

MINUTES OF THE SENATE NATURAL RESOURCES

The meeting was called to order by Vice Chairman Ralph Ostmeyer at 8:30 a.m. on March 3, 2006, in Room 423-S of the Capitol.

All members were present except:

Chairman Carolyn McGinn - excused
Senator Ruth Teichman - excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research
Emalene Correll, Kansas Legislative Research
Lisa Montgomery, Office of Revisor of Statutes
Judy Seitz, Substitute Committee Secretary

Conferees appearing before the committee:

Representative Robert Olson
Eric Arner, Water District #1, Johnson County
Tom Day, Kansas Corporation Commission

Others attending:

See attached list.

Hearings were opened on **HB 2716, Granting of easement for diversion works on Kansas River for water District Number 1 of Johnson County.**

Raney Gilliland, Kansas Legislative Research, reviewed the bill. He said Johnson County does have a water right for water from the Kansas River to supply its customers primarily in Johnson County, Kansas. He said the bill has a legal description of the property to which the easement would apply. Mr. Gilliland also noted on page 2, line 12 and 13, there is a provision that Johnson County, Kansas, would assume full responsibility for any costs arising from this bill. Mr. Gilliland stood for questions.

Representative Robert Olson testified as a proponent for **HB 2716 (Attachment 1)**. He said the granting of an easement to Water District Number One of Johnson County is needed for construction of a diversion works on the Kansas River. There was a breach of the rocky jetty in March 2004. He also said it is necessary to enable Water One to construct a more permanent structure to protect its access to raw water and meet the demands of more than 380,000 residents in Johnson County.

Eric Arner, Water District #1 of Johnson County, testified in support of **HB 2716 (Attachment 2)**. He said that Water One receives one-third of its water supply from the Kansas River. He also noted that there are photographs attached to the written testimony and showed several enlarged photographs to illustrate the need for the proposed weir. Water District No. 1 of Johnson County is not a part of Johnson County government and is a separate governmental entity.

Representative Olson and Mr. Arner stood for questions.

Hearings on **HB 2716** were closed.

Vice Chairman Ostmeyer opened the hearing on **HB 2757, requiring notification of oil and gas spills to landowners.**

Mr. Gilliland reviewed **HB 2757**. He said this bill would require the Kansas Corporation Commission (KCC) to adopt rules and regulations requiring operators of oil and gas wells to notify landowners or the representatives of landowners of a spill which also is required to be reported to the Commission.

Tom Day, Kansas Corporation Commission, offered testimony in support of **HB 2757 (Attachment 3)**. He gave background information on the regulatory definition of a spill, graphs showing the number of spills (200 in 2005) and a description of how the KCC regulations are being developed. The House Committee on Environment amended the bill to notify the landowners or representatives of the landowners. This change

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee Mr. Gilliland at 8:30 a.m. on March 3, 2006, in Room 423-S of the Capitol.

was made because there may be land which has been inherited and there are many owners spread out over the country.

The hearing on **HB 2757** was closed.

A motion was made by Senator Bruce to recommend **HB 2757** be passed, seconded by Senator Pyle. There was no discussion, and the motion carried.

Discussion continued on **HB 2716**. Action on this bill will be held over until next week.

The meeting was adjourned at 9:07 a.m.

SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

3/3/06

Name	Representing
ERIC ARMER	Water District No. 1 Johnson County
Tom Day	KCC
Rep. Rob Olson	State House
Derek Hein	Hein Law Firm
Tracy Smith	KWC
Doug Smith	SWKROA
Joe Furd	KWO
Earl Lewis	KWO
Chris Tymeson	K'DWP

STATE OF KANSAS

Robert (Rob) Olson
REPRESENTATIVE, 26TH DISTRICT
19050 W. 161st St.
Olathe, Kansas 66062
State Capitol, 182-W
Topeka, Kansas 66612-1504
785-296-7632
email: olson@house.state.ks.us



HOUSE OF
REPRESENTATIVES

Committee Assignments:

Environment
Financial Institutions
Transportation
Utilities

March 3, 2006

The Honorable Carolyn McGinn, Chairperson
Senate Committee on Natural Resources
State House-Room 423-S
Topeka, Kansas 66612

Subject: HB 2716

Authorizes the Secretary of State to grant an easement to Water District Number One of Johnson County, Kansas (Water One) for the construction of a diversion works on the Kansas river. The diversion works will be located just downstream of the I-435 bridge and will replace the current rock jetty structure operated by Water One at the same location. In granting this easement and authorizing the diversion works, Water One is required to hold the State of Kansas harmless.

Water One relies on the Kansas river for approximately one third of their raw water supply. In March of 2004, the current rock jetty was breached, causing the loss of the use of the Kansas river surface water intake as a water supply source. HB 2716 is necessary so that Water One may construct a more permanent structure in the Kansas river to protect their access to raw water and meet the demands of the more than 380,000 people they serve in Johnson County.


Representative Rob Olson

House District 26

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2716

TO: Senator Carolyn McGinn; and
Members of the Senate Natural Resources Committee

DATE: March 3, 2006

RE: House Bill No. 2716—An Act concerning water; granting an easement for
construction of diversion works along the Kansas river.

Ladies and Gentlemen:

This testimony is offered by Water District No. 1 of Johnson County, Kansas (“WaterOne”) in support of House Bill 2716 in an effort to protect its Kansas River raw water intake structure from river bed degradation. WaterOne requests that you recommend House Bill 2716 favorably for passage.

