

MINUTES

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

September 14-15, 1993
Room 526-S -- Statehouse

Members Present

Representative Carl Holmes, Chairperson
Representative Walker Hendrix, Vice-Chairperson
Representative Ken Grotewiel, Ranking Minority Member
Representative Richard Alldritt
Representative Joann Freeborn
Representative Gary Hayzlett
Representative Joe Kejr
Representative Douglass Lawrence
Representative Steve Lloyd
Representative Eloise Lynch (September 14 only)
Representative Laura McClure
Representative Dennis McKinney
Representative Don Myers
Representative Ted Powers
Representative Don Rezac
Representative Eugene Shore
Representative Richard Nichols
Representative Carolyn Weinhold

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Members Absent

Representative Fred Gatlin
Representative Robert E. Krehbiel
Representative Jim Long

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statute's Office

Conferees

Charles Jones, Director, Division of Environment, Kansas Department of Health

and Environment

Karl W. Mueldener, Director, Bureau of Water, Kansas Department of Health and Environment
Bill Caton, President, Kansas Development Finance Authority
Harry Herington, League Attorney, The League of Kansas Municipalities
Bill Ramsey, City of Olathe
Stephen A. Hurst, Director, Kansas Water Office
Bob Totten, Public Affairs Director, Kansas Contractors Association
Professor John C. Peck, University of Kansas, School of Law
David L. Pope, Chief Engineer-Director, Division of Water Resources, Kansas State Board
of Agriculture
William Craven, Legislative Coordinator, Kansas Chapter, Sierra Club
Joyce Wolf, Kansas Audubon Council
Chris McKenzie, Executive Director, The League of Kansas Municipalities
Whitney Damron, Pete McGill & Associates on behalf of WMX Technologies, Inc.
Peter Powell, President, Lyons Salt Company, Lyons, Kansas
Frazier Russell, Wheelabrator Technologies, Hampton, New Hampshire
Brian Moline, Kansas Corporation Commission
Joe King, Meridian Corporation
Dr. Dick Hayter, Kansas State University
Bob Best, Chairman, Kansas Water Authority
Bill Fuller, Kansas Farm Bureau

Others attending: See attached list.

**Tuesday, September 14
Morning Session**

The meeting was called to order by Chairperson Carl Holmes at 8:30 a.m. on September 14, 1993, in Room 526-S of the Capitol.

Chairperson Holmes noted that six of the bill drafts before Committee members contained ideas that deserve more intensive consideration during an interim. Chairperson Holmes noted the September and November interim meetings were equivalent to 22 Committee meeting days which, in turn, would be equivalent to five and a half weeks of consideration during a regular legislative session. He noted the Committee, at its November meeting, would be investigating another mandate from Washington dealing with energy.

Staff briefed the Committee on 3 RS 1373, noting this legislation was based upon current statutes which provided a loan fund for local municipal pollution control (wastewater treatment). The bill would establish a fund for the purpose of making loans to political subdivisions to construct, maintain, and operate public water supply systems, including rural water districts. Monies in the fund would be derived primarily from the sale of bonds issued by the Kansas Development Finance Authority, from the federal government, and from other sources.

Staff explained that officials from the Department of Health and Environment and Dick Pelton, Topeka Water Department, had suggested technical changes in the draft. The first of these was to change "expended," line 8, page 2, to "used." In addition, a technical change was suggested on

page 5, lines 25-26, striking "In order to ensure repayment by municipalities of the amounts of loans provided under this act," as the phrase is a doublet. It also was suggested that section (b), lines 5 through 14, page 6, might not apply. It was noted that the language had been taken from the wastewater treatment control program, and therefore, some changes may be required to make it more appropriate to public water supply development.

Charles Jones, Director of Environment, Kansas Department of Health and Environment (KDHE), told Committee members the Department had created a bureau of district operations; the goal being to strengthen district operations in terms of education and outreach. He stated that this organizational structure increases technical support to local governments and businesses, tailors programs to regional conditions, and serves as a more complete regional resource. This organizational change included hiring district office supervisors as follows: Tom Byerley, Salina; Howard Duncan, Lawrence; Ken Brooks, Hays; Mark Bradbury, Wichita; David Stutt, Chanute; and Don Ubel, Dodge City. These individuals were introduced to the Committee.

Mr. Jones testified before the Committee, noting the two bills provide revolving loan funds, one dealing with a loan fund to assist local government in financing public water supplies, and the other dealing with remediation for contaminated sites that are owned either by the state or local governments.

In order to give the Committee an idea of how a revolving loan program might operate, Karl Muedener, Director of the Bureau of Water, presented a briefing on the State Revolving Loan Fund for Wastewater Treatment Systems (Attachment 1). He said this revolving loan program originally started out as a federal grant program and has developed into a state loan program. Mr. Muedener stated that the present total of the fund is \$123 million. Mr. Muedener also noted that interest rates were established through regulations, the interest rate being 60 percent of the "Twenty Bond Buyers Index." Reference was made to language in the proposed bill that would require 10 percent of the money in the fund to be set aside for communities of 5,000 or less. It was stated that this figure was open to further consideration. It was also stated there appeared to be more frugality in the use of loans than when using grants by recipients.

