) caused intentionally by an **insured** who is 13 years of age or older;
- (3) to property, other than a rented golf cart, owned by or rented to an **insured**, a tenant of an **insured**, or a resident in your household; or
- (4) arising out of:
 - (a) **business** pursuits;
 - (b) any act or omission in connection with a premises an **insured** owns, rents or

controls, other than the **insured location**; or

(c) the ownership, maintenance, or use of a **motor vehicle**, aircraft, or watercraft, including airboat, air cushion, personal watercraft, sail board or similar type watercraft.

4. **Chemical Drift Liability.**

a. We will pay those sums that the **insured** becomes legally obligated to pay as the result of **property damage** to crops or animals if:

- (1) the damage was caused by the chemicals, liquids or gases that the **insured** uses in normal and usual agricultural operations. These chemicals, liquids or gases must be emitted into the air by discharge, dispersal, release or escape from the **insured location**; and
- (2) the chemicals, liquids or gases entered into the air by some means other than discharge, dispersal, release or escape from aircraft.

b. The total limit of our liability in any one year is \$25,000. This aggregate limit is the most we will pay for this coverage regardless of the number of:

- (1) **occurrences**;
- (2) **insureds**;
- (3) claims made or suits brought; or
- (4) persons or organizations making claims or bringing suit.

**SECTION II -
EXCLUSIONS**

1. **Coverage L - Farm Liability** and **Coverage M - Medical Payments to Others** do not apply to:

a. **bodily injury** or **property damage**:

- (1) which is either expected or intended by the **insured**; or
- (2) which is the result of willful and malicious acts of the **insured**;



FARM AND RANCH POLICY

FARM PREMISES AND PERSONAL LIABILITY COVERAGE FORM

We provide the insurance described in this policy for those coverages stated by a specific limit of liability or other notation in the declarations, in return for your payment of the premium and your compliance with the policy provisions.

SECTION I-DEFINITIONS

Throughout this policy the words **you** and **your** mean the individual shown in the policy declarations as Named Insured or Additional Named Insured and that individual's spouse, if a resident of the same household. **You** and **your** also refers to any partnership, joint venture, corporation, estate or trust shown as Named Insured or Additional Named Insured in the declarations page.

We, us and our, means The Farm Bureau Mutual Insurance Company, Inc.

Other words and phrases that appear in bold face type have special meaning.

1. **Aircraft** means any device used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo.

2. **Bodily Injury** means bodily harm, sickness or disease occurring during the policy period, including required care, loss of services and resulting death.

3. **Business** means a full or part time trade, profession or occupation, other than **farming** or **custom farming**. **Business** includes but is not limited to:

- a. rental or holding for rental of any premises, other than an **insured premises**;
- b. custom livestock feeding;
- c. sale and application of anhydrous ammonia for others; or
- d. game preserves or land leased for the hunting season to an individual or group of individuals to be used for their hunting purposes exclusively.

Business does not include:

- a. **farming, custom farming** or roadside stands maintained principally for sale of **your farm products**;
- b. rental of an **insured premises** for use as a private residence or **farming purposes**;
- c. rental or holding for rental a part of the **residence premises** for use as a dwelling, unless the rental is to three or more roomers or boarders;
- d. rental or holding for rental a part of the **residence premises** as a private garage, office, school or studio;

- e. garage or yard sales;
- f. activity that minors normally perform such as, newspaper delivery, babysitting, caddying, lawn care, or similar type activities; or
- g. incidental hunting for sport on the **farming premises**.

4. **Custom Farming** means the use of **farm machinery** in the **farming operations** of others for a charge.

5. **Declarations** mean the pages that complete this policy by showing the coverage, limits of protection and the basic information applying to it.

6. **Farm Employee** means an employee of yours who is performing duties within the course and scope of their employment in **your farming operations**. This does not include a **residence employee** or an employee while engaged in an **insured's business**.

7. **Farming** means the production of fruits, vegetables, nuts, trees or field crops. **Farming** also means the raising or keeping of **livestock, poultry, or fish**. It includes wholesale but not retail sales, except incidental retail sales of **your unprocessed farm products**. This also includes responsibilities in connection with the maintenance and upkeep of the **insured premises**.

8. **Farm Machinery** means:

- a. motorized land vehicles, including accessories and any attached equipment or apparatus, usual to operating a farm and designed principally for use off public roads;
- b. wagons or trailers designed and used principally for **farming purposes**; or
- c. any other machinery or implement usual to the operation of a farm.

9. **Farm Products** means fruits, vegetables, nuts, trees, grain, poultry, **livestock**, (excluding fish), and any other raw farm commodity (except honey) produced by **your farming operations**.

Your farm products does not include property rented to or provided for the use of others but not sold.

Your farm products does not include warranties or representations made at any time with respect to the fitness,

DEFINITIONS (cont.)

quality, durability, performance or use of **your farm products** and the providing or failure to provide warnings or instructions.

10. Impaired Property means tangible property, other than **your farm products** or **your work**, that cannot be used or is less useful because:

- a. it incorporates **your farm products** or **your work** that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. you have failed to fulfill the terms of a contract or agreement.

if such property can be restored to use by:

- a. the repair, replacement, adjustment or removal of **your farm products** or **your work**; or
- b. your fulfilling the terms of the contract or agreement.

11. Insured means you, and:

- a. if you are an individual, **insured** also means the following residents of your household;
 - i. your relatives; and
 - ii. any other person under age 21 who is in your care or the care of a resident relative.
- b. if you are a partnership or joint venture, **insured** also means the partners and members of the partnership or joint venture including their spouses, but only with respect to the conduct of **your farming** operations;
- c. if you are a corporation, **insured** also means the executive officers and directors of that organization. The executive officers and directors must be acting within the scope of duties connected with the corporation and those duties must be covered by this policy;
- d. if you are an estate, **insured** also means the personal representatives of that estate. The representatives must be acting within the scope of duties connected with the estate and those duties must be covered by this policy.
- e. if you are a trust, **insured** also means the trustee or trustees of that trust. The trustee must be acting within the scope of duties connected with the trust and those duties must be covered by this policy.
- f. any of **your farm employees** or **residence employees** (other than executive officers), but only for acts that;
 - i. cause **bodily injury** to someone other than an **insured** or a co-employee; and
 - ii. are within the course and scope of the employee's employment by you.

The providing of professional health care services or the failure to provide them will not be considered within the scope of any employee's employment by you.

- g. any person or organization legally responsible for animals, **farm machinery** or watercraft owned by you. It does not include a person or organization using or having custody of the animals, **farm machinery** or watercraft, in the course of any business, or without your permission.

12. Insured Premises means:

- a. the residence premises;
- b. the **farming** premises which you own, rent, lease or operate described in the **declarations**;
- c. part of a premises not owned by you where you may be temporarily residing or which you may occasionally rent for non-business purposes;
- d. any other premises acquired by you during the term of this policy which you intend to use as a residence premises or for **farming**;
- e. vacant land (other than land used for **farming** purposes) owned by or rented to an **insured**;
- f. cemetery plots or burial vaults owned by an **insured**;
- g. land owned or rented to you on which a one or two family dwelling is being constructed as a residence for your occupancy; or
- h. land leased for temporary grazing not exceeding a 90 day lease.

13. Livestock means cows, calves, bulls, steers, heifers, horses, mules, donkeys, swine, sheep, goats, buffalo, bee-falo or cattalo.

14. Medical Expenses means expenses for necessary medical, surgical, x-ray and dental services, prosthetic devices, pharmaceuticals and ambulance, hospital, professional nursing and funeral services.

15. Motor Vehicle means a motorized land vehicle, trailer or semi-trailer (including any attached machinery or apparatus) designed for use or travel on public roads or subject to motor vehicle registration or licensing.

Motor vehicle does not include, except when being towed by or carried on a motor vehicle:

- a. utility trailers, boat trailers or camping trailers;
- b. **farm machinery**;
- c. any equipment that is principally designed for use off public roads and not subject to registration or licensing.

Motor vehicle does not include:

- a. motor vehicles in dead storage on an **insured premises**;

DEFINITIONS (cont.)

- b. motorized vehicles not subject to motor vehicle registration used exclusively as a device for assisting the physically impaired.

16. **Occurrence** means an accident, including continuous or repeated exposure to conditions.

17. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

18. **Products-completed operations hazard** includes all **bodily injury** and **property damage** occurring away from premises you own or rent and arising out of your product or your work except:

- a. Products that are still in your physical possession; or
- b. Work that has not yet been completed or abandoned.

Your work will be deemed completed at the earliest of the following times:

- a. When all of the work called for in your contract has been completed;
- b. When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
- c. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement that is otherwise completed, will be treated as completed.

19. **Property Damage** means damage to or destruction of tangible property. This includes loss of use of that property.

20. **Recreational vehicle** means a motorized land vehicle (other than a motor vehicle) designed or used for recreational, vacation or leisure time activities. This does not include:

- a. motorized golf carts while being used for golfing purposes; or
- b. snowmobiles, motorized bicycles or tricycles, 3 or 4-wheelers, or unlicensed motorcycles while any of these are being used for farming purposes.

21. **Residence Employee** means someone employed by an insured whose duties are in connection with the maintenance or use of the residence premises. This includes persons who perform household or domestic services, or who perform duties elsewhere of a similar nature not in connection with an insured's farming operation or business.

22. **Residence Premises** means the one or two family dwelling where you reside, including the immediate grounds not used for farming. The residence premises is described in the declarations pages.

23. **Your Work** means:

- a. Farming or custom farming performed by you or on your behalf;
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work does not include warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your farming or custom farming work and the providing of or failure to provide warnings or instructions.

SECTION II - COVERAGES AND EXCLUSIONS

COVERAGE G - LIABILITY

1. INSURING AGREEMENT

We pay all sums for which an insured becomes legally obligated to pay as compensatory damages because of **bodily injury** or **property damage**. The **bodily injury** or **property damage** must be caused by an **occurrence** to which this insurance applies.

We will have the right and duty to defend any suit seeking those damages using legal counsel of our choice. At our discretion, we may investigate any occurrence and settle any claim or suit that may result. But,

- a. The amount we will pay for compensatory damages is limited as described in **SECTION III - LIMITS OF LIABILITY**; and
- b. Our right and duty to defend ends when we have used up the applicable Limits of Liability in the payment of judgments or settlements under Coverage G.

No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under the **ADDITIONAL COVERAGES**.