Background

Water District No. 1 of Johnson County, Kansas is a quasi-municipal corporation organized pursuant to K.S.A. 19-3501 et seq. The governing body for WaterOne is comprised of seven (7) board members elected at large from the service territory, each serving staggered four year terms. WaterOne serves approximately 385,000 residents of Johnson County, Kansas, with a service territory of over 271 square miles, with over 2500 miles of transmission and distribution mains providing drinking water to 18 municipalities (see Attachment 1). WaterOne has no taxing authority and derives revenue from water sales and system development charges. Water District No. 1 of Johnson County is not a part of Johnson County government and is a separate governmental entity, operating much like a city of the first class in Kansas. The day-to-day operations of WaterOne are the responsibility of the General Manager, Michael J. Armstrong.

WaterOne is fortunate to draw water from three distinct sources in order to meet water demands as well as keep pace with the development within its service territory. With a surface water intake on the Missouri River and a second surface water intake on the Kansas River and a small well field along the Kansas River, WaterOne has a treatment capacity of 180 million gallons per day. Roughly two thirds of the water supply comes from the Missouri River intake, with the remaining one third coming from the Kansas River intake. A fourth source of water is currently being developed along the

Senate Natural Resources
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Attachment 2

Missouri River to ensure that WaterOne continues to be able to meet the water demands of its customers. House Bill 2716 deals with the continued ability of WaterOne to rely on the Kansas River intake as a reliable water source, now and in the future.

The Need

The Kansas River raw water surface intake is located just downstream of the I-435 bridge in Wyandotte County (see Attachment 2). In the mid-1960's, WaterOne constructed a surface water intake at the elevation of the river bottom to draw water out of the Kansas River to help meet its growing system demands. Not long thereafter, due to channel degradation lowering river levels below the intake, a rock jetty stretching across the Kansas River was constructed to stabilize the channel level at the intake elevation. The sole purpose of the rock jetty was to maintain the channel level at the intake structure to insure proper hydraulics during low flow river conditions. The jetty was constructed under a permit issued by the U.S. Army Corps of Engineers in 1970. Since the intake and original jetty were constructed, the downstream channel of the Kansas River has continued to degrade. In fact, not long after the intake and jetty were constructed, the jetty was strengthened with larger rock as the difference in upstream and downstream elevations grew due to river bed degradation. Since that time, the jetty has continuously grown in size in order to maintain channel elevation at the intake as the river bed degraded downstream. In March of 2004, a significant breach occurred in the jetty causing the loss of the surface water intake as a source of supply (see Attachments 3-5). Fortunately, drinking water demands in March of 2004 were such that WaterOne was able to adequately supply the water needs of its customers completely off the Missouri River source of supply. The cost of the jetty repairs in 2004 exceeded \$1.7 million dollars (see Attachment 6). Additional dollars have been spent since that time to maintain the structure and keep it in working order. Because of the March 2004 breach, WaterOne commissioned consulting engineers Black & Veatch to evaluate the conditions that caused the breach and make recommendations regarding a long-term solution to address the continued viability of the rock jetty.

The Solution

Black & Veatch reported to the Governing Body of WaterOne the results of their study in early 2005. The study found that river degradation had made the existing jetty unstable. Multiple options were evaluated and the recommendation was to construct a weir just upstream of the present rock jetty. The proposed weir is very similar to the structure constructed by the City of Topeka in the Kansas River (see Attachment 7). This weir would be a permanent structure with a foundation extending to bedrock, unlike the rock jetty that has no foundation and rests upon sand and sediment. The Governing Body of WaterOne adopted the recommendation and directed staff to initiate design, environmental assessment, agency permitting and potential funding sources for the weir. A new, permanent weir was determined to be a much more reliable structure that would be unaffected by continued river bed degradation and not susceptible to breaches like the one in 2004. The estimated cost to construct a weir is approximately \$15.2 million dollars. Pending successful approval and permitting requirements, construction of the

new weir should begin in the fall of 2006 with the anticipated goal of completion by the summer of 2008.