Bill Caton, President, Kansas Development Finance Authority (KDFA), addressed the creation of revolving loan programs for public water supply development and pollution cleanup (Attachment 2). Mr. Caton stated his testimony would focus on the past success the state has had with its wastewater treatment revolving loan program.

Mr. Caton told members the fund was intended to provide \$130 million for local entities at interest rates 40 percent below market rates. Also, the bond issue that provides approximately one-half of the fund received an AA+ rating from Moodys and other bond raters. The fund was designed so that the state could provide the minimum match funds by borrowing the state's portion of match money and having it repaid in the program cash flows. The market demand for Kansas quality bonds keeps interest rates at a minimum. KDFA's expertise and experience in issuing bonds helps keep the costs of issuance to a minimum, thus preserving more funds for program use. Mr. Caton told Committee members that the state borrowed money for the federal match program and ultimately, the entity which received a loan from the fund would repay the borrowed funds. This provided nonstate monies. Mr. Caton stated that in all probability this method would no longer be acceptable to the federal government. It was mentioned that the national market for bonds from Kansas is excellent. The State Revolving Loan Program for wastewater treatment is an excellent example of federal, state, and local participation in a program that benefits all involved parties.

Harry Herington, League Attorney, The League of Kansas Municipalities, supported the proposal to create a revolving loan fund at the state level for public water supply development (Attachment 3). Mr. Herington thought the federal government has ignored its obligations to fully fund the cost of compliance with the mandates of the federal Safe Drinking Water Act, thereby making it necessary to investigate other methods of funding at a state level.

Mr. Herington also explained that a current proposal in Congress would be funded by reducing existing funding of the wastewater treatment program by 50 percent and he urged a protest of this Congressional "solution" to a problem. He suggested that the solution really requires extensive amendments to the Safe Drinking Water Act.

Mr. Herington thought that although this plan would be a justifiable use of the existing State Water Plan Fund, his organization had recommended that no consideration be given to increasing the current fees which are used to capitalize the Fund in order to finance this initiative.

Bill Ramsey, Director of Public Works, City of Olathe, told Committee members the city operated both water and wastewater programs, and recently were recipients of federal EPA grants and they are now using the state loan program. Mr. Ramsey also told members the City of Olathe has two water plants. He noted that Olathe, in the past three years, has spent \$40,000 just in monitoring equipment between the two plants in order to stay in compliance with current regulations.

Mr. Ramsey stated that he had previously worked in a very small community and he thought that compliance with present and expected regulations concerning water were going to be extremely difficult for such communities and a state revolving fund would be one of the very few tools that would help.

Mr. Ramsey commented that in the future, the League of Municipalities, Kansas Department of Health and Environment, and others, working independently, would hopefully be offering further suggestions of how to keep the burden of all of these regulations from becoming too onerous on ratepayers.

Stephen A. Hurst, Director, Kansas Water Office, supported the proposed bill which would establish a revolving loan fund for public water supply development (Attachment 4). Mr. Hurst explained that in July, 1993, the Kansas Water Authority approved as an addition to the Kansas Water Plan, a subsection entitled "Ensuring the Viability of Public Water Supply Systems." Recommendations contained in this subsection are as follows: (1) ensure the viability of existing systems; (2) discourage the creation of nonviable new systems; and (3) encourage the formation of regional public water supply systems and other forms of regional cooperation.

Mr. Hurst stated that the establishment of a revolving loan fund administered by the Kansas Department of Health and Environment for public water supply is a key recommendation contained in the new subsection. He also said development and management which encourages regional cooperative projects is a key recommendation. Finally, he recommended the development of regional strategies for the state's major river basins to guide future water supply development.

A spokesperson from the Kansas Water Office recommended an amendment to the proposed bill which recognizes regional projects and solutions as a priority for funding. Also, he recommended any regional solutions considered for loans should be consistent with any regional strategies developed through the Kansas Water Plan basin planning process. Additionally, he

suggested that approved water conservation plans, consistent with state guidelines, be required from each entity involved in regional water supply projects.

Robert E. Totten, Public Affairs Director of the Kansas Contractor's Association, stated that his association which represents more than 330 highway, municipal, and utility contractors and associate member firms in the Kansas construction industry supports the bill (Attachment 5). Mr. Totten noted the phaseout of the 1987 federal program which called for a gradual reduction in federal grants and the establishment of state revolving loan funds to finance the program in the future. He stated that Kansas has been on the forefront of using revolving loan funds for wastewater facilities but has not yet addressed the need for a fund for clean water facilities. He also stated that with more stringent EPA guidelines, many smaller communities are finding it difficult to meet these guidelines. These difficulties, coupled with declining water infrastructure, necessitated a need for additional funds at a low interest rate so that new and improved clean water facilities can be built throughout the state. The proposed measure would provide adequate funding mechanisms for constructing facilities to provide clean water. Finally, Mr. Totten stated that the state revolving fund will eventually be self-perpetuating and provide money for future clean water needs.

A Committee member questioned where municipalities presently inquire concerning funding for such projects. Karl Mueldener explained that the Kansas Department of Health and Environment, the Department of Commerce, and some community block grants presently provided some funds; otherwise, funding is utility rate-based. A member questioned whether there was really a need for funds and Mr. Mueldener stated that there was a long waiting list, even without the requirements of the federal Safe Drinking Water Act. He explained that two-thirds of the public water supply systems in the state are serving communities of 500 people or less.