**COVERAGE H -
DAMAGE TO PROPERTY OF OTHERS.**

1. INSURING AGREEMENT

We pay for damage to property of others, caused by an **insured**, or by animals owned by or in the care of any **insured**. Our limit of liability for this coverage is \$1000 per occurrence.

**2. EXCLUSIONS APPLICABLE TO COVERAGE H -
DAMAGE TO PROPERTY OF OTHERS**

We do not pay for damage to property:

- a. covered elsewhere in this policy;
- b. owned by, rented or leased to, any **insured**, a tenant of any **insured**, a **farm employee**, **residence employee** or a resident of your household;
- c. caused intentionally by any **insured** who has attained the age of 13; or
- d. resulting from:
 - i. **business pursuits**;
 - ii. **premises owned, rented or controlled by an insured, other than the insured premises**; or
 - iii. **ownership, maintenance, use, entrustment, loading or unloading of motor vehicles, recreational vehicles, aircraft, watercraft, trailers or semi-trailers.**

**COVERAGE J -
FARM EMPLOYEE COVERAGE**

YOU HAVE THIS COVERAGE IF THE DECLARATIONS INDICATE IT IS PROVIDED.

1. EMPLOYER LIABILITY INSURING AGREEMENT

We pay all sums that an **insured** becomes legally obligated to pay as compensatory damages because of **bodily injury** to a **farm employee**. The **bodily injury** must be caused by an **occurrence** to which this insurance applies.

We have the right and duty to defend any suit seeking those damages using legal counsel of our choice. We may at our discretion investigate any **occurrence** and settle any claim or suit that may result. But,

- a. The amount we will pay for compensatory damages is limited as described in **SECTION III - LIMITS OF LIABILITY**; and
- b. Our right and duty to defend ends when we have used up the applicable Limits of Liability in the payment of judgments or settlements under **Coverage J**.

No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under the **ADDITIONAL COVERAGES**.

2. EMPLOYEE MEDICAL PAYMENTS INSURING AGREEMENT

We pay the necessary **medical expenses** of a **farm employee** who sustains **bodily injury** arising out of your **farming operation**. These expenses must be incurred within three years from the **occurrence date**. We do not cover expenses resulting from any hernia.

We may pay the injured person or the party that provides the medical services.

**3. EXCLUSIONS APPLICABLE TO COVERAGE J -
FARM EMPLOYEE COVERAGES**

We do not cover:

- a. liability assumed by an **insured**, under any contract or agreement.
- b. punitive or exemplary damages because of **bodily injury** to any **farm employee**.
- c. **bodily injury** to any **farm employee** employed in violation of law, with the knowledge or consent of the **insured**.
- d. **bodily injury** arising out of the ownership, maintenance, use, loading or unloading, or entrustment to others of:
 - i. **aircraft**;
 - ii. **motor vehicles** owned or operated by or rented or loaned to any **insured**;
 - iii. **recreational vehicles** owned by any **insured**, if the **bodily injury** or **property damage** occurs away from the **insured premises**;
 - iv. **watercraft**:
 - (1) owned by or rented to any **insured** if it has inboard or inboard-outdrive motor power of more than 50 horsepower;
 - (2) owned by or rented to any **insured** if it is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;
 - (3) owned by or rented to any **insured** if it is powered by one or more outboard motors with more than 25 total horsepower if the outboard motor is owned by any **insured**;
- e. **bodily injury** to a person eligible to receive benefits required to be provided or voluntarily provided under workers' compensation, occupational disease or non-occupational disability benefit laws.
- f. any damages arising out of the refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or consequential **bodily injury** as a result of any of the above.

**SECTION II -
COVERAGE AND EXCLUSIONS (cont.)**

- g. **bodily injury** to the spouse, child, parent, brother or sister of a **farm employee** because of **bodily injury** to that employee.
- h. **bodily injury** sustained by an officer, or director of a corporation shown as Named Insured in the **declarations**.
- i. **bodily injury** arising out of **business** activities of any **insured**.
- j. **bodily injury** caused intentionally by or at the direction of any **insured**;

4. CONTINGENT WORKERS COMPENSATION. If you become legally obligated to pay an award of benefits under the Kansas Worker's Compensation Act because of an injury to your **farm employee**, we will issue our standard Kansas Worker's Compensation Policy in your name. The award must be in connection with an injury sustained by a **farm employee**. The policy will be issued based on our approved rates and premiums.

The Kansas Worker's Compensation Policy takes effect as of the inception date of this policy, or as of the date operations began out of which your legal obligation arises, whichever is more recent. While this coverage is in force, you must agree not to provide or pay compensation according to the provisions of any Worker's Compensation Act.

This coverage applies only if:

- a. you maintain accurate payroll records on all your **farm employees**;
- b. you accept and pay the premium for the Worker's Compensation Policy provided for in this clause. If you refuse to accept the Worker's Compensation Policy or pay the premium, we are relieved of all liability with respect to any claim arising from this coverage;
- c. you do not voluntarily elect to come under the provisions of any worker's compensation law;
- d. your legal obligation to pay benefits does not arise out of:
 - i. premises rented or held for rental to others, except **farming** premises;
 - ii. premises owned by or rented to any **insured** that is not an **insured** premises;
 - iii. your **business** or the **business** of any partnership of which you are a partner;
 - iv. **custom farming** when performed outside a 50 mile radius of the **insured** premises, or the annual gross receipts from **custom farming** exceeds \$1000 unless excess gross receipts have been declared in the **declarations**;

- e. you do not intentionally cause the injury or disease which creates your legal obligation to pay benefits; and
- f. the policy we issue is the only source of coverage for the worker's compensation or occupational disease benefits the person is entitled to receive.

**COVERAGE K -
MEDICAL PAYMENTS**

1. INSURING AGREEMENT

We pay the necessary **medical expenses** that are incurred within three years from the **occurrence** date causing **bodily injury**. The amount we will pay for **medical expenses** is limited as described in **SECTION III - LIMITS OF LIABILITY**.

Each person sustaining **bodily injury** is entitled to this protection when that person is:

- a. on an **insured** premises with the permission of an **insured**; or
- b. elsewhere if the **bodily injury**:
 - i. results from a condition in the **insured** premises;
 - ii. is caused by the activities of any **insured**;
 - iii. is caused by the activities of an **insured's** **farm employee** or **residence employee** in the course and scope of their employment by an **insured**; or
 - iv. is caused by an animal owned by or in the care of an **insured**.

We may pay the injured person or the party that provides the medical services.

**EXCLUSIONS APPLICABLE TO
COVERAGE G - LIABILITY,
AND COVERAGE K - MEDICAL PAYMENTS**

1. We do not cover bodily injury:

- a. to you or to an **insured**, or resident of the **residence** premises, except a **residence employee**.
- b. to any employee other than a **residence employee**.
- c. to any person eligible to receive benefits required to be provided or voluntarily provided by an **insured** under workers' compensation, occupational disease or non-occupational disability benefit laws.

This exclusion applies whether the **insured** may be held liable as an employer or in any other capacity and to any obligation to share damages because of the injury.

- d. to any person arising out of any refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other

SECTION II -

COVERAGE AND EXCLUSIONS (cont.)

employment-related practices, policies, acts or omissions; or consequential **bodily injury** as a result of any of the above.

- e. to the spouse, child, parent, brother or sister of any employee because of **bodily injury** to that employee.
- f. to any person arising out of or resulting from any **insured's** transmission of a communicable disease.
- g. to any person arising out of sexual molestation, corporal punishment or physical or mental abuse.
- h. to any person while on the **insured premises**, because a **business** is conducted or professional services are rendered on the **insured premises**.

2. We do not cover property damage:

- a. to property owned by or being transported by an **insured** or any other resident of your household.
- b. to property rented to or used by or in the care of any **insured**. We will cover **property damage** to such property caused by fire, smoke or explosion.
- c. to **your farm products**.
- d. to any part of any property that must be restored, repaired or replaced because **your work** on the property was incorrectly performed.
- e. to **your work**.
- f. to **impaired property** or property that has not been physically injured, arising out of:
 - i. a defect, deficiency, inadequacy or dangerous condition in **your farm product** or **your work**; or
 - ii. a delay or failure by you or anyone acting on **your behalf** to perform a contract or agreement according to its terms.
- g. arising out of the failure of seeds, bulbs, plants, roots, tubers, cuttings or other similar forms of plant source to conform to the variety or quality specified by an **insured**, or to be suitable for the purpose specified by an **insured**.

3. We do not cover bodily injury or property damage:

- a. resulting from **your non-farming** activities when you do not reside on the **residence premises**.
- b. caused intentionally by or at the direction of any **insured**. This exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property.
- c. resulting from liability assumed under an unwritten contract or agreement; or by any contract or agreement relating to a **business** of any **insured**.
- d. arising out of any premises owned, rented or controlled by an **insured** which is not an **insured premises**. This exclusion does not apply to **bodily injury** to a **residence employee** arising out of and in the

course of the **residence employee's** employment by any **insured**.

- e. arising out of game preserves or land leased to individuals or groups of individuals for their exclusive hunting purposes during the hunting season.
- f. arising out of or in connection with a **business** engaged in by any **insured**. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the **business**.
- g. resulting from **custom farming** when performed outside a 50 mile radius of the **insured premises**, or when the annual gross receipts from **custom farming** exceeds \$1000 unless excess gross receipts are declared in the **declarations**.
- h. arising out of the delay or lack of performance by an **insured** of any contract or agreement to perform **custom farming** operations.
- i. caused by the rendering or failing to render professional services.
- j. caused by or resulting from any substance released or discharged from **aircraft**.
- k. caused by the actual or alleged dumping, discharge or escape of **pollutants**, irritants or contaminants into or upon land, the atmosphere or any water course or body of water, or underground water.

This exclusion does not apply to **bodily injury** or **property damage** caused by or arising out of:

- i. accidental above ground contact with herbicides, pesticides, fungicides and fertilizers caused by the application of the same to an **insured premises** which results in actual damages to crops (other than an **insured's** crops), within one growing season of said application;
 - ii. accidental above ground contact with herbicides, pesticides, fungicides and fertilizers caused by applying these chemicals to an **insured premises**. Any medical treatments must be incurred within one year (365 days) of said application; or
 - iii. smoke resulting from the normal and usual practices of **farming** or agricultural pursuits at the **insured premises**.
- l. arising out of goods or products, including containers, which any **insured** manufactures, processes, sells, handles or distributes, unless the liability arises from **farm products** produced by an **insured** on the **insured premises**.
 - m. resulting from an **insured's** liability arising out of a warranty of **your work** or **farm products** after relinquishing control to others.