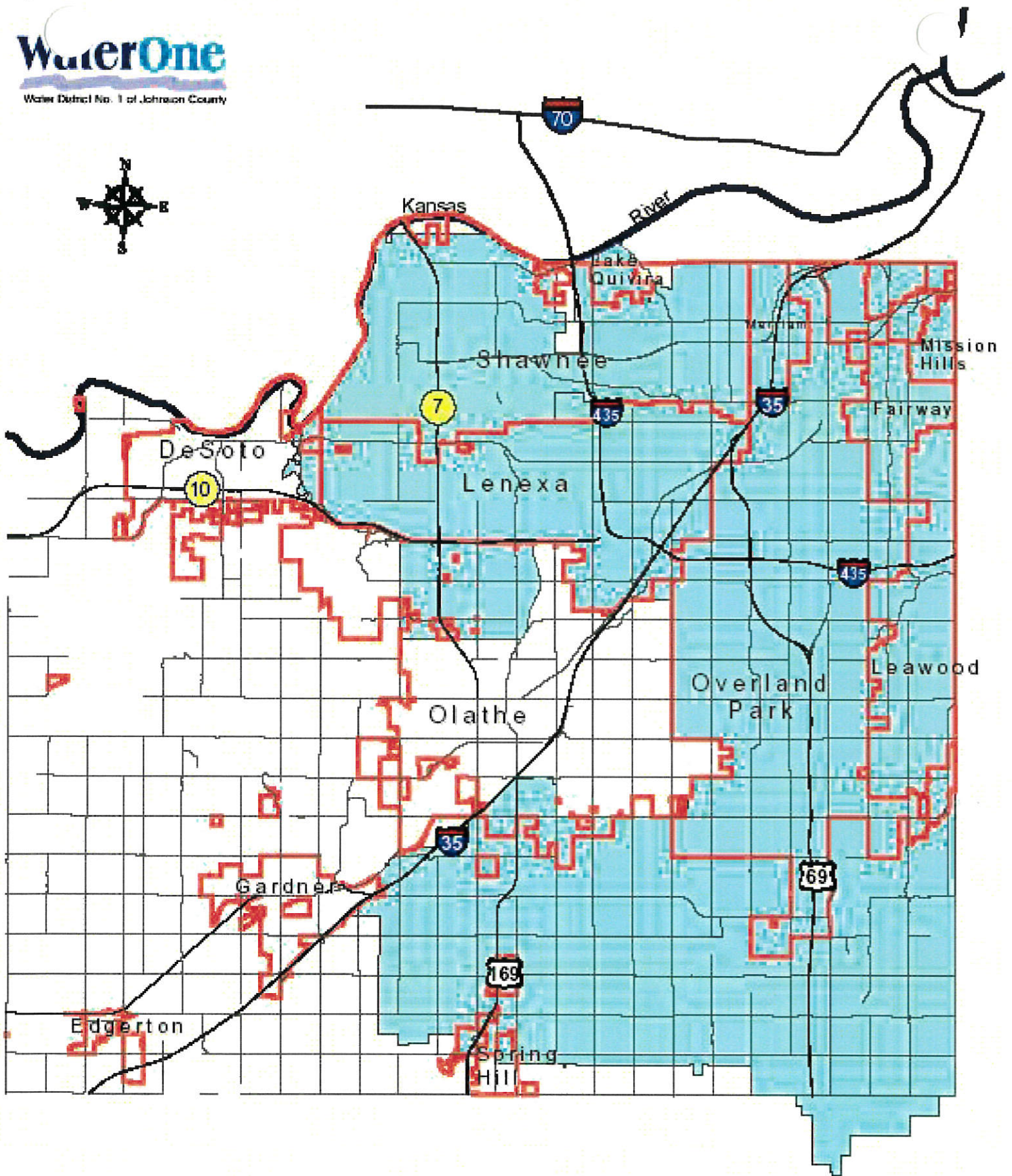
Benefits of a Permanent Weir

There are a number of benefits associated with construction of a permanent weir:

1. WaterOne has invested significant dollars to improve the performance of the raw water intake on the Kansas River and a weir would enhance the availability of sufficient water supply in low river conditions.
2. The new weir maintains the status quo of this location in that the elevation would be the same as the present rock jetty.
3. A permanent weir would act as a control point on the Kansas River and arrest river bed degradation from moving upstream. Both state and federal agencies recognize the importance of a structure like this that can act as a checkpoint to river bed degradation.
4. A permanent weir provides much more reliability and does not have the potential for breach as a rock jetty.
5. A permanent weir provides reliability for upstream water stakeholders all the way to Bowersock dam in Lawrence by halting the degradation of the river bed.
6. A permanent weir helps protect important environmental habitats along the Kansas River from Lawrence to the WaterOne intake site.
7. A permanent weir helps prevent bank erosion by preventing cutting down of the river channel. Without a structure at the intake to prevent upstream degradation, significant property damage would occur to structures along the river, including bridges, outlet structures, pipeline crossings, flood levees and erosion control structures.
8. A permanent weir provides the ratepayers of WaterOne with a sound, long-term, reliable structure that will ensure water may be taken from the Kansas River for years to come without the risk and maintenance issues associated with the rock jetty.