Two additional points were made by Mr. Mueldener. One of these points was to second Mr. Hurst's comments on the viability of public water supply systems (this fund should promote regional systems whenever possible since there are areas where utilities could use a regional approach). Mr. Mueldener said that this is an area to place goals and criteria. The second comment from Mr. Mueldener was the possible feasibility of combining a public water supply revolving loan bill with one addressing water pollution cleanup.

In reply to a question by a Committee member concerning interest rates, Mr. Mueldener told the Committee that rates were both fixed and variable. He explained that interest rates are fixed after an agreement is reached but repayment can vary to suit the needs of the borrower.

Charles Jones was asked whether there were rules and regulations determining the prioritized criteria for receipt of revolving loan funds from the wastewater treatment program. Mr. Mueldener answered by stating that none were in place for this program but federal rules and regulations were used for 20 years with the grant program and the Department was using the same ones for contamination sites. A Committee member suggested combining the two bills and Mr. Jones stated he did not feel they needed to be combined but it was often expeditious to work on both simultaneously. He stated the two issues of conserving and reconstruction dovetail nicely.

A Committee member questioned the cleanup process and Mr. Jones explained that the source is first cleaned up, followed by surface water cleanup. The member next questioned whether there was equipment available to make such cleanup economically feasible. Mr. Mueldener stated that for most small communities it was most efficient to keep equipment simple due to lack of mechanical expertise.

A member questioned fiscal figures on Mr. Mueldener's written testimony noting \$51 million of federal seed money and asked where the \$17,200,000 originated. Mr. Mueldener replied that the state monies were derived from the issuance of bonds.

Committee discussion suggested that \$20 million would stimulate regional projects and solve problems. In answer to other questions concerning finance, Mr. Ramsey from Olathe told members that due to the federal Safe Drinking Water Act, Olathe's second plant on the Kansas River, normally a seven and one-half million gallon per day facility, had to reduce the capability of the plant by two million gallons of water per day in order to meet water quality regulations. He stated that to retrofit and to do all the required procedures, an expenditure of an additional \$2 million is needed to bring production back to the seven and one-half million gallon per day capacity (\$2 million just to fulfill regulations). He stated that this expenditure is the fiscal impact of compliance with the federal Safe Drinking Water Act.

A Committee member requested a list of communities that either applied for grants and funds or loans for wastewater treatment which might be interested in the revolving water supply funds. These communities should be prioritized by population and need, thus enabling the Committee to look at population numbers before deciding where to set percentages.

Chairperson Holmes introduced Representative Rocky Nichols, a newly appointed member of the Committee.

Dr. John C. Peck, Professor from the School of Law, University of Kansas, presented background information dealing with water rights and eminent domain, including the issue of condemnation of these rights. Dr. Peck told the Committee he was not taking any position on any proposed bill but was concerned with good laws for citizens of the State of Kansas.

Dr. Peck explained to the Committee that water rights condemnation is becoming increasingly more important because such rights in the State of Kansas are rapidly becoming totally appropriated. He also said future water rights will be obtained by some type of transfer, either by purchase or condemnation, and the current law of condemnation is somewhat clouded with uncertainty and ambiguity.

Dr. Peck followed the outline on the law of water rights as summarized in (Attachment 6). Dr. Peck explained that while water rights are the subject of transfers, both voluntary and involuntary, two other types of property relating to water should be considered. These include water which is different than a water right, because water is a liquid reduced to possession by somebody with a water right. Secondly, water is said to be personal property, whereas a water right is real property. Therefore, water right holders can sell or lease water to someone else.

Water contracts are another type of property interest. They are held by municipal and industrial users with contracts from the State of Kansas and are under the state water marketing program and supplied from federally constructed reservoirs.

Dr. Peck defined eminent domain as the power of the state to take private property for public use. Condemnation is the procedure used by the government to exercise that power. The power of eminent domain is one of three powers inherent in state government. The second being taxation power. The third is police power, that is, laws to make things better for the state. The state has the power of eminent domain as an attribute of sovereignty. The state can share this power with local units of government and with private industry. The state, at times, also uses this power to

acquire private property for public purposes against the will of the owner. The state and other condemners are required by the Fifth Amendment of the *United States Constitution* to compensate the owner for that which is taken.

Dr. Peck noted there are very few references in the *Kansas Constitution* concerning condemnation, other than corporate condemnation which is limited until full compensation is paid. He further indicated his belief that condemnation is implied in the section giving cities home rule. There are numerous statutory sections giving cities condemnation power as well.

The Condemnation Procedure Act, enacted by the Legislature in 1963, was designed to bring uniformity to all condemnation proceedings. These proceedings involve the condemning entity filing a petition in the county where the property being condemned is located. Next, if a judge finds the entity has eminent domain power, then three appraisers are appointed to determine damages and report their findings to the court. Following the court proceedings, the condemning entity pays the funds to the court. Either side may appeal the award, the only issue being the amount of compensation. If appealed, the judge assigns the case to a jury or magistrate who makes the final determination.