**SECTION II -
COVERAGE AND EXCLUSIONS (cont.)**

n. for damages claimed for any loss, cost or expense by an insured or others: for loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of:

i. your products or farm products;

ii. your work; or

iii. impaired property;

if such products, farm products, work, or property is withdrawn or recalled from the market or from use by anyone due to its known or suspected defect, deficiency, inadequacy, or dangerous condition.

o. arising out of the use of any type of motorized vehicle in sponsoring or taking part in any organized or agreed-upon speed, racing, pulling or pushing, demolition or stunting activity or contest, or in preparation for any such activity or contest.

p. caused while providing rides to persons for a fee using livestock or other animals, with or without accessory vehicles.

q. arising out of the ownership, maintenance, use, loading or unloading, or entrustment to others of:

i. aircraft;

ii. motor vehicles owned or operated by or rented or loaned to any insured;

iii. recreational vehicles owned by any insured, if the bodily injury or property damage occurs away from the insured premises;

iv. watercraft:

(1) owned by or rented to any insured if it has inboard or inboard-outdrive motor power of more than 50 horsepower;

(2) owned by or rented to any insured if it is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;

(3) owned by or rented to any insured if it is powered by one or more outboard motors with more than 25 total horsepower if the outboard motor is owned by any insured;

This exclusion does not apply to bodily injury to any residence employee.

r. arising out of any person's use, sale, manufacture, delivery, transfer or possession of Controlled Substances as defined by the Federal Food and Drug Act at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. This exclusion does not apply to a person's legitimate use of prescription drugs when following the orders of a licensed physician.

s. arising from nuclear reaction, radiation or radioactive contamination or any consequence of any of these.

t. arising out of war (declared or undeclared), or due to any act or condition incident to war. War includes civil war, insurrection, rebellion and revolution.

4. We do not cover:

a. liability for punitive or exemplary damages; or

b. statutorily imposed vicarious parental liability for the actions of a child or minor using any aircraft, motor vehicle, recreational vehicle, or watercraft.

OPTIONAL COVERAGE

You have this coverage, if shown in the declarations.

1. COVERAGE L - MEDICAL PAYMENTS TO YOU AND YOUR FAMILY.

We pay the necessary medical expenses for bodily injury caused by an occurrence while engaged in work necessary or incidental to your farming operation. These medical expenses must be incurred within three years from the date of an accident causing bodily injury to a person named in the declarations under Coverage L.

The amount we will pay for medical expenses is limited as described in SECTION III- LIMITS OF LIABILITY; and

2. EXCLUSIONS APPLICABLE TO COVERAGE L- MEDICAL PAYMENTS TO YOU AND YOUR FAMILY

We do not cover medical expenses:

a. for any person eligible to receive worker's compensation benefits as a result of the accident;

b. arising out of domestic or personal activities not related to your farming operation;

c. involving a motor vehicle or watercraft;

d. resulting from any hernia; or

e. arising out of business activities.

ADDITIONAL LIABILITY COVERAGES

1. CLAIMS AND DEFENSE EXPENSE COVERAGE

We pay the following expenses incurred in connection with a suit defended by us under Coverage G - Liability and Coverage J - Employer Liability:

a. costs taxed to the insured;

b. expenses incurred by us;

c. reasonable expense any insured incurs, including but not limited to actual loss of earnings by an insured, up to \$100 per day, for time spent away from work at our request;

d. interest accruing after entry of a judgment but ending when we tender or pay up to the applicable limit of liability;

e. premiums on appeal bonds or bonds to release

**SECTION II -
COVERAGE AND EXCLUSIONS (cont.)**

attachments up to our limit of liability. We are not required to apply for or furnish any bonds;

- f. premiums up to \$250 per bail bond required of an insured because of an accident, or traffic law violation issued in connection with an accident, arising out of any vehicle to which this policy applies. We are not required to apply for or furnish any bonds;

- g. expenses up to \$250 incurred in defending any claim or proceeding brought by a farm employee, against an insured, under any Worker's Compensation Law if it is finally determined that the Workers' Compensation Law is not applicable.

SECTION III-LIMITS OF INSURANCE

1. LIMIT OF LIABILITY. Regardless of the number of insureds under this policy, persons or organizations sustaining bodily injury or property damage, or claims made, our total liability for each occurrence is subject to the following limitations:

- a. Coverages G-Liability and J-Employer Liability, are limited to the amount shown for "each occurrence" in the declarations. These are our limits for all bodily injury and property damage resulting from one occurrence.

Our liability is limited for bodily injury and property damage resulting from the Products/Completed Operations Hazard. The limit of liability shown in the declarations for Coverage G-Liability, is the total limit of our liability for all such occurrences during the policy period

- b. The Coverage K-Medical Payments limits are shown in the declarations. This "per person" limit is our limit for all medical expenses for bodily injury to one person resulting from one occurrence. The "per occurrence" limit for Coverage K-Medical Payments, is our limit for all medical expenses payable for bodily injury to two or more persons resulting from one occurrence.

- c. The Coverage L - Medical Payments to You and Your Family limit is shown in the declarations. This is our limit for all medical expenses payable for bodily injury resulting from any one occurrence for each person named under this coverage.

2. SEPARATION OF INSURED

This insurance applies separately to each insured. This condition shall not increase our occurrence limit of liability.

SECTION IV-FARM LIABILITY CONDITIONS

The Following Conditions Apply In Addition To The Common Policy Conditions:

LOSS CONDITIONS

1. DUTIES AFTER LOSS, CLAIM OR SUIT. In case of an accident or occurrence, insureds must perform the following duties. You must cooperate with us in seeing that these duties are performed:

- a. You must notify us as soon as practicable of an occurrence that may result in a claim. The notice must include:

- i. the identity of the policy and insured;
- ii. the available information on the time, place and circumstances of the accident or occurrence; and
- iii. the names and addresses of any claimants and available witnesses;

- b. You must forward to us every notice, demand, summons or other process relating to the accident or occurrence;

- c. At our request, you must assist in:

- i. making settlement;

- ii. enforcing any rights of contribution or indemnity against any persons or organizations liable to any insured;

- iii. attending hearings, discovery proceedings and trials; and

- iv. securing and giving evidence and obtaining the attendance of witnesses;

- d. The insured shall not, except at their own cost, voluntarily make payments, assume any obligations or incur any expense. This does not apply to first aid provided to others at the time of the bodily injury.

2. DUTIES OF AN INJURED PERSON

- a. The injured person or, when appropriate, someone acting on behalf of the injured person shall:

- i. give us written proof of claim, under oath if required, as soon as practicable;

- ii. execute authorization to allow us to obtain copies of medical reports and records; and

**SECTION IV -
FARM LIABILITY CONDITIONS (cont.)**

- iii. submit to physical examination by a physician selected by us when and as often as we may require.

3. LEGAL ACTION AGAINST US

No legal action shall be brought against us unless there has been compliance with the policy provisions.

No one shall have any right to join us as a party to any legal action against any insured. Further, no legal action with respect to Coverage G-Liability and Coverage J-Employer Liability, shall be brought against us until the obligation of the insured has been determined by final judgement or agreement by us.

4. NO ADMISSION OF LIABILITY WITH MEDICAL PAYMENTS

No payment we make under the provisions of Coverage K-Medical Payments or Coverage J-Employer Medical Coverage constitutes an admission of liability by any insured or us.

5. OTHER INSURANCE. If this insurance applies, it is excess insurance over any other valid and collectible insurance. However, this limitation does not apply to insurance written specifically as excess insurance over the limits of liability that apply in this policy. This clause does not apply to Coverage J, 2. Employee Medical Payments or Coverage L-Medical Payments To You And Your Family.

6. ESTIMATED POLICY PREMIUM

Premium is subject to adjustment based on the rates that are in effect at each renewable date. The premiums shown in the declarations are estimated premiums only. Upon request, you must notify us of any changes in exposures that will affect the estimated premiums in this policy.

The earned premium for the policy will be computed according to our rules, rates and minimum premiums that apply to this insurance. If the earned premium exceeds the estimated advance premiums paid, you will pay the excess to us. If the earned premium is less, we will return the unearned portion to the first Named Insured.

7. TERRITORY

This policy applies to bodily injury or property damage which occurs during the policy period:

- a. anywhere in the world with respect to bodily injury or property damage arising out of personal activities or farming activities in connection with the insured premises; or
- b. anywhere in the world with respect to bodily injury or property damage arising out of your farm products, provided original claims or suits are brought within the United States or its territories.

**SECTION V
OPTIONAL POLICY PROVISIONS**

The following Optional Policy Endorsements are subject to all the terms and provisions of this policy, unless otherwise indicated in the terms of the option.

Each Optional Policy Endorsement applies only as indicated in the declarations.

**FL 047
PROPERTY DAMAGE EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the FARM PREMISES AND PERSONAL LIABILITY COVERAGE FORM.

We do not cover Property Damage to property resulting from the explosion hazard, collapse hazard, or underground hazard defined as follows:

- 1. Explosion hazard means property damage arising out of blasting or explosion. The explosion hazard does not include property damage resulting from the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.

- 2. Collapse hazard includes "structural property damage" and property damage to any other property at any time. "Structural property damage" means the collapse of or structural injury to any building or structure due to (a) grading of land, excavating, borrowing, filling, back filling, tunneling, pile driving, cofferdam work, or caisson work or (b) moving, shoring, under-pinning, raising or demolition of any building or structure or removal or rebuilding of any structural support.
- 3. Underground hazard includes "underground property damage" and property damage to any other property at any time. "Underground property dam-

**SECTION V -
OPTIONAL POLICY PROVISIONS (cont.)**

age" means **property damage** to wires, conduits, pipes, mains, sewers, tanks, tunnels, and similar property, any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back filling or pile driving.

The explosion hazard, collapse hazard, or underground hazard does not include **property damage** arising out of operations performed by any **insured** for independent contractors.

All other provisions of this policy apply.

**FL 070
ADDITIONAL RESIDENCE RENTED TO OTHERS
1 OR 2 FAMILIES**

This endorsement modifies insurance provided under the **FARM PREMISES AND PERSONAL LIABILITY FORM**.

Coverage G- Liability, and Coverage K- Medical Payments, is extended to the residences described in the

declarations under this endorsement number. The definition of **insured premises** includes such residences.