House Bill 2716

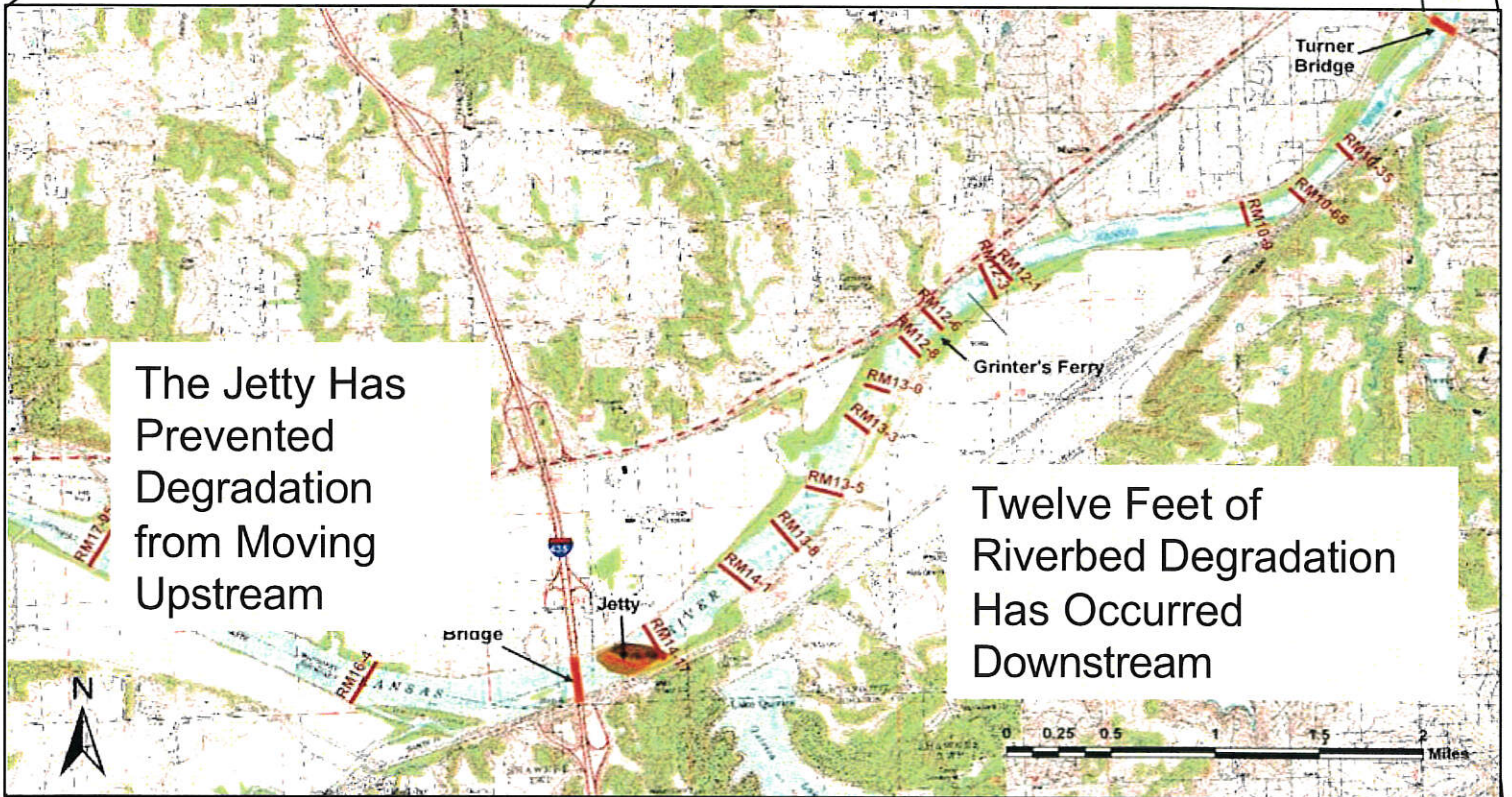
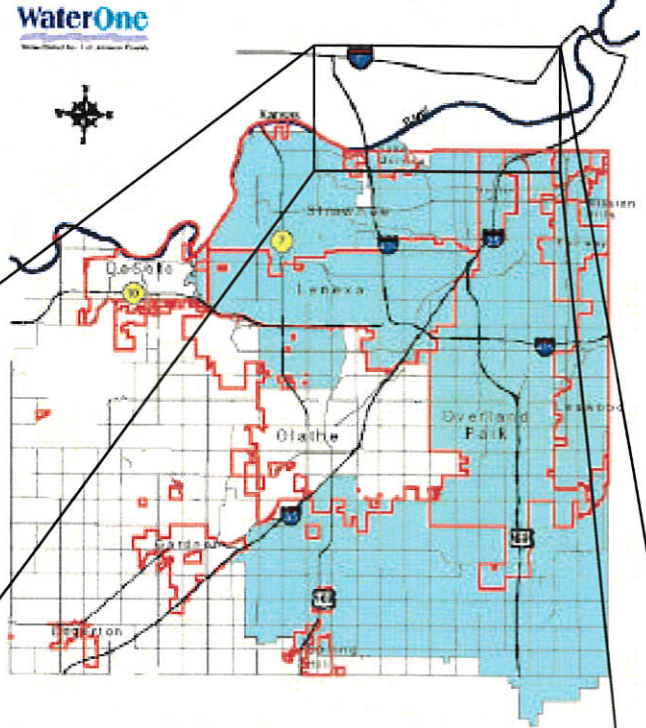
HB 2716 is a mirror image of K.S.A. 82a-215, easement for construction of diversion works along the Kansas River for the City of Topeka. While investigating the various permit requirements from the respective state and federal agencies, WaterOne was advised to follow the same protocol as the City of Topeka used for their weir on the Kansas River. HB 2716 would authorize the Secretary of State to grant an easement to WaterOne for the construction of a diversion works on the Kansas River in an area legally described between the I-435 bridge and the rock jetty structure. WaterOne would assume full responsibility for the design, construction, maintenance and operation of the diversion works (weir). Lastly, HB 2716 would require that WaterOne hold the State of Kansas harmless for the use of the easement and the weir.