Dr. Peck indicated that the Water Appropriation Act prescribes the way water rights are granted as well as describes the nature of a water right. This Act neither prohibits nor allows condemnation of water rights. However, there are several sections that allude to the subject. Since the attributes of a water right can be changed with prior permission from the Chief Engineer and since they are severable from the land to which they are appurtenant, water rights can be transferred between people. Section 707 of the Act lists an order of preference of uses. That order is followed by a statement which states "first in time is first in right." This statement is followed by another statement that the holder of a water right for an inferior use cannot be deprived of that right except by condemnation. Dr. Peck suggested that a comprehensive study of Section 707 by the Legislature may lead to improvements.

Old irrigation statutes, Chapter 42 of the *Kansas Statutes Annotated*, have a number of sections still existing from the 1800s which expressly state that water rights, of whatever kind, may be condemned. Assuming that water rights can be condemned, such a condemnation could trigger the Water Transfer Act and the procedural rules under that Act.

Numerous entities have condemnation power, including: cities of all sizes, counties with their various boards and associations, authorities such as transit and parking authorities, townships and township districts, water districts of various kinds, corporations of certain kinds, school districts, community colleges, state administrative agencies of various kinds, the State of Kansas, and other states which are given rights to acquire Kansas property in certain limited situations.

Property that can be condemned is: real property, land and interest in land, rights-of-way, water works, water plants, water rights, water, and other similar items.

Cities are empowered in sections to condemn property for various purposes. However, it does not appear to give any cities the right to condemn water rights. One statute allows cities to go outside its boundaries to dam any non-navigable river and condemn the water. Another section appears to put a five or 20-mile limit on that power. However, these two statutes were enacted in the 1800s when entirely different laws were in force. A 1918 Kansas Supreme Court case that says that unless the Legislature limits the distance outside a city, the city can go wherever necessary to

obtain water rights. In 1918, Kansas had not yet enacted home rule, the 1945 Water Appropriations Act, and other relevant acts thereby making the current status of the law unclear at this time.

A number of questions arise when studying the current law and could arise should a city or some other entity attempt to take water rights by condemnation. Numerous examples are shown in Attachment 6, Section IV.

Dr. Peck stated that both California and Oregon have statutory sections that attempt to reduce the cost of condemning water rights. California law states that when a water right is to be owned by the state, city, or water district, the value claimed for the permit cannot exceed a value greater than the actual amount paid to the state for the permit. Oregon limits the value to the cost and to the owner perfecting the right. Colorado has a comprehensive water rights condemnation act for cities and it establishes a procedure and some limitations for these water rights. First, it does not limit the geographical distance from the cities where the city may take the rights. Secondly, it places a limitation on the amount, basing it on the cities' needs, for the next 15 years. This act was challenged in 1978, and upheld as being constitutional by the Colorado Supreme Court.

After a lengthy study, Dr. Peck concluded that consideration of a comprehensive water rights condemnation act might answer some lingering questions. He focused on cities and proposed that cities have power to condemn water rights anywhere in the state; arguably what current law now allows. His proposal, modified following collaboration with Kent Weatherby of Western Resources, is not offered as a model act but as an attempt to present some issues for consideration.

Dr. Peck discussed bill draft 3 RS 1379 in Section VI of Attachment 6. He noted the bill, as now written, is not entirely clear as to meaning, *i.e.*, the ability to condemn only water rights located and existing within the city, or, no political subdivision can condemn except within its boundaries (the suit has to be brought within its boundaries). If, however, the bill is meant to cover the water rights that are located within the political subdivision, then where are the water rights located (*e.g.*, point of diversion, where the owner lived, place of use)? What is the meaning of "political subdivision"? (Is "political subdivision" a term that is limited to the more general types of governmental units that provide general governmental services and have taxing authority such as cities, counties, and townships, or does it also include groundwater management districts or water districts, transit authorities, and other quasi-governmental entities?) Dr. Peck noted that there is no definition of political subdivision although it is presently defined in two other sections of our statutes and these definitions are different.

Concern was expressed whether it would be possible for various political entities, through contractual arrangements, to circumvent the condemnation of water rights by a city within its boundaries.

Dr. Peck stated this issue should possibly be studied over a period of several years, possibly by the Water Authority since it is comprised of representatives from various water interests, who could then propose legislation.

David L. Pope, Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, presented testimony concerning condemnation of water rights (Attachment 7). Mr. Pope agreed that present law concerning this issue does not appear to be clear but also noted he was not aware of any specific problems caused by this lack of clarity. He explained the role played by the Division of Water Resources. Mr. Pope specifically urged consideration be given to any law which is passed to expressly require that existing statutory procedures must be complied with and

particularly that the condemnation law **not exempt** any condemned water right from such processes. He further urged the Legislature, when setting limits, to carefully consider who they were protecting and from what. Mr. Pope noted there may be a very fine line which must be drawn between protecting people against having their water rights condemned unnecessarily versus allowing municipalities, after considering all reasonable alternatives, the right to have the necessary tools to protect their citizens from water shortages.