All other policy provisions apply.

**FL 071
PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the **FARM PREMISES AND PERSONAL LIABILITY COVERAGE FORM**.

1. Coverage G - Liability, and Coverage K- Medical Payments, applies to the business pursuit of the insured named in the declarations under this endorsement, who is a:

- a. clerical office employee, salesperson, collector, messenger; or
- b. elementary or secondary school teacher, school principal or school administrator;

while acting within the scope of the above listed occupations.

2. However, no coverage is provided:

- a. for **bodily injury** or **property damage** arising out of the business pursuits of the insured in connection with a business owned or financially controlled by the insured or by a partnership of which the insured is a partner or member;
- b. for **bodily injury** or **property damage** arising out of the rendering of or failure to render professional services of any nature other than teaching or school administration. This exclusion includes but is not limited to:
 - i. architectural, engineering or industrial design services;
 - ii. medical, surgical, dental or other services or treatment conducive to the health of persons or animals; and

- iii. beauty or barber services or treatment;
- c. for **bodily injury** to a fellow employee of the insured injured in the course of employment;
- d. when the insured is a member of the faculty or teaching staff of any school:

i. for **bodily injury** or **property damage** arising out of the maintenance, use, loading or unloading of:

- (1) draft or saddle animals, vehicles for use with them; or
- (2) **aircraft, motor vehicles, recreational vehicles** or watercraft, air boats, air cushions or personal watercraft which use a water jet pump powered by an internal combustion engine as primary source of propulsion;

owned or operated, or hired by or for the insured or employer of the insured or used by the insured or for the purpose of instruction in the use thereof; or

ii. for **bodily injury** to a pupil arising out of corporal punishment administered by or at the direction of the insured unless indicated in the declarations that liability for corporal punishment is included.

All other provisions of this policy apply.

SECTION V -
OPTIONAL POLICY PROVISIONS (cont.)

FL 074
BUSINESS PURSUITS

This endorsement modifies insurance provided under the **FARM PREMISES AND PERSONAL LIABILITY COVERAGE FORM**.

The following paragraph is added to **Section I, Definitions, Number 3. Business** does not include:

- h. the incidental business pursuit listed in the declarations under this endorsement.

The following paragraph is added to **Section I, Definitions, Number 11. Insured Premises** means:

- i. that portion of the insured premises used for the incidental business pursuit listed in the declarations under this endorsement and includes advertising signs owned by an insured, provided the insured is not in the business of advertising, bill posting or sign erection or repair. However, this does not extend to cover expressions or implications declared or promised in the language of the advertised material.

Definitions, Number 6 of Section I, Definitions, is deleted and the following is substituted:

Farm Employee means an employee of yours who is performing duties within the course and scope of

their employment in your farming operations or the incidental business pursuit listed in the declarations. This does not include a residence employee or an employee while engaged in any other business of any insured.

EXCLUSIONS

The following exclusions apply in relation to the incidental business covered by this endorsement:

We do not cover:

- a. bodily injury or property damage included within the products-completed operations hazard.

The **CONTINGENT WORKERS COMPENSATION** under Coverage J- Farm Employee Coverage, does not apply.

All provisions applicable to the **FARM PREMISES AND PERSONAL LIABILITY COVERAGE FORM**, except where amended by this endorsement, apply to the business pursuit covered by this endorsement.

FL 075
FARM OWNER NON OPERATOR

This endorsement modifies insurance provided under the **FARM PREMISES AND PERSONAL LIABILITY FORM**.

Coverage G-Liability and Coverage K-Medical Payments is extended to the persons named in the declarations under this endorsement number. Coverage is only provided for the ownership and maintenance of the insured premises described in the declarations.

This insurance does not apply to:

- a. any employees of the persons named in the declarations, under this endorsement; or
- b. to non farming activities of these persons.

All other provisions of this policy apply.

FL 076
ANIMAL COLLISION

This endorsement modifies insurance provided under the **FARM PREMISES AND PERSONAL LIABILITY FORM**.

We agree to pay for loss by death of livestock owned by an insured caused by collision with a motor vehicle or self propelled farm machinery not owned by or operated by an insured or an insured's employee that occurs on a public road.

We do not cover:

- A. livestock being transported by anyone;

- B. loss that can be reasonably expected or is intended by an insured;
- C. loss caused in connection with any of your business activities or from your furnishing, or failure to furnish, any professional services or advice.

We will pay the smallest of the following amounts:

- A. the market value of the animal; or
- B. the limit of liability stated in the declarations.

**SECTION V -
OPTIONAL POLICY PROVISIONS (cont.)**

FL 076

Animal Collision (cont.)

This coverage is void if there is any other collectible insurance covering the same loss.

All other provisions of this policy apply:



Chris Wilson
Executive Director
4210 Wam-Teau Drive
Wamego, KS 66547
(785) 456-9705 Office
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(785) 456-7899 Home

STATEMENT OF THE KANSAS AGRICULTURAL AVIATION ASSOCIATION

TO THE SENATE AGRICULTURE COMMITTEE

SENATOR DEREK SCHMIDT, CHAIR

REGARDING S.B. 326

FEBRUARY 10, 2004

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of Kansas Agricultural Aviation Association (KAAA). KAAA members include approximately 95% of all the Kansas-licensed aerial application pesticide business licensees. Thank you for the opportunity to appear in opposition to SB 326.

Because of how aviation insurance coverage is provided, this bill as written would have a devastating effect on agricultural aviation in Kansas. In aviation, the insurance is on the aircraft, not the business. So, our companies that have more than one airplane carry the insurance on each plane. Also, comprehensive chemical coverage is required by the statute, and that is separate from the general liability coverage for aircraft. While all of our planes carry liability coverage above the level sought in this bill, comprehensive chemical coverage is unavailable at that level. Where it is all in one policy for other segments of the application industry, it is separate coverage for aircraft.

With me today is Randy Hardy of Hardy Aviation Insurance, Wichita, KS, Chair of our Insurance Committee, who will explain the problem for the ag aviation insurance industry. Because this is a very specialized market, Randy writes insurance coverage for aerial applicators all over the country, so is very familiar with licensing laws throughout

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the country. He is also a leader in our national organization, NAAA, and has served as the Insurance Chair for the nation for several years, and just completed a term as our National Treasurer. Randy's company provides the coverage for 75% of the operators in Kansas.

In addition to the concerns we have regarding the insurance level increases, we are also concerned about increasing the other financial stability requirements. The Department of Agriculture reports that 88 pesticide business licensees use the letter of credit; 45 use a surety bond; and 7 use an escrow account to meet the requirement in the law, a total of 140.

A number of our members do use these other methods in the law to meet the licensing requirement. These members also carry insurance, but often use another method on their license for a variety of reasons. One reason for this is the timing of the license renewal in relation to the renewal of the operator's insurance. For example, the license renews in December. If your insurance renews, say in January, there will be a statement on your license that it expires on the date of renewal of your insurance. If there was any delay in your certificate of insurance being sent to the Department of Agriculture, your license would lapse. Having a letter of credit on file for your license avoids any potential licensing problem with the certificate of insurance.

Another member uses the letter of credit because that is what is listed on his license instead of his million dollar insurance coverage. He believes it discourages frivolous lawsuits. Still another member reported to me that he uses a bond, and that's what he has had since he started in the business 30 years ago. In 30 years, he has never had a claim or a complaint.

It currently costs our members in the range of \$250 to obtain a \$6,000 letter of credit from their banks. In checking with lenders, we believe that raising the \$6,000 to \$50,000 would make the bonds or letter or credit cost prohibitive or unavailable. I doubt anyone would want to put \$50,000 cash in an escrow account. Basically, if SB 326 were to pass,

I believe it would stop the usage of these other methods, and these 140 businesses would have to use their liability insurance for their licenses.

We urge the Committee to provide time for further study of this measure. We would like the Department of Agriculture to have an opportunity to study this, to contact those 140 who use the letter of credit, bond or escrow account. Would they continue to be licensed in Kansas?

Further, in our industry we do not see the need for change. The Department of Agriculture reported to us that in 2001, the most recent year for which we have numbers, there were 90 complaints for agricultural applications of pesticides. Of those 90, 59 were found to have no violation. Of the remainder, 15 aerial applications and 16 ground applications received some administrative action. Of those 31, 15 involved a civil penalty. 15 involved a lesser notice of non-compliance, warning or summary order. We estimated that in agriculture, there are upwards of 10 million acres of applications annually. To be conservative, we figured that if only 8 million acres were treated, this would involve 100,000 applications. Out of 100,000 applications, only 30 involved violations of the law - .0003.

Nor are the damage amounts large when there is a claim. Most generally, in our industry \$1000 in a large claim. Most of ours fall below the deductible on the insurance. We just don't have claims that aren't getting paid.

This bill could have a tremendous adverse impact on the aerial application industry in Kansas, and there is not a demonstrated need for a change related to our industry. It would specify coverage amounts that for our members are simply unattainable. We would be glad to meet with proponents of the bill in order to provide recommended language to remedy this situation, and I would be glad to respond to questions.

KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Chris Wilson 234-5544

FROM: Nancy Anderson, Records Center Program Manager *Nancy Anderson*

DATE: February 9, 2004

SUBJECT: Open Records Request

The response to your open records request for the number of pesticide business licenses using a letter of credit, escrow account, or surety bond is as follows:

| | |
|------------------|----|
| Surety Bond | 45 |
| Escrow Account | 7 |
| Letter of Credit | 88 |

If you require additional information, please contact me at 785-296-5193.

February 3, 2004

TO: Senate Agriculture Committee

RE: SB 326

The liability insurance requirements proposed in SB 326 are NOT available in the current market. The increased limits proposed, if available at all, would only be available to operators with squeaky clean loss histories, and then at a premium that would be cost prohibitive. To do anything higher than 50-100-50 would make chemical coverage unavailable for many operators. Higher requirements throw up red flags with underwriters, and we're on the edge with USAIG, one of only three companies worldwide that write policies for agricultural aviation. At this point in time, underwriters are cutting and minimizing liability in every way possible, so this is not the time for the state to try to increase liability requirements. The underwriters simply will not provide the proposed coverage.

Higher liability requirements would cause the aerial application industry great harm and would effect the ability to introduce new people to our industry.

The higher limits of chemical liability for states are NOT AVAILABLE, so any state that requires more, has in effect put aerial application out of business.