Attachment 1

Kansas River Near WaterOne Jetty

WaterOne Service Area



Attachment 2



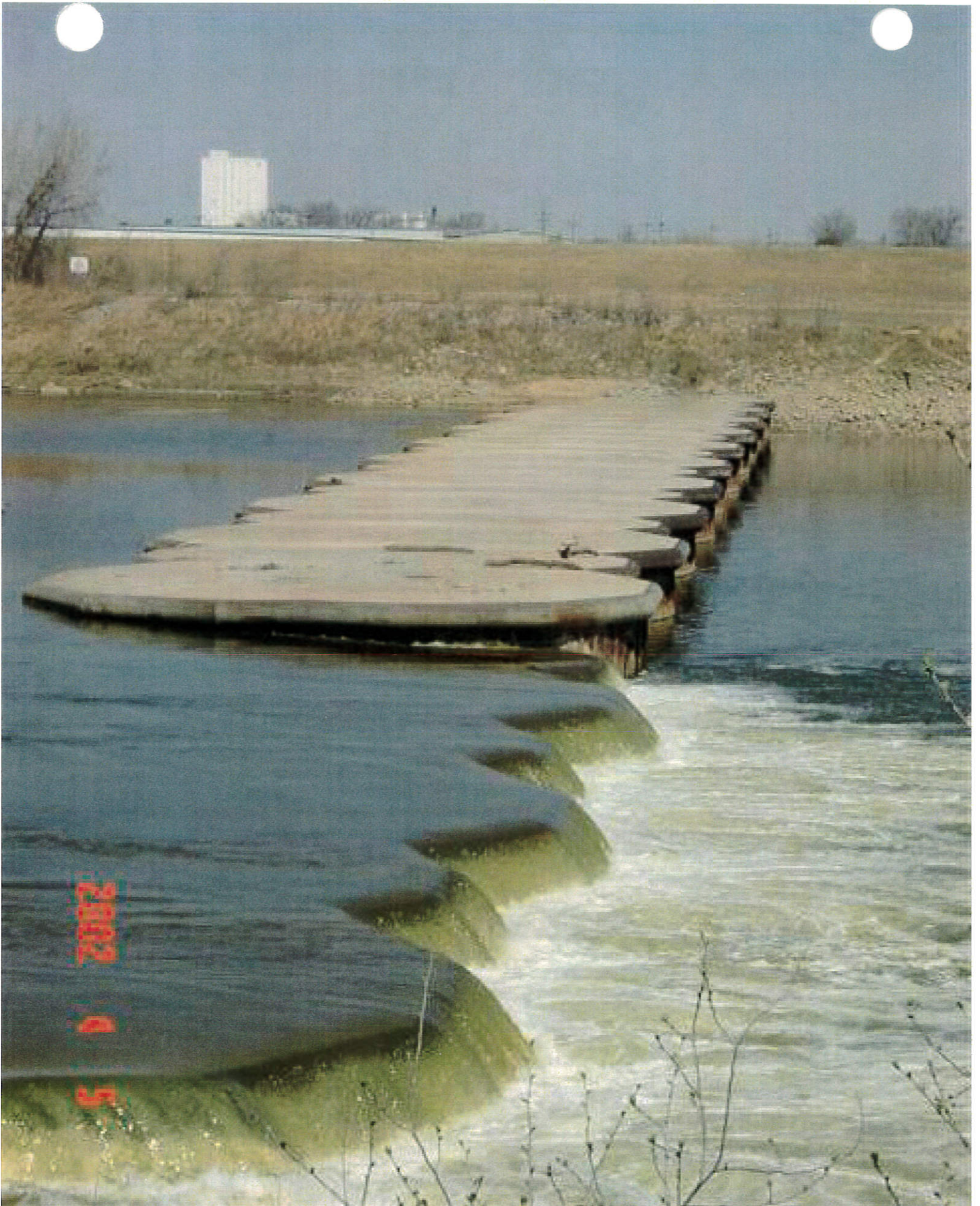


Attachment 4



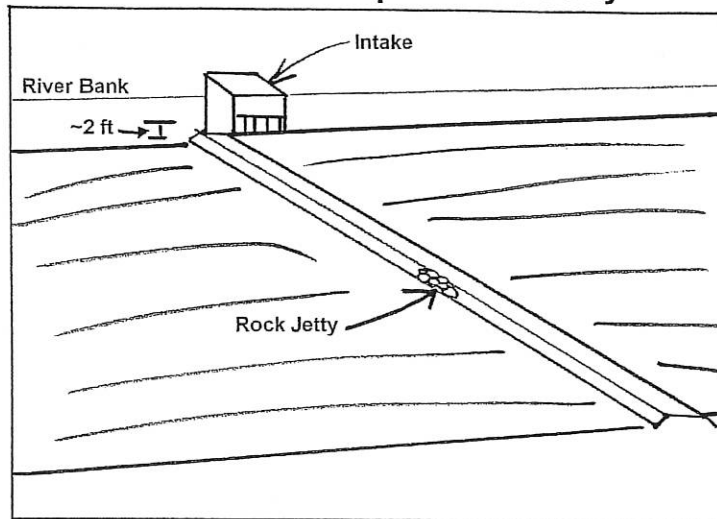


Attachment 6

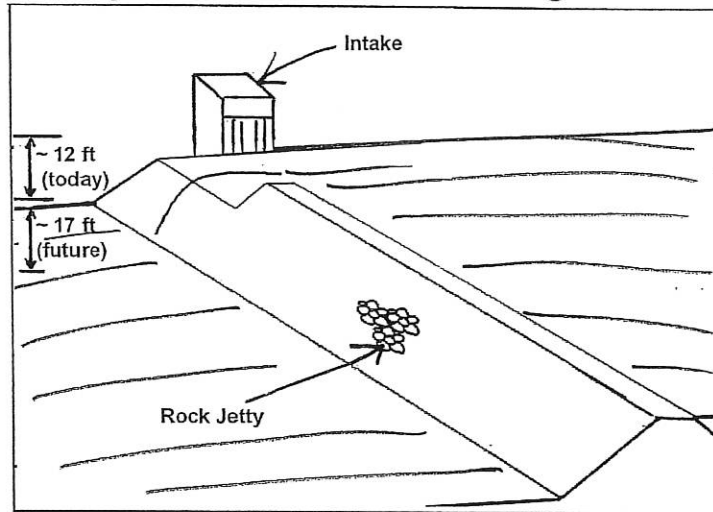


Attachment 7

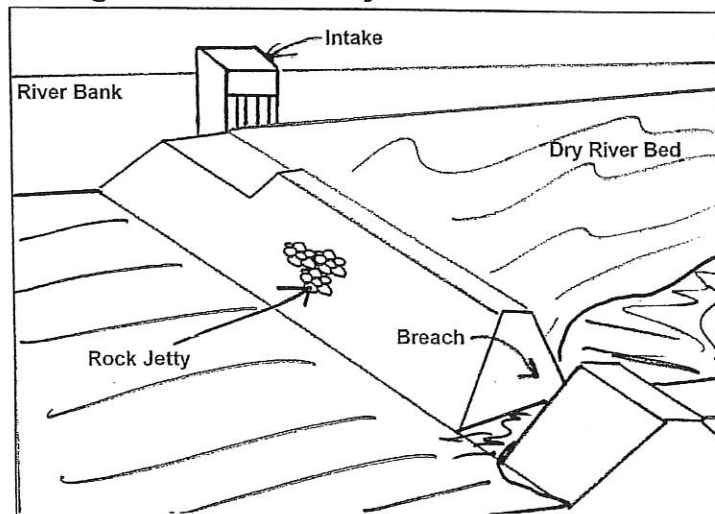
1967 - Small Drop Across Jetty



Today and Future with Bed Degredation



During Breach of Jetty - No Water for Intake



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER

Comments of Tom Day
Legislative Liaison
State Corporation Commission
Before the
Senate Committee on Natural Resources
March 3, 2006

Good morning, Chair McGinn and members of the Committee. I am Tom Day, legislative liaison for the State Corporation Commission. I am appearing here today to provide background material with regard to HB 2757. This proposed legislation as amended in the House directs the Commission to establish rules and regulations requiring oil and gas operators to provide notification to landowners or representatives of landowners of any oil and gas related spills that are reportable to the Commission. We hope that the background data provided will be useful to this Committee in its determinations with respect to this policy issue.

The data that we are providing includes some general information concerning what spill reporting requirements currently exist for oil and gas operators in Kansas, some statistics as to the number of oil field spills being reported to the Commission, and a general overview of how rules and regulations are developed through the Commission's Oil and Gas Advisory Committee along with information on similar requirements in adjoining states.

Exhibit A:

- Regulatory definition for a spill as contained in KCC regulation K.A.R. 82-3-101(68)
- KCC spill notification requirements found in K.A.R. 82-3-603 (b)-(d) including exceptions to reporting requirements for very minor amounts and penalty levels for non-compliance of reporting requirements.
- Federal requirements for spill reporting

Exhibit B:

- A graph of the total number of spill incidents reported to Commission during calendar year 2000 through 2005.
- A graph showing the distribution of spill incidents by volume reported to the Commission from 2000 through 2005

- A graph showing the distribution of spill incidents by District field area for spills reported from 2000-2005.

Exhibit C:

- A description of how KCC regulations are developed under requirements of K.S.A. 55-152(a).
- Other information from regulatory programs in adjoining states.