William Craven, Legislative Coordinator, Kansas Sierra Club, presented testimony concerning condemnation of water rights (Attachment 8). Mr. Craven stated that all purchase and condemnation proceedings should have a prerequisite statement concerning rigorous conservation. Mr. Craven's testimony raised questions concerning municipal condemnation for any purpose other than domestic or municipal use, that is, the wisdom of setting forth policy allowing cities to condemn water or water rights or water contracts anywhere in the state with no concern of the city's lawful boundaries. Another question raised the issue of allowing a municipality to condemn contract rights already held by industry.

Joyce Wolf, Kansas Audubon Council, offered comments concerning the issue of permitting municipalities to condemn water and water rights (Attachment 9). Ms. Wolf suggested ambiguities set forth concerning a proposed water rights condemnation act be addressed. Other concerns of the Council were set forth in the testimony in order of preference. These concerns questioned: whether municipalities would always be the "preferred" user above others lower on the list, conflict among industries, lack of incentive for municipalities to practice stringent water conservation measures, the "preference listing" containing no mention of water for agricultural purposes other than irrigation, and no water for wildlife purposes such as Cheyenne Bottoms.

Chris McKenzie, Executive Director, The League of Kansas Municipalities, opposed the concepts embodied in the proposed legislation to restrict municipal condemnation powers to the corporate limits of the city (Attachment 10). Mr. McKenzie stated that probably half of the water sources for cities around the state are outside the city limits. He offered the following reasons for his opposition to legislation: there were no proven needs; the Water Transfer Act suggests that further water legislation is unnecessary; flexibility in planning is needed by cities; and water right preferences would be disturbed. Mr. McKenzie recommended careful consideration of the proposed legislation by Dr. Peck on the issue of condemnation of water rights.

Chairperson Holmes explained to the Committee that the bill draft had been introduced to stimulate dialogue concerning water rights and in his opinion this dialogue should be conducted in the Legislature rather than in the State Supreme Court.

A Committee member asked Dr. Peck if home rule power was not sufficient concerning water rights. Dr. Peck stated one could question how "local affairs" would be defined, thereby raising a question concerning home rule.

Another member asked whether there was a favorable federal tax law treatment for capital gains by entities which forced condemnation rights? Dr. Peck explained there could be considerable benefit in the tax area depending on the tax bracket.

A member explained that if legislation with statewide application is passed applying to municipalities, then home rule would not be involved. It was noted that as long as it was uniformly applicable, in the area of taxation you can actually create four classifications of nonuniform statutes. In principal, such action would conflict with the generic brand of power in home rule.

The question was posed as to whether cities could condemn other cities water rights. Dr. Peck stated that he did not think this was possible and he also did not think a city could take a state agency's right.

There was some discussion concerning whether water rights passed with condemnation. It was noted that water rights must be specifically condemned.

The question was asked whether water rights fall under mineral rights. Dr. Pope explained that there were laws stating water was not included in mineral rights.

Further discussions concerned whether or not conservation was required before condemnation could occur. It was explained that when the change of use and type of usage were requested, the Chief Engineer would probably question whether conservation measures were being incorporated into the water use. The Chief Engineer is empowered by the requestors to take such issues into consideration.

Discussion centered on voluntary and involuntary transfers of water rights, and bankruptcies and foreclosures of these rights. It was explained that a water right passes automatically with a deed, will, or other voluntary conveyances and, therefore, a foreclosure would probably be an involuntary transfer so it would not automatically pass unless stated.

Dr. Peck's proposed draft for legislation will be made available to staff and the Chairperson when it is available.

Charles Jones, Director, Division of Environment, KDHE, made a presentation concerning the meeting of the Southeast Compact Import Committee and reviewed the low-level radioactive waste disposal situation (Attachment 11). Mr. Jones referred to a paper entitled the *Position of the State of Kansas* stating Kansas could not support the *Continuous Progress Report* concerning the progress by the Central Interstate Compact which was presented to the Southeast Compact Import Committee meeting. Nebraska prepared the report along with the staff of the Compact Commission and it suggests that if the first site in Nebraska is rejected for whatever reason, Nebraska could reopen the discussion concerning the host state issue. Another area of concern by Kansas is that other compact states try to make changes in closed meetings and Kansas thinks the closed meetings are not acceptable.

Mr. Jones explained that the Southeast Compact Import Committee met and did not take action but they will meet again October 19 to decide whether to permit the Central Interstate Compact access to the Barnwell, South Carolina facility. The belief was expressed that the issue will be tabled in lieu of the lawsuit concerning the question of community consent and an administrative ruling of intent-to-deny on the part of the State of Nebraska.

Mr. Jones explained that U.S. Ecology, the developer of the proposed facility in Nebraska, has agreed to reconfigure the site to exclude the wetlands and this reconfiguration has been presented to the proper state agencies in Nebraska. However, some newspaper headlines have stated that "Reconfiguration Is Not The Solution." Kansas remains insistent that Nebraska will continue to serve as host state and should the Boyd County site prove unlicensable, Nebraska should then agree to pursue alternative sites within its state. Resistance to being designated as the host state remains in the office of the Governor of Nebraska and the issue will probably be dealt with in court. The previous Governor of Nebraska thought the issue of community consent had been resolved.