In other states where we have higher limits like Illinois, this limit doesn't pertain to the chemical portion of the policy. Example, in Illinois, it's \$250K BI per person, \$500K BI aggregate, and \$250K PD – however this is for the Non-Chemical portion of the policy, and the operator can still buy the Chemical portion at lower levels.

There is not one state currently asking for higher limits of chemical liability in this country. In those states asking for greater limits, it's only regarding the non-chemical portion of the policy.

The problem with the Kansas law is that several years ago, there was a re-interpretation of the statute saying it now was inclusive and that our limits need to include the chemical portion.

If Kansas wants to pursue this any further they must, for the benefit of keeping application alive and keeping Kansas business alive, re-write this law separating the non-chemical portion and the chemical portion. I respectfully suggest you don't do anything, and leave well enough alone as it stands. Kansas is currently asking for the maximum limit of insurance given by the remaining three insurance carriers left in this business.

Just a bit more for understanding purposes. Aviation insurance is written differently, than other forms of insurance. In aviation we write the insurance coverage on the aircraft which operates for the operator thus giving the company coverage from the aircraft policy, which is where the damage would come from. In other forms of coverage, they

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write a general liability policy on the business of the operator. I would venture that in many cases, Kansas has accepted general liability coverage which does not include damage done by chemical liability claims and only covers claims against the company for general liability around the facility.

We also sell General Liability to the aerial operations, which is commonly referred to as Premises liability and is written in two forms – Comprehensive General Liability (which adds additional items to its policy) and a policy referred to as Owners, Landlords and Tenants, which is a bit less inclusive. Neither of these policies are for chemical damage. They are however for protection to our insureds for public use facilities and people coming on or off their premises.

It is critical to the industry that I serve that this legislation not pass in its current form.

Sincerely,

Randy Hardy, President, Hardy Aviation Insurance, Inc.
Insurance Chair, Kansas Agricultural Aviation Association
2003 National Treasurer and longtime Insurance Chair, National Agricultural Aviation Association

KAPA

Kansas Aggregate
Producers' Association

TESTIMONY

Edward R. Moses
Managing Director

By the

Kansas Aggregate Producers' Association

Before the

Senate Agriculture Committee

Regarding SB 409

February 10, 2004

Chairman Schmidt, members of the committee my name is Ken Johnson, of Hays Kansas, Vice President, APAC Shears – Kansas and current Secretary-Treasurer of the Kansas Aggregate Producers' Association. Our company, APAC Shears, is one of the largest construction and mining firms in the state. APAC and its predecessors have been mining sand and gravel continuously for over 70 years in Kansas. Currently we have operations in Wichita, Hutchinson (2), Dodge City and 14 throughout Western Kansas. I personally have been in the business for the past 28 years. The Kansas Aggregate Producers' Association (KAPA) is a statewide trade association, comprised of over 250 members, producing sand, gravel, crushed rock, and other various aggregate products, and one of the few industries to be represented in every county in this state. Our industry produces over 15 million tons of sand annually. Or roughly equivalent to half the Kansas wheat crop in terms of weight, clearly a major contribution to the Kansas economy. Additionally, we provide some of the highest paying jobs in rural Kansas.

We thank you for the opportunity to come before you today to express our support for SB 409. SB 409 would provide a means of implementing a last remaining policy with respect to sand & gravel operations, and their interaction with the aquifer.

Sand is one of the most common construction materials in the world, and it might well be said the extraction of sand is the world's second oldest profession. Yet for all its basic commonness, sand is concentrated and limited in its availability for public and private use. Just like water, sand appears to be plentiful but it is not. The main reason for this is that quality sand & gravel deposits are unique, both in quality and gradation; and located where they were placed millions of years ago. Therefore sand mining, unlike any other water use cannot be readily moved or relocated. Sand must be mined where it is found, unlike irrigated land that can be farmed dry, or livestock operations that can be located near available water. For these reasons SB 409 is a vital element for the sand & gravel industry in the state of Kansas in order to continue providing a vital commodity and comply with the Kansas Water Appropriations Act.

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Water is important to all Kansans young and old. If water is truly reserved for the benefit of the people in this state then surely the public benefits by having reasonable access to a supply of sand and gravel which is used in many ways from eyeglasses to highways, from insulation to the silica used in computer chips. Next to water, ubiquitous sand and gravel is one of our most needed basic materials in our society. Please join with us today in assuring its future availability by supporting SB 409.

Thank you for your attention and I will be happy to respond to any questions you may have.

ECONOMIC IMPACT OF THE KANSAS AGGREGATE INDUSTRY

by:
Chris Haugsness

In trying to determine the impact of our industry on the economy of Kansas I uncovered an interesting fact. Although Kansas is known as the WHEAT STATE and does indeed lead the nation in wheat production it also produces large amounts of corn, sorghum, and soybeans, aggregates do play a large part in the overall scheme of things.

In 2003 Kansas produced 480,000,000 bushels of wheat, 300,000,000 bushels of corn, 130,500,000 bushels of sorghum and 57,000,000 bushels of soybeans, (these figures came from the Kansas Agricultural Statistics Service). These are all impressive numbers and do indeed give you an idea of the farming impact on the states economy. We generally refer to our aggregate usage in tons so I broke the crop totals down into tons (realizing that wheat, corn, etc. have a lower specific gravity) to see how we compare. This is when it got interesting, Wheat translated to 13,440,000 tons, Corn 8,400,000 tons, Sorghum 3,654,000 tons, and Soybeans 1,596,000 tons. Again these are very impressive numbers. Using the U.S. Bureau of Mine Statistics we find that crushed Stone produced 25,400,000 tons, which is 47 percent more, then wheat and considerably more then the other grains. When Sand and Gravel production is thrown into the equation at 15,100,000 tons we get a total of 40,500,000 tons of aggregate produced, which is more than the crops mentioned combined (27,090,000). While we will always be regarded as a farm state with a farm-based economy, mining plays a huge part in the states well being.

One other note of interest is that the United States mining and construction are at the top of the average hourly earnings scale of manufacturing jobs at \$16.72 and \$16.40 per hour respectively. While some people may not want us next door, we are vital to the economy of any area that we are operating in.

Sources:

Kansas State Board of Agriculture
U.S. Bureau of Mines
Kansas Labor Market Information Services

**TESTIMONY BEFORE THE SPECIAL COMMITTEE ON THE ENVIRONMENT
ON OCTOBER 14, 1999**

**BY
LELAND E. ROLFS
STAFF ATTORNEY
KANSAS DEPARTMENT OF AGRICULTURE**

My purpose here today is to give you a brief summary of the history and the current status of the regulation of the evaporation of groundwater caused by the opening of sand and gravel pit operations within the state of Kansas.

Sand and gravel pit operations are regulated by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, under two sets of statutes, the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq., and the Obstructions in Streams Act, K.S.A. 82a-301 et seq. While the Obstructions in Streams Act provides for regulation of activities which change the course, current, or cross section of the stream, sand and gravel operations are also regulated under the Kansas Water Appropriation Act relative to the water supply used, or impacted by, the opening or expansion of sand and gravel pit operations.

Below are significant events that have occurred in connection with the regulation of sand and gravel pit operations under the provisions of the Kansas Water Appropriation Act.

1. June 28, 1945 Kansas Water Appropriation Act became effective.
2. September 17, 1986 The Chief Engineer set into motion a comprehensive enforcement plan regulating the various types of water utilized in sand and gravel operation including: hydraulic dredging, industrial use, and evaporation of groundwater

- caused by exposing the groundwater table. (See attached map of average annual potential net evaporation in inches.)
3. December 3, 1990 The rules and regulations were amended, at the request of the Legislature, to remove the large quantity of water re-circulated for hydraulic dredging from the "industrial use" category. This relieved the aggregate producers from paying the water protection fee for the large quantities of water re-circulated solely for hydraulic dredging. Evaporation caused by exposing the groundwater table in a sand and gravel operation was expressly included in the regulatory definition of "industrial use". Amendments to make the definition of "industrial use" consistent with K.S.A. 82a-734 are being proposed.
4. May 1, 1993 The Chief Engineer waived the safe yield or allowable appropriation criteria to allow to allow the aggregate industry to file permits to appropriate water to the extent that evaporation was occurring from the size of the water surface of the pits in existence as of May 1, 1993. (All sand pit evaporation occurring as of May 1, 1993 was grandfathered in.)
5. May 1, 1993 As for evaporation caused by new and expanded pits after May 1, 1993, the aggregate industry had the same options

as any other water user of acquiring a new right where water was available; or acquiring existing water right and filing a change application. The chief engineer also granted the aggregate industry a third option of acquiring an equivalent active existing water right, preferably up-gradient, in the same or hydraulically connected source of supply, and permanently retiring it, to compensate for future evaporation from the groundwater.

6. November 28, 1994 By regulation the Chief Engineer granted each sand and gravel pit operation a 15 acre foot exemption from the safe yield criteria to get a permit to authorize groundwater evaporation that had been caused since May 1, 1993 and to allow pits to continue to operate into the future while they searched for existing water rights to offset future evaporation. See K.A.R. 5-3-16.
7. April 6, 1995 The legislature passed K.S.A. 82a-734 (copy attached), requiring operators of sand and gravel pits operations to notify the Chief Engineer any time a new pit was to be opened or an existing pit expanded. Section (b) provided that unless the Chief Engineer determines that the opening or expansion of a pit has a "substantially adverse impact on the area groundwater supply," the evaporation of water

exposed as a 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. The statute also specifically provided that the sand and gravel pit operations were to continue to pay the Water Protection Fee pursuant to K.S.A. 82a-954 for all activities associated with their operation, except hydraulic dredging.

8. July 1997

The Board of Directors of the Aggregate Producers Association and the Equus Beds Groundwater Management District No. 2 created the Aggregate and Groundwater Resources Task Force with the charge to make recommendations to the legislature related to groundwater resources and aggregate production. The Task Force's Final Report was given to the legislature on January 21, 1999. As a result, HB 2215 was introduced on February 4, 1999 and referred to the House Environment Committee. No hearings were held on the matter during 1999 Legislative session.

9. September 3, 1999

The Chief Engineer formulated a draft set of regulations (copy attached) to implement the provisions of K.S.A. 82a-734 which have been sent to the public for informal review. The draft regulations propose to define "substantial adverse

effect on the area groundwater supply” to include seven specific situations. The draft also proposes to “grandfather in” evaporation caused by the opening or expansion of proven sand and gravel reserves under the legal control of a law abiding operator as of July 1, 1999. To date, no comments have been received from the public concerning these draft regulations which were sent out in Batch II on September 3, 1999.