Should the Committee members have any questions I would be glad to address them.

K.A.R. 82-3-101. DEFINITIONS.

(a) As used in these regulations, the following definitions shall apply:

(68) "Spill" means any escape of saltwater, oil, or refuse by overflow, seepage, or other means from the vicinity of oil, gas, injection, service, or gas storage wells, or from tanks, pipelines, dikes, or pits, if the wells, tanks, pipelines, dikes, or pits are involved in or related to any of the following:

(A) The exploration or drilling for oil or gas;

(B) the lease storage, treatment, or gathering of oil or gas; or

(C) the drilling, operating, abandonment, or postabandonment of wells. For purposes of this regulation, "vicinity" means the area within six feet of the wellhead.

K.A.R. 82-3-603. SPILL NOTIFICATION AND CLEANUP; PENALTY; LEASE MAINTENANCE.

(b) Notification: when required.

(1) Threat to surface water or groundwater. Each operator shall notify the appropriate district office in accordance with subsection (c) immediately upon discovery or knowledge of any escape of saltwater, oil, or refuse that has or threatens to reach surface water or to impact groundwater. The operator shall take immediate action in accordance with procedures specified or approved by the district office to contain and prevent the saltwater, oil, or refuse from reaching surface water or impacting groundwater.

(2) Timely notification of spills. Except as otherwise specified in this regulation, the operator shall notify the appropriate district of any escape of saltwater, oil, or refuse that meets the definition of "spill" in K.A.R. 82-3-101. This notification shall meet the requirements of subsection (c) and shall be made no later than the next business day following the date of discovery or knowledge of the spill.

(3) Exception for minor leaks and drips. The notification requirement for spills in paragraph (b)(2) shall not apply to very minor amounts of saltwater, oil, or refuse, that unavoidably or unintentionally leak or drip from pumps, machinery, pipes, valves, fittings, or well rods or tubing during the conduct of normal prudent operations and that are not confined in dikes or pits or within the vicinity of the well. However, this exception shall not apply to ongoing, continual, or repeated leaks or drips, or to leaks or drips that are the result of intentional spillage or abnormal operations, including unrepaired or improperly maintained pumps, machinery, pipes, valves, and fittings.