Mr. Jones stated that more than \$23 million was spent in the pre-licensing phase alone and presently, the total funds invested equals \$53 million. Mr. Jones explained to Committee members that Kansas' share of costs had been supported by export fees. However, if access to Barnwell is prevented, then the income from fees will cease to exist. He indicated that Kansas is in good shape as far as storage of low-level radioactive waste is concerned and the working relationship between the Legislature and the utility groups is very good, a credit to Kansas participants.

Nebraska is the only state in our compact with state-owned utilities. All other states must obtain money from investor-owned utilities.

The issue of potential sites was discussed with Mr. Jones, and it was stated that each state was to determine a number of potential sites, then specify one site, utilizing the geological survey to name the sites. In closing, Mr. Jones stated that it appears obvious that Nebraska plans to go to court and will not be the host state; therefore, throwing the process open which may result in Kansas becoming the host state.

When questioned about penalty provisions, Mr. Jones explained that even if Kansas would withdraw from the Compact, the state still would be obligated to continue paying costs for the next five years.

Afternoon Session

Chairperson Holmes opened discussions on 3 RS 1376 for the Committee, dealing with tipping fees to be dedicated for closure and post-closure costs. The Chairperson told the Committee several requests had been received from county commissioners who expressed concern that if they set aside funds for post-closure to deal with contamination and remediation of a landfill, the money might not be available because subsequent county commissions may utilize the monies for other purposes. Bill draft 3 RS 1376 would be an optional program and in later years county commissions could eliminate the fee.

Staff reviewed 3 RS 1376, stating that the bill would allow the imposition of a tonnage fee on solid waste disposed in a disposal area which is located in the county. Funds then would be deposited in the county treasury and credited to a special fund to be used only for payment of costs, post-closure, and contamination remediation associated with the solid waste disposal area. The bill also would require a separate fund for each solid waste disposal area in the county and provides penalties for misuse of these funds. Staff explained that a suggestion had been made to identify and exempt certain exceptions to the statewide tipping fee which were made by the Legislature.

Charles Jones, Director, Division of Environment, KDHE, supported the proposed bill, noting it would ensure that tipping fees collected for facility closure costs will be used solely for that purpose (Attachment 12). Mr. Jones stated applicants for solid waste disposal permits are required to project closure costs but are not required to collect funds for closure costs during the active life of the facility. It is anticipated that few publicly-owned landfills will be operating on a pay-as-you-go basis. Therefore, in order to avoid state expense for cleaning up environmental problems following closure of these landfills, KDHE supports the idea of early collection and dedication of county tipping fees to be used for site closure.

Mr. Jones stated there had been a proposal from the Environmental Protection Agency (EPA) to extend some of the Subtitle D deadlines which includes a year's postponement for the financial assurance requirements against local governments. In that year EPA would clarify whether ad valorem taxing authority is sufficient for financial assurance.

Mr. Jones was questioned about the financial assurance requirements that privately owned disposal sites are mandated to have for proper closure. Mr. Jones stated there were financial assurance requirements in existence for private sites.

Mr. Jones explained that it was the agency's intention to allow local government to make the first decisions as to the aesthetics of the local landfill. If counties may not opt to support a facility in their county, Mr. Jones stated the legal authority of the department is purely technical.

A member questioned the changing of "may" to "shall," line 19 (d) and Mr. Jones explained that the intention was to set aside money for closure and to prevent diversion of funds. Chairperson Holmes stated the use of "may" gave the county the option of setting aside fees for this purpose and could do so by referencing this statute. This would protect the use of these funds.

William Craven, Kansas Sierra Club, presented written testimony which stated that such tipping fees are "in addition to any other fees provided by law" and he was not in opposition to the bill (Attachment 13).

Whitney B. Damron, Pete McGill & Associates on behalf of WMX Technologies, Inc., testified before the Committee concerning 3 RS 1376 (Attachment 14). Mr. Damron explained that WMX Technologies, Inc. (formerly known as Waste Management, Inc.) and Wheelabrator Technologies, Inc. (a majority-owned subsidiary of WMX Technologies, Inc.) were companies already required to meet bonding and financial responsibility requirements.

In order to clarify the bill to reflect its original intent, it was suggested that 3 RS 1376 be amended to read on page one, line 9, "publicly owned and operated" solid waste disposal area located in such county. A member suggested adding "or region" at the end of line 9.

Attachment 15 was provided to the Committee members with information concerning Texas which originally was a "go it alone" state in the issue of low-level radioactive waste disposal. Vermont and Maine may join Texas in a waste disposal compact and as a part of that compact Maine and Vermont would contribute \$25 million each. Also included in Attachment 15 is recent information concerning the Central Interstate Compact and the landfill site in Nebraska.

Staff briefed the Committee on 3 RS 1374, concerning the disposal of municipal incinerator ash. Special reference was made to page 4 where the term "Municipal solid waste incinerator ash" is defined along with sources.

Charles E. Jones, Director, Department of Environment, KDHE, presented written testimony, stating the Department's immediate concern was in the area of policy (Attachment 16). Mr. Jones explained to the Committee that this issue arises out of a proposal, brought before KDHE by an existing in-state industry, which would import municipal incinerator ash via train, convert the ash into a slurry, then inject the slurry into a salt mine for final disposal. Mr. Jones also stated that two commercial medical waste incinerators and three wastewater treatment sludge incinerators currently operate in the state. He also said some counties are exploring the feasibility of solid waste incineration and indicated KDHE assumed that there would be no impact on these in-state

operations. He suggested the language in the proposed bill be tailored carefully to reflect that intent. Also, care should be taken not to discourage the development and implementation of innovative technologies in this bill.