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

of

Kansas Aggregate Producers' Association

Before the
Senate Agriculture Committee

Regarding SB 409

February 10, 2004

Mr. Chairman, and members of the committee my name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association. The Kansas Aggregate Producers' Association (KAPA) is a statewide trade association, comprised of over 250 members, producing sand, gravel, crushed rock, and other various aggregate products, and one of the few industries to be represented in every county in this state.

We thank you for the opportunity to come before you today to express our support for SB 409. SB 409 would provide a means of implementing a last remaining policy with respect to sand & gravel operations, and their interaction with the aquifer. Our association, as a sponsor of this bill, feels that the passage of SB 409 is a vital element for the sand & gravel industry in the state of Kansas in order to continue providing a vital commodity and comply with the Kansas Water Appropriations Act.

The Kansas Aggregate Producers' Association along with the Kansas Division of Water Resources, and the Kansas Groundwater Management Districts introduced HB 2251, a bill that would have implemented a policy by which the evaporation from sand & gravel pits would be regulated under the Kansas Water Appropriations Act. The purpose of this legislation was to account for the unique operating conditions that exist when sand & gravel operators are to be regulated for the beneficial use of water. Due to a number of water bills, with higher priorities, being introduced and considered in the 1999 session, HB 2251 did not receive a hearing, and was later referred to interim committee. At that time it was the recommendation of the interim committee that elements of HB 2251 be placed into rules and regulations. Since that time the Kansas Aggregate Producers' Association has worked with the Division of Water Resources and the Groundwater

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Management Districts to successfully implement, by rules and regulations 80% of the elements contained in HB 2251.

SB 409 represents the remaining 20% of this legislation to affect those policies that cannot be changed by implementation of a rule or regulation, and require statutory changes SB 409 primarily deals with the perfection of water rights over the period of a sand and gravel operation, and the definitions of commencement and completion of diversion works. These changes are needed to assure that sand and gravel operations, who go to the expense of securing both sand and gravel deposits and sufficient water to cover the associated evaporation, will be able to eventually complete their operations, no matter how long it may take.

The diversion associated with the evaporation of water exposed by sand and gravel pits is truly unique under the Kansas Water Appropriations Act for example:

- Evaporation as a result of sand and gravel operations is the only form of diversion regulated under the Kansas Water Appropriations Act on a theoretical rate, as opposed to a specific known diversion or quantity. It is highly variable over the period of time and not measurable by any other means than theoretical estimation.
- It is the only form of water diversion that is not subject to direct impairment.
- It is a form of diversion that does not create a cone of depression, and therefore no identifiable infringement to any senior water right owner or an unreasonable raising or lowering of the water table.
- The sand & gravel industry is the only industry to be directly regulated for evaporation.

In addition to that, the development of sand and gravel deposits may occur over a very long period of time, in many cases up to 50 or 100 years. As a result, the Kansas Water Appropriations Act, which is primarily designed to govern a specific use over a specific period of time [K.S.A. 82a-706], was not designed or anticipated to cover long-term sand and gravel evaporation when passed in 1945.

In order to address these and other problems, the Kansas Aggregate Producers' Association along with the Kansas Geological Survey, the Kansas Association of Groundwater Management Districts, and the Kansas Division of Water Resources organized a working group called the Aggregate and Groundwater Resources Task Force (AGWRTF). The mission of the task force was to develop an appropriate piece of legislation to integrate sand and gravel operations into the Kansas Water Appropriations Act. The group began meeting in the summer of 1997 and by the 1999 session had developed a piece of legislation, which was introduced as HB 2251. In 1999, after receiving no action from the legislature, most of the elements were incorporated into rules and regulations by the Chief Engineer of the Division of Water Resources, in consultation with the Kansas Aggregate Producers' Association and Groundwater Management Districts.

SB 409 is needed because it addresses one important element of the 1999 compromise not reflected in the rules and regulations. Simply put, current rules and regulations require sand and gravel operators secure a sufficient amount of water to cover the net evaporation estimated to occur over the life of a project [K.A.R. 5-13-5]. This water must be obtained up front otherwise the project may not be approved or may not be economically feasible. In many cases the life of the project may last up to 100 years. For example APAC Shears has operated a pit in Hutchinson since 1930, as has the Popejoy Construction operation in Lakin. These time lines are not unusual for any industry dealing with natural resources. Both the Monarch Cement Company and the Ash Grove Cement Company seek to maintain limestone reserves in the 50 – 75 year range. Fortunately, they are not required to cover these reserves with water rights. Yet, Kansas Administrative Regulation 5-13-11, promulgated by the Chief Engineer only allows an operator to perfect water up to 40 years. This negates the concept contained in the 1999 AGWRTF compromise, which allowed a permit “until the exhaustion of proven reserves or closure in accordance with the Surface-Mining and Land Reclamation Act . . .” Obviously this puts any operator attempting to comply with the Kansas Water Appropriation Act in an immediate dilemma, and violates the spirit of the 1999 compromise.

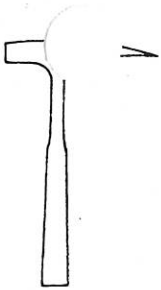
SB 409 represents elements of HB 2251 which require a statutory change as opposed to rules and regulations.

1. It repeals the “substantially adverse” language, which has been a confusing subject for both regulators and the regulated; and in its place provides a clear definition of when beneficial use occurs, which is 18 inches or more of net evaporation.
2. The bill establishes a different form of perfection for water rights **permanently dedicated** to sand and gravel use, in order to provide a perfection period that runs along with the proven reserves of a sand and gravel operation, and to take into account the variability of both sand and gravel markets and the variability of sand and gravel deposits.
3. It addresses issues concerning notification for the commencement of diversion works and the completion of diversion works by providing the Chief Engineer with the authority to go beyond a simple one-year extension or a five-year completion time for perfection. This is necessary as often times it may be 30 years or longer before the opening of reserves.
4. SB 409 gives the Chief Engineer a tool by which any unused water as a result of the premature termination of an operation or for some other reason an operation may not be feasible, to then apply the water, if available, to a different use, thereby providing other water users in a given area access to water that can no longer be used by a sand and gravel operation.

By approving SB 409 the Kansas Legislature will create good public policy for the following reasons:

- SB 409 will protect the public by not providing an incentive for sand and gravel operators to prematurely mine out deposits in order to protect previously acquired water.
- SB 409 will allow sand and gravel operators to protect and make huge capital investments in reserves.
- SB 409 will allow the sand and gravel industry to comply with Kansas Water Appropriations Act.
- SB 409 will give the necessary stability to continue providing vital construction materials to the public as well as the private sector of Kansas at a reasonable cost, keeping Kansas competitive while protecting the state's water resources.
- SB 409 will protect and aid other water users by not artificially driving up the prices of available water in the area.
- SB 409 will promote the recommendations of the Kansas Natural Resources Legacy Alliance.

In closing we urge this committee to complete the work of the Aggregate and Groundwater Resources Task Force by passing SB 409. Such action will affirm the work of this group and provide the framework for allowing the Kansas sand and gravel industry to continue supplying a valuable commodity to all Kansans. We thank you for the opportunity to come before you today, and I will be happy to respond to any questions at this time.



KANSAS GEOLOGICAL SURVEY
Office of the Director

1930 Constant Ave., Campus West
The University of Kansas
Lawrence, Kansas 66047-3726
phone 785-864-3965
fax 785-864-5317

MEMO

TO: Board of Directors, Kansas Aggregate Producers Association
Board of Directors, Equus Beds Groundwater Management District #2

FROM: Rex Buchanan, Kansas Geological Survey *RB*
Chair, Aggregate and Groundwater Resources Task Force

RE: Progress Report on Aggregate and Groundwater Resources Task Force

DATE: 21 January 1999

In July 1997, the Board of Directors of the Aggregate Producers Association and the Equus Beds Groundwater Management District No. 2 created the Aggregate and Groundwater Resources Task Force with the charge to make "recommendations to the legislature" related to groundwater resources and aggregate production. In early 1998, you authorized the committee to continue its activities for another year and expanded the committee to include a representative of the Kansas Department of Health and Environment. The committee has now completed its work. It has developed a set of recommendations concerning proposed legislation and additional research. What follows is the final report of the task force.

As you know, we met monthly from July 1997 through January 1998, then from April 1998 to January 1999. Nearly every meeting lasted an entire day and most members of the task force attended all of those meetings. We held detailed discussions about nearly every aspect of this issue, including formulas for computing runoff, transferability of water rights, and water quality. We brought in experts to discuss specific issues such as water use by phreatophytes, underground injection control, evaporation, and recharge. We spent much of 1997 developing draft legislation. In response to concerns about that draft legislation, we spent much of 1998 making changes, including addressing issues of transferability of water rights, differentiating regional aquifers from stream channel aquifers, and developing regulatory language that recognized those different geologic settings. We also spent considerable time exploring a variety of options by which operators could obtain water rights.

I am attaching a copy of the proposed legislation that was developed by the task force and adopted unanimously at its January 13, 1999, meeting. I understand that both boards have at least tentatively approved this draft. This document represents the

culmination of 18 months of work by this task force. It represents considerable compromise on the part of everyone involved. And it represents several new, creative approaches to groundwater regulation as it pertains to aggregate production. Having spent considerable time and effort in drafting this proposed legislation, the members of the task force have agreed to be active in supporting its progress in the Legislature. The possibilities of passage depend directly on support of the legislation by all sides involved. We appreciate your patient support of the process of developing legislation, and urge your continued support of the draft legislation itself. Having invested considerable time in this process, we believe it is important to resolve this long-standing issue. This legislation provides the means to do that.

In addition to developing the proposed Legislation, the task force approved two recommendations for additional research. The task force recommended that studies be conducted to determine: 1) if additional water storage space is created in an aquifer by the mining of aggregate, and 2) the effect on groundwater quality of allowing, or diverting, surface water into the lake created by aggregate mining, including study of the effect of vegetative filters on the quality of surface water entering such lakes. Those recommendations are listed in order of priority.

With the submission of this report, the task force has completed its charge (though members have promised to continue their involvement by supporting this legislation). I believe the members of the task force deserve the thanks of both the aggregate industry and the water community for the time and attention they have devoted to this topic. In addition, I want to express my appreciation to both boards for the staff and logistical support that they provided, and for their support of the proposed legislation. I appreciate the opportunity to help be part of that process.

cc: Members, Aggregate and Groundwater Resources Task Force

HOUSE BILL No. 2251

By Committee on Environment

2-4.