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Ref. HB 2757 - Exhibit A: Page 2**

(4) "Discovery or knowledge" defined. For purposes of this regulation, the point of "discovery or knowledge" shall mean that point when the operator knew or reasonably should have known of the spill or escape.

(c) Information required with notification. The notification requirement in subsection (b) shall include the following information:

- (1) The operator's name and license number;
- (2) the lease name and legal description and the approximate spill location;
- (3) the time and date the spill occurred;
- (4) a description of the escaped materials, including type and amount;
- (5) a description of the circumstances creating the spill;
- (6) the location of the spill with respect to the nearest fresh and usable water resources;
- (7) the proposed method for containing and cleaning up the spill; and
- (8) any other information that the commission may require.

(d) Penalty for failure to notify. The notification requirement in subsection (b) shall apply even if the operator knows or believes that the appropriate district office is already aware of the spill or escape. The failure to comply with subsection (b) shall be punishable by a \$250 penalty for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty and an operator license review for the third violation.

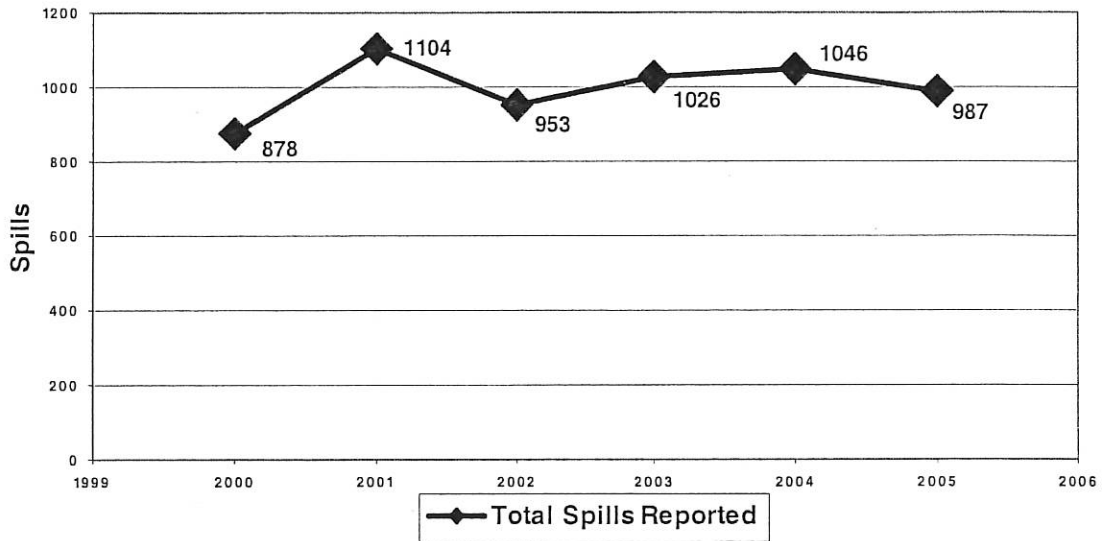
FEDERAL REQUIREMENTS FOR OIL SPILL REPORTING

- Clean Water Act (CWA) § 311(b)(5) provides in part:

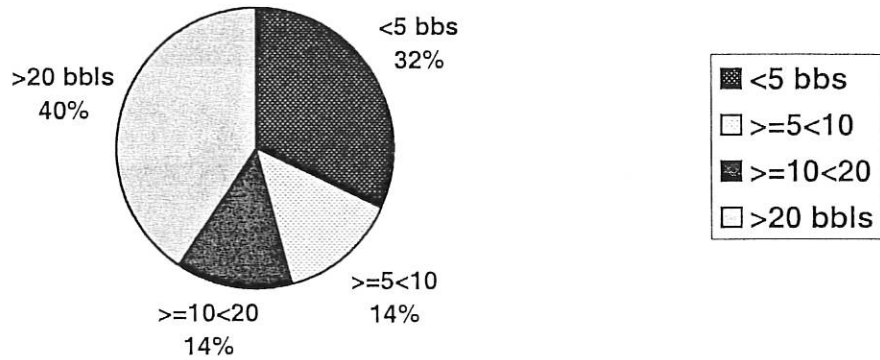
Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge [defined as including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, with a number of exclusions] of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. 33 U.S.C. § 1321(b)(5).