Concern was also expressed about the possible designation of solid waste incinerator ash as a hazardous waste and therefore more stringent management and disposal regulations could be forthcoming. Also, the bill should consider the constitutional issues involved in restrictions on interstate commerce.

Mr. Jones explained that while this proposed bill had been triggered by a particular proposal it was probably only a matter of time until other scenarios of municipal incinerator ash being imported into the State of Kansas occur. He indicated that the Department is looking for guidance from the Legislature.

A member questioned whether KDHE can presently control incinerator ash brought into Kansas. Mr. Jones explained it would be no different than any other solid waste the Department controls coming into the state. The controls are based upon the facility that receives the waste, its design and construction, rather than any specific regulation. Mr. Bill Bider of KDHE told the Committee it was his agency's belief that imported ash would require a solid waste permit, however, it would not be subject to all of the Subtitle D requirements because it would not be disposed in a landfill receiving municipal solid waste.

William Craven, Kansas Sierra Club, presented testimony supporting the ban on burial of municipal incinerator waste in Kansas (Attachment 17). He expressed concern about the possibility of some metals in the ash which are highly leachable and he also stated that fly ash's toxicity makes it more dangerous than other kinds of ash.

Peter Powell, Lyons Salt Company, commented in the draft legislation because his company is proposing to use municipal ash in a backfill project at the Lyons Salt Mine. The ash would be made into a slurry which then would be used in the backfill project. This backfill would provide improved air ventilation in the mines as well as bring rail cars into the area to ship rock salt out of the area. Attachment 18 is a letter from Rice County supporting such a project. Attachment 19 is a letter from the City of Lyons stating that if the proposed material to be brought to Lyons Salt Company is nonhazardous, environmentally safe, handled in an environmentally safe manner, and approved by the Department of Health and Environment, then the governing body of the city would endorse the project proposed by Lyons Salt Mine.

Chris McKenzie, League of Kansas Municipalities, presented written testimony concerning the proposed ban on disposal of municipal solid waste incinerator ash (Attachment 20). Waste-to-energy power plant facilities are operable in other states and Mr. McKenzie questioned the wisdom of placing another obstacle in the way of the construction of such facilities because they could be an alternative technology to dispose of household solid waste.

Mr. McKenzie also mentioned the case before the Supreme Court concerning the disposal of incinerator ash and state regulation (which could be preempted by federal law). It was also noted that an exemption for the three existing incinerator facilities in Kansas would be appropriate.

Frazier Russell, Wheelabrator Technologies, Inc., Hampton, New Hampshire, stated that the Integrated Waste Services Association is the principle advocacy group representing companies

pursuing the integrated approach to municipal solid waste management (Attachment 21). This approach includes making optimal use of reduction, recycling, waste-to-energy (WTE), and landfilling to solve the nation's garbage dilemma. WTE also is known as trash-to-energy, resource recovery, and municipal waste combustion. Ms. Russell expressed her organization's opposition to 3 RS 1374 stating many scientific studies over the past decade have demonstrated that this ash is neither hazardous nor toxic and can be safely managed under the federal Resource Conservation and Recovery Act Subtitle D guidelines. Ms. Russell told Committee members this bill would limit options of communities in Kansas and force them to rely on out-of-state disposal for their waste-to-energy ash.

The Chairperson then opened the meeting to questions by Committee members. Peter Powell, when questioned, explained his company's proposal which would include going to the cities, bidding on contracts for their ash, shipping the ash to Lyons where it would be made into a slurry and pumped into salt caverns. The rail cars used to ship ash to Lyons then would be used to export rock salt. Mr. Jones stated the concern with municipal ash is the material which has been incinerated and affects the quality of the ash (e.g., batteries).

Mr. Powell stated a pilot plan by a salt company in New York state is using this municipal ash incineration process. A Committee member requested information concerning this plan. Mr. Powell explained that the water used to wash out the railroad cars would be used to make the slurry mixture, total projected water usage was about 12 million gallons per year.

In answer to a question as to whether this ash was being used as a landfill cover in Kansas, the answer was negative. It was stated that there is an ongoing project in Florida. Also, EPA has stated in writing that municipal solid waste landfills operating under Subtitle D were suitable disposal sites for this type of material.

It was explained that the state does not have much control over shipment of municipal waste into the state. Any rule must be applicable to both in-state and out-of-state waste. It was stated that EPA categorized municipal ash as exempt from hazardous waste regulations. This ruling has been challenged in court.

Charles Jones told Committee members his Department was very sensitive to legislators' concern about out-of-state issues, waste importation issues, and the public perception of Kansas becoming a dumping ground. He advised members to keep open minds due to the different types of incineration and also advantages of incineration, particularly in the waste-to-energy areas.