9 AN ACT supplementing the Kansas water appropriation act; concerning
10 appropriation of water for sand and gravel projects; repealing K.S.A.
11 82a-734.

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

14 Section 1. As used in this act, unless the context indicates otherwise:

15 (a) "Acceptable quality surface water" means surface water that will
16 not degrade the quality of the groundwater source into which it is
17 discharged.

18 (b) "Operator" means any person who engages in mining sand or
19 gravel, or both.

20 (c) "Permit" means a permit to appropriate water pursuant to the
21 Kansas water appropriation act (K.S.A. 82a-701 *et seq.* and amendments
22 thereto).

23 (d) "Project application" means an application filed with the chief
24 engineer to construct a sand and gravel project.

25 (e) "Project permit" means a permit issued by the chief engineer
26 authorizing construction and operation of a sand and gravel project until
27 the exhaustion of proven reserves or closure in according with the surface-
28 mining land conservation and reclamation act (K.S.A. 49-601 *et seq.* and
29 amendments thereto).

30 (f) "Proven reserves" means extractable sand and gravel deposits for
31 which good estimates of the quantity and quality have been made by
32 various means, such as core drilling.

33 (g) "Sand and gravel project" or "project" means a project that: (1)
34 Excavates overburden for mining sand or gravel, or both, exposing the
35 underlying groundwater table to evaporation; and (2) has a perimeter
36 equal to or greater than its depth.

37 (h) "Unconsolidated regional aquifer" means a body of mostly un-
38 consolidated and heterogeneous water-bearing deposits that are hydro-
39 logically and geographically contiguous and are capable of yielding water in
40 sufficient quantities for beneficial use.

41 (i) "Stream channel aquifer" means unconsolidated water-bearing
42 deposits in river valleys, flood plains and terraces that are separate and
43 distinct from any other aquifer and capable of yielding water in sufficient

1. quantities for beneficial use.
2. Sec. 2. A permit for a project that will expose and cause evaporation
- 3 from the groundwater table shall include authorization of:
- 4 (a) The net average annual groundwater evaporation;
- 5 (b) all nonconsumptive uses of water at the project site, including
- 6 hydraulic dredging; and
- 7 (c) all consumptive uses of water in the project.
- 8 Sec. 3. In determining whether to issue a permit for a project that
- 9 will expose and cause evaporation from the groundwater table:
- 10 (a) The chief engineer shall determine the annual groundwater ap-
- 11 propriation to be permitted based on: (1) Net average annual ground-
- 12 water evaporation values in effect on July 1, 1997, or revised values taking
- 13 into account any relevant scientific evaporation data related to projects in
- 14 the state of Kansas; multiplied by (2) the water surface area of the pro-
- 15 posed project expressed in acres. The rate of diversion shall be considered
- 16 to be the natural rate of evaporation.
- 17 (b) The chief engineer shall expeditiously approve any application for
- 18 a permit if the operator demonstrates that the net average annual evap-
- 19 oration for the project is accounted for or offset in one or more of the
- 20 following ways:
- 21 (1) The amount of net annual groundwater evaporation is currently
- 22 permitted pursuant to the Kansas water appropriation act;
- 23 (2) water as may be available for appropriation pursuant to the Kansas
- 24 water appropriation act, the perfection period for which shall extend
- 25 through the life of the project;
- 26 (3) the net annual groundwater evaporation is authorized to be per-
- 27 mitted pursuant to the provisions of the Kansas water appropriation act;
- 28 (4) acceptable quality surface water, which is legally and physically
- 29 available for groundwater recharge, is authorized to be diverted into the
- 30 proposed project;
- 31 (5) water rights have been acquired and the point of diversion, place
- 32 of use and type of use are changed to allow existing water rights to be
- 33 used for the project;
- 34 (6) (A) water is made available by acquiring all, or a portion of, an
- 35 existing water right to: (i) Use surface water or groundwater, or both,
- 36 hydraulically connected to the stream channel aquifer in which the pro-
- 37 ject is located; (ii) use groundwater from an unconsolidated regional aq-
- 38 uifer that is within a two-mile radius of the geo-center of the project and
- 39 is the same unconsolidated regional aquifer in which the project is lo-
- 40 cated, or a hydraulically connected aquifer; or (iii) use groundwater from
- 41 an unconsolidated regional aquifer that is within a 3.5-mile radius of the
- 42 geo-center of the project and is the same unconsolidated regional aquifer
- 43 in which the project is located, or a hydraulically connected aquifer, if

1 the operator can demonstrate to the satisfaction of the chief engineer that
2 sufficient water rights to offset the evaporation caused by the project
3 cannot be acquired within a two-mile radius of the geo-center of the
4 project after making reasonable and prudent efforts to find both proven
5 reserves and water rights; and

6 (B) the applicant demonstrates to the satisfaction of the chief engineer
7 that the acquired water right or a portion thereof will no longer be ex-
8 ercised by: (i) Placing it in the custodial care of the state; (ii) placing it in
9 a perpetual trust approved by the chief engineer; or (iii) restricting its
10 future use in some other way that the chief engineer determines to be
11 satisfactory to accomplish the purposes of this section;

12 (7) diffused surface water is diverted into the project from inside a
13 berm surrounding the project built to prevent unacceptable quality sur-
14 face water from entering the groundwater table, in which case the average
15 annual amount of runoff shall be determined in accordance with stan-
16 dards established by the chief engineer; or

17 (8) and any other water credit or offset acceptable to the chief
18 engineer.

19 (c) With respect to an offset water right described in subsection
20 (b)(6):

21 (1) No physical diversion of the offset water right shall be required
22 or allowed; and

23 (2) the project shall receive credit for 100% of the net consumptive
24 use of the acquired water right.

25 (d) The chief engineer shall adopt rules and regulations establishing
26 criteria for determining the offset credit that shall be allowed pursuant
27 to subsection (b)(6).

28 (e) Proof that any necessary easements or covenants attached to or
29 running with the land to provide offsets will continue to be available.

30 (f) The chief engineer may approve a permit for a project subject to
31 such terms, conditions and limitations as necessary to protect the public
32 interest.

33 Sec. 4. (a) An application for a permit to appropriate water for evap-
34 oration of groundwater caused by a project shall be exempt from meeting
35 the safe yield, allowable appropriation or similar criteria if the applicant
36 demonstrates that all of the following are met on the effective date of
37 this act:

38 (1) The operator had an active existing sand and gravel mining op-
39 eration as of December 31, 1997;

40 (2) the operator has a valid surface mining license issued pursuant to
41 the surface-mining land conservation and reclamation act;

42 (3) if required, the operator has a valid hydraulic dredging permit
43 issued pursuant to the Kansas water appropriation act;

1 (4) the operator has filed all water use reports required by K.S.A.
2 82a-732 and amendments thereto;

3 (5) the operator has paid all water protection fees required by K.S.A.
4 82a-954 and amendments thereto;

5 (6) the operator had purchased, leased or otherwise acquired legal
6 control over the proven sand and gravel reserved for the existing project
7 or a reasonable expansion of the proposed project by February 15, 1999,
8 or such later date as the chief engineer may approve for good cause based
9 on clear and convincing evidence;

10 (7) in the past the operator has provided notice to the chief engineer
11 when required by subsection (a) of K.S.A. 82a-734, as it existed prior to
12 the effective date of this act; and

13 (8) the operator has applied for all local permits and local zoning
14 approvals, which must be acquired by December 31, 2000.

15 (b) It shall be the burden of the operator to show that the operator
16 meets the requirements of this section by filing the necessary information
17 and documentation with the chief engineer on or before December 31,
18 2000. Extensions may be granted by the chief engineer, provided that
19 any requests for such extensions are filed on or before December 31,
20 2000.

21 Sec. 5. An application for a project shall be made on forms provided
22 by the chief engineer. The forms shall require the following:

23 (a) The legal description and a map of the land located within one
24 mile of the proposed project boundary;

25 (b) the date the project began, or will begin;

26 (c) the total net acres of the groundwater table that will be exposed
27 by the project at the time active mining ceases and a legal description
28 and a map showing the location of the completed excavation;

29 (d) the total net average annual groundwater evaporation that will
30 have been caused by the project at the time active mining ceases;

31 (e) the entire net amount of groundwater evaporation which needs
32 to be offset at the time that active mining ceases;

33 (f) the natural and artificial drainage patterns of surface water into
34 the project during active mining and at the time active mining will cease;

35 (g) the water rights, permits and evaporation offsets that will fully
36 permit or replace the net average annual groundwater evaporation at the
37 time that active mining ceases; and

38 (h) such other pertinent information as required by the chief
39 engineer.

40 Sec. 6. (a) In addition to the reporting requirements of K.S.A. 82a-
41 732 and amendments thereto, the owner shall also report pursuant to
42 K.S.A. 82a-732 and amendments thereto: (1) The areal extent of the ex-
43 posed ground water table on December 31 of the preceding calendar

1 year; (2) that sufficient offsets to the evaporation are actually in place
2 pursuant to the project permit to replace the net annual evaporation from
3 the surface area of the groundwater exposed as of December 31 of the
4 previous calendar year; and (3) the specific offsets that are in place.

5 (b) The chief engineer shall report net evaporation from sand and
6 gravel operations as an industrial use to the director of taxation for the
7 purpose of assessing the water protection fee pursuant to K.S.A. 82a-954
8 and amendments thereto.

9 (c) At the time active mining ceases, the applicant shall have in place
10 offsets sufficient to replace the average annual net evaporation from the
11 groundwater table.

12 Sec. 7. Once a project is permitted, the project shall not be subject
13 to regulation by the chief engineer for impairment unless it is necessary
14 to protect the public health, safety or welfare.

15 Sec. 8. Any application for a project permit shall be accompanied by
16 a filing fee of \$500 and any request for modification shall be accompanied
17 by a fee of \$250. Such fees shall cover all permits issued pursuant to the
18 project permit, and are in lieu of any fees which might be required pur-
19 suant to K.S.A. 82a-708a and 82a-708b, and amendments thereto.

20 Sec. 9. (a) If an operator desires to modify or expand a project, the
21 operator shall apply for a modification to, and receive the written approval
22 of, the chief engineer prior to modifying or expanding the project.