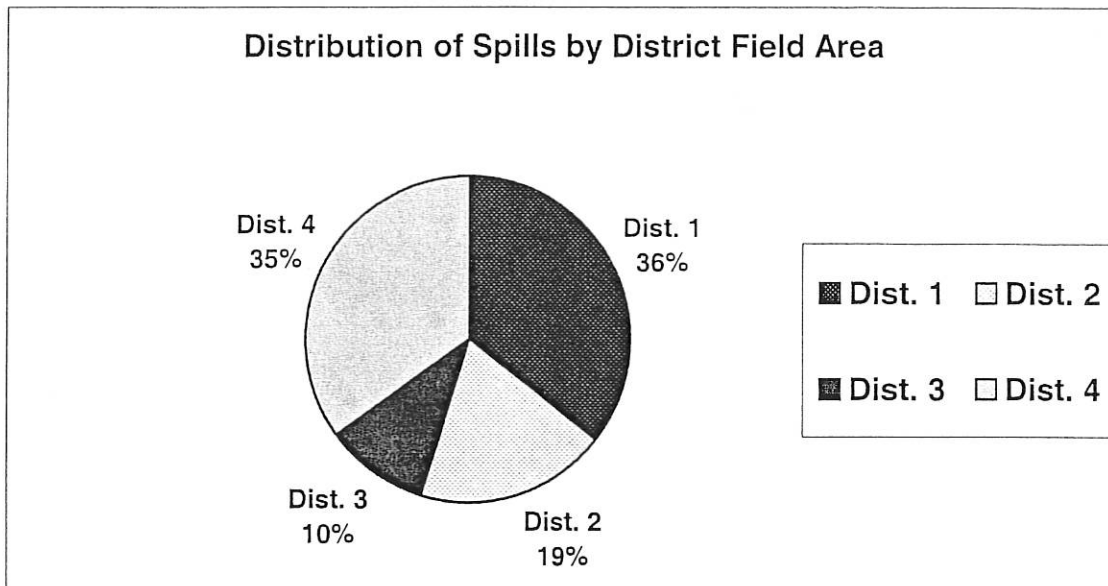
- By U.S. Environmental Protection Agency regulation, reports must be made to the National Response Center at 800-424-8802. 40 C.F.R. § 110.6.
- Failure to report is a criminal act, punishable by fine and up to 5-year imprisonment. 33 U.S.C. § 1321(b)(5).

Total Spills Reported to KCC

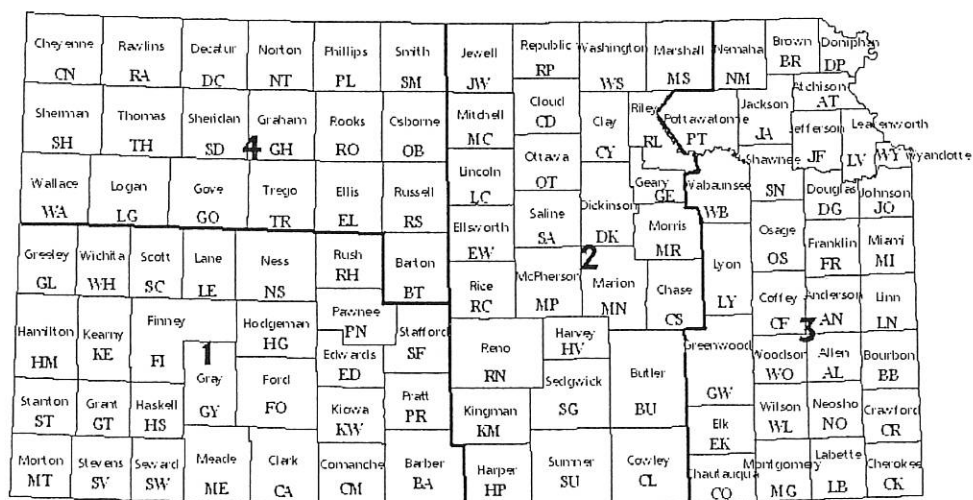


Distribution of Spill Volumes 2000 -2005





District Field Areas



K.S.A. 55-152. Rules and regulations; recommendations of advisory committee; annual review of drilling methods.

(a) The commission shall adopt such rules and regulations necessary for the implementation of this act including provisions for the construction, operation and abandonment of any well and the protection of the usable water of this state from any actual or potential pollution from any well. Any such rules and regulations relating to wells providing cathodic protection to prevent corrosion to lines shall not preempt existing standards and policies adopted by the board of directors of a groundwater management district if such standards and policies provide protection of fresh water to a degree equal to or greater than that provided by such rules and regulations. No rules and regulations promulgated pursuant to this section shall be adopted by the commission until recommendations have been received from the advisory committee established by K.S.A. 55-153, and amendments thereto.

Process of regulation development:

- Issue for regulation relating to oil and gas activities originates within or is assigned to the Oil and Gas Advisory Committee
- Issue is delegated to the Rules and Regulations Sub-committee
- Rules and Regulations Sub-committee researches the issue and develops language for proposed regulations
- Proposed regulations are referred back to the Oil and Gas Advisory Committee for its recommendations
- Proposed regulations are sent through the Secretary of Administration and the Attorney General for approval
- Proposed regulations are reviewed with the Joint Committee on Administrative Rules and Regulations
- State Corporation Commission (Commission) holds a public hearing on the proposed regulations
- Post-hearing changes are made as needed, any changes must be approved by the Secretary of Administration and Attorney General, and substantial changes require a subsequent public hearing
- Regulations are adopted by the Commission

Regulations and associated documents are filed with the Secretary of State

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Information concerning landowner notification regulatory requirements in adjoining states:

Oklahoma – Oklahoma Corporation Commission

No landowner notification requirements. Legislation has been proposed in the past, but was opposed by Oklahoma Corporation Commission Staff and Industry due to the perceived problems with enforcing the legislation.

Colorado – Colorado Oil and Gas Conservation Commission

906.c. SPILLS AND RELEASES—

Surface owner notification and consultation.

The operator shall make good faith efforts to notify and consult with the surface owner prior to commencing operations to remediate E&P [exploration and production] waste from a spill/release in an area not being utilized for oil and gas operations.

Nebraska - Nebraska Oil and Gas Conservation Commission

No landowner notification requirements