23 (b) If a project is terminated prior to full completion, the special
24 project permit may be modified accordingly and an application for change
25 for the unused portion of any water rights used for offset may be filed
26 pursuant to K.S.A. 82-708b and amendments thereto.

27 Sec. 10. The provisions of this act shall be part of and supplemental
28 to the Kansas water appropriation act.

29 Sec. 11. K.S.A. 82a-734 is hereby repealed.

30 Sec. 12. This act shall take effect and be in force from and after its
31 publication in the statute book.

K.A.R. 5-13-5. Approval of pit operations that are opened or expanded after the effective date of this regulation. Except as set forth in K.A.R. 5-13-4, pit operations that are excavated or expanded after the effective date of this regulation and that have a substantial adverse impact on the area groundwater supply shall meet one of the following conditions:

- (a) Receive prior approval of the chief engineer for a new permit to appropriate an annual quantity of water sufficient to offset the evaporation caused by exposing the groundwater table in a manner described in K.A.R. 5-13-7;
- (b) acquire existing water rights and receive approval of the chief engineer to change the point of diversion, place of use, and the use made of water to authorize the water rights to be used for the project in a manner described in K.A.R. 5-13-7;
- (c) acquire and take out of production sufficient water rights in the manner described in K.A.R. 5-13-7 to offset the net average annual evaporation caused by exposing the groundwater table; or
- (d) any combination of the above. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721 and K.S.A. 82a-734; effective Sept. 22, 2000.)

K.A.R. 5-13-10. Time to construct the diversion works for a sand and gravel pit operation.

- (a) As used in this regulation, "completion of diversion works" means that both of the following have occurred:
 - (1) All equipment necessary to begin to operate a sand and gravel operation, including the hydraulic dredge, has been installed.
 - (2) Sufficient overburden has been excavated to begin to expose the groundwater to evaporation.
- (b) A reasonable time to construct the diversion works for a sand and gravel pit operation shall be not less than one full year following the approval of the application to appropriate water.
- (c) For good cause shown by the applicant, a reasonable extension of time to construct the diversion works shall be allowed by the chief engineer if both of the following conditions are met:
 - (1) The request for extension is filed pursuant to the requirements of K.A.R. 5-3-7.
 - (2) The request for extension is accompanied by the statutorily required filing fee.(Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-712 and 82a-713; effective Sept. 22, 2000.)

K.A.R. 5-13-11. Time to perfect a water right for evaporation of groundwater.

- (a) A reasonable time to perfect a water right for evaporation of groundwater caused by a sand and gravel pit operation shall be neither less than five calendar years plus the remainder of the calendar year in which the application was approved, nor more than 20 years plus the remainder of the calendar year in which the application was approved.
- (b)(1) For good cause shown by the applicant, a reasonable extension of the time to perfect the water right shall be allowed by the chief engineer if both of the following conditions are met:
 - (A) The request is timely filed pursuant to the terms of K.A.R. 5-3-7.
 - (B) The request is accompanied by the statutorily required filing fee.
- (2) The total time to perfect a water right **shall not exceed 40 years**. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-713; effective Sept. 22, 2000.)

KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

January 2, 2004

ALSOP SAND CO INC
PO BOX 331
CONCORDIA KS 66901

RE: Appropriation of Water
File No. 44,856


Dear Sir or Madam:

In response to your written request, received in this office on December 17, 2003, the Chief Engineer has extended until December 31, 2004, the time in which to complete the diversion works under the above referenced file.

The law requires that the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, be notified in writing, when construction of the diversion works has been completed. According to the law, failure to complete construction of the diversion works within the time allowed shall result in the dismissal of the above referenced file.

If you have any questions, please contact our office.

Sincerely,



William J. Gilliland, L. G.
Permits Unit Head
Water Appropriation Program

WJG:dws

pc: Stockton Field Office

Division of Water Resources David L. Pope, Chief Engineer
109 SW 9th ST., 2nd Floor Topeka, KS 66612-1283

Voice (785) 296-3717 Fax (785) 296-1176 <http://www.accesskansas.org/kda>



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the Senate Agriculture Committee

February 10, 2004

Senate Bill 409

David L. Pope, Chief Engineer

Kansas Department of Agriculture's Division of Water Resources

Good afternoon, Chairman Schmidt and members of the committee. I am David Pope, chief engineer of the Kansas Department of Agriculture's Division of Water Resources. I appear today as an opponent to SB 409. I believe this bill is unnecessary and that it would set bad precedent by amending a section of the Kansas Water Appropriation Act related to the perfection of water rights in Kansas.

This bill essentially grants a statutory "perfected" water right to holders of permits that have been issued, or may be issued in the future, for sand and gravel pits to cover the net evaporation from such operations. It also permanently dedicates such rights to the existing sand and gravel operation. This is inconsistent with provisions of current law, and it would give special treatment to one industry that is otherwise required to comply with existing law in a manner similar to other users. All other permitted water users are granted a certificate of appropriation for a perfected water right only after it is determined that the diversion works have been completed and water is actually applied to beneficial use as authorized by the permit to appropriate water. This is the long-established method for developing, or perfecting, a water right under the prior-appropriation doctrine of water law.

It is my understanding that this bill was requested out of concern that some sand and gravel operators would not be able to perfect the full use of water for permitted sites within the time allowed under current law and rules. Applicable rules and regulations promulgated effective September 22, 2000, allow 40 years to perfect this type of water right after a sand and gravel operation has been permitted, if their equipment is installed and the operation started within the time allowed by the permit or any extension thereof.

A Special Legislative Committee on the Environment studied this issue in 1999. One of their conclusions was to request the chief engineer to resolve the matter, to the extent possible administratively, by adopting rules and regulations. As mentioned, we did adopt new rules and regulations in 2000, and we made an extensive effort to incorporate the views of various interests. We also considered many of the recommendations made by the task force created by the Kansas Aggregate Producers Association and the groundwater management districts, which met several times in 1997 and 1998 to find a solution to longstanding disputes over how water use by this industry should be regulated by the Kansas Water Appropriation Act.

Division of Water Resources David L. Pope, Chief Engineer

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Senate Agriculture
February 10, 2004
Attachment 7

The rules include provisions to allow permitting for existing sand and gravel operations, along with the long-term transition into regulation similar to that for all other water users in Kansas. I believe we were successful in our effort and the rules received overall support. To our knowledge, all known existing sand and gravel operations that cause evaporation of groundwater have now been permitted.

The rules set forth a series of standards related to the appropriation of water through evaporation as a result of sand and gravel operations. The rules indicate that a sand and gravel operation shall be deemed to have a “substantially adverse impact on the area groundwater supply” if the operation is opened or expanded in an area that has average annual evaporation greater than 18 inches per year. The rules also include provisions to allow a very liberal exemption from normal regulatory criteria in closed areas, or where permits could not otherwise have been issued for other uses. This allowed existing, active sand and gravel operations – as long as they met certain criteria like having legal control over proven sand and gravel reserves within a certain time frame – to file an application and obtain a permit to appropriate water for evaporation from an existing or proposed groundwater pit.

The rules based the amount of water to be appropriated on the amount of water that would evaporate by exposing the water table using the ultimate size of the groundwater pit. We recognized that some of these operations take many years to fully develop or mine such a site, so 20 years was allowed to perfect the water right through the expansion of the pit, with a potential extension of up to 40 years with good cause. For comparison, this is longer than all other uses, except municipal use. Public water suppliers also are allowed 20 years to perfect a water right, with a 10 year review. If necessary to justify the construction of the infrastructure needed for a significant public water supply project or a utility, a period of up to 40 years may be allowed. By comparison, a sand and gravel project seems to be treated very fairly. In the event a sand and gravel pit continues to expand after 40 years, the rules provide for several alternatives to secure additional water rights, or to secure a source of water to offset the additional evaporation. In many respects, these rules allow even more flexibility than allowed for other uses, recognizing the unique nature of sand and gravel operations.

It is important to recognize that the extent of development, or perfection, of a water right is based on the amount of water applied to beneficial use within the amount authorized by the permit. Otherwise, a lot of water would be appropriated, essentially reserved indefinitely and then never used. This may make water unavailable for other uses and hinder our ability to make a variety of decisions related to the management of the aquifer system.

I do not believe it is good policy to pass legislation to guarantee a perfected water right to a particular type of operation. I do not believe this change is necessary for this industry to successfully operate, nor do I believe it is fair to other types of water users. It also is unclear how this provision would be administered during periods of water shortage and what is meant by the transfer language in the last sentence of paragraph (b).

Consequently, KDA opposes this bill. However, we will continue to work with the sand and gravel industry to resolve any concerns they may have within the limits of the law and rules. I would be happy to answer questions the committee may have.

**Testimony to the
Senate Agriculture Committee
SB 409
Presented by Patrick T. Lehman
For the Northwest Kansas Groundwater Management District #4
February 10, 2004**

Thank you, Mister Chairman and members of the committee. I am Pat Lehman and I represent the Northwest Kansas Groundwater Management District #4 headquartered in Colby, KS. I am testifying for the district in opposition to SB 409.

SB 409: Amends KSA 82a-734 by making evaporation losses from sand and gravel operations a beneficial use in Kansas in townships where net evaporation exceeds 18 inches per year. It also requires operations to file new water rights for evaporative losses in these areas and if and when approved by the Chief Engineer, they are to be permanently dedicated to the operation with no certification process. Moreover, any unused portion of these rights may be transferred to another beneficial use pending Chief Engineer regulations.

GMD 4 opposes this bill for the following reasons:

- (1) The elimination of the certification process for these water rights is a new precedent that should not be set.
- (2) The language in lines 36-39 is unclear. It can be interpreted to mean that the Chief Engineer of his or her own volition can transfer any unused water to another beneficial use type (subject to rules). It can also be interpreted to mean, that upon an application to transfer water to another beneficial use, the Chief Engineer gets to determine if there is any unused water to transfer, and if so, approve the applicant's application (subject to rules). However, under either interpretation, special rules to transfer unused, uncertified water is another precedent we don't think should be made.
- (3) Rules already exist on certified water transfers, which prohibit increased consumptive use as a matter of law. We feel that in most cases the transfer process in SB 409 will result in increases in consumptive use.

Mister Chairman, for these reasons we oppose SB 409 and urge the committee not to pass this bill favorably. Thank you and I will be glad to answer any questions the committee may have.

*Senate Agriculture
February 10, 2004
Attachment 8*