A member asked what control Kansas would have concerning restrictions on the content of imported ash. His reply stated that the ash would be tested before being brought into the state. Reference was made to the letter of endorsement from the City of Lyons and the restrictions upon which their endorsement rested. Charles Jones noted that his Department would have, under current law, all necessary authority to accomplish all requirements expressed by the City of Lyons. Self-monitoring requirements as well as fee structure would be necessary and the Department would use the tipping fee to pay for oversight of this operation. Review costs would be covered by using other personnel. Mr. Powell explained the tipping fee had been included in the basic feasibility study of this project. It was stated that a lot depends on the court ruling as to whether municipal incinerator ash is hazardous.

Frazier Russell explained that in addition to state regulations, there are extremely stringent federal guidelines controlling municipal waste combustion. A request was made for

information from various states and their regulations with respect as to how they handle ash and the disposal of ash.

The Committee recessed to a dinner meeting at Giorgio's Restaurant with Mobil Oil Corporation making a presentation dealing with cleaning up a pumping station and a waste oil site east of Ulysses.

**Wednesday, September 15
Morning Session**

Chairperson Holmes called the meeting to order at 8:45 a.m.

There was some discussion concerning the site Mobil Oil Corporation had featured in the presentation shown Tuesday evening to Committee members. Charles Jones, KDHE, noted most such sites are cleaned up at a time when the corporation is considering buying or selling leases and property.

Charles Jones, KDHE, presented testimony in support of the proposed plan to establish a revolving loan fund to assist municipalities with contaminated sites in their jurisdictions (Attachment 22). Substances once widely used and accepted have now been identified as being hazardous to public health and to the environment. Governmental entities are unable to bear the financial burden necessary to investigate and clean up such sites to protect public health, and to protect the safety and welfare of the state.

Mr. Jones told the Committee that KDHE has identified at least 20 sites which would qualify for loans and that cleanup costs per site would average \$350,000.

It was suggested that the fund could be derived from a combination of funds, such as, the State General Fund, the State Water Plan Fund, or the Economic Development Fund. A state revolving loan fund would provide a mechanism for the state to work cooperatively with local governments in addressing environmental problems.

Mr. Jones suggested several ways local government could use these funds. These ways included: (1) if the local unit of government, itself, is the source of contamination; (2) if a second party is the source of the contamination but the polluted property is now the responsibility of the local unit of government; or (3) if a local unit of government chooses the funds to clean up someone else's problem such as a business abandoning a pollution problem. Mr. Jones stated he had concerns about the last possibility.

Staff briefed the Committee on 3 RS 1371 which would establish a contamination remediation loan fund enabling cities, townships, and school districts to use loans for contamination remediation. It was explained that this fund would be similar to one proposed in draft bill 3 RS 1373 heard previously, which suggested funding by bonds from the Kansas Development Finance Authority. Additionally, the contamination remediation loan fund could receive funds appropriated by the Legislature, the federal government, or other sources. Interest would remain with the fund and the Secretary of KDHE would administer this fund.

A provision in the bill would dedicate 10 percent of the total amount of the loans in municipalities with populations of 5,000 or less. The interest rate would be at or below market value and could be interest free. The municipalities would have to establish a source for repayment.

Staff stated that the Department had requested a possible language change, noting that neither the state nor the Department would assume any liability for the contamination. It also was explained that the revolving loan fund monies could be available to state agencies for cleanup and then reimbursed over a period of time.

There was discussion whether this fund would cover the cost of asbestos removal in schools. The reply stated typically the fund dealt with soil or water pollution; however, the use of "inhalation," page 1, line 8, might possibly cover asbestos.

William Craven, Kansas Sierra Club, stated his organization had no opposition to the bill.

Harry Herington, attorney, The League of Kansas Municipalities, supported the draft bill which would create a revolving loan fund for pollution cleanup (Attachment 23). He stated currently most Kansas municipalities do not consider contamination remediation projects because they lack the financial ability to complete such a project. Also, cities are reluctant to request financial assistance from the Superfund and actively avoid being deemed a Superfund site due to the economic ramifications.

Mr. Herington was concerned with the availability of funding, stating cities and their ratepayers already are bearing a significant cost of funding the State Water Plan. He hoped that funding of the contamination remediation loan fund could be derived from existing revenues.

The Committee then discussed whether such loans should be available to local businesses. Charles Jones explained that the decision not to include them had been based on two issues, one being solvency and the second with finite resources which involved decisions as to who should be helped. It was further stated that many of these cleanup problems are inherited by local government when businesses close, leave town, and the property reverts back to the city. Mr. Jones told members that Wichita had lowered the value of such property, charged the same taxes, and used the funds to clean up the pollution.

Further discussion stated that probably 20 of the 50 sites are in small cities and they do need help. The 10 percent figure (the allocation to smaller communities) was questioned and it was suggested to raise it to 20 percent.

Mr. Herington told the Committee that his major concerns about a revolving loan fund are: how do we fund it, how many tax dollars are involved, and how can it be accomplished during a difficult budgetary year?

The Committee then turned its attention to 3 RS 1373, which proposes a revolving loan fund for the development of public water supply systems.

The Committee was informed that other states are using a revolving loan fund, but presently no data is available to show whether or not it is working. It was suggested staff research this issue.

A question as to whether regional systems are included in this draft and if regional systems would have a higher priority than other types of systems was raised.

Staff asked if rural water districts receive ad valorem tax funds and if they could receive any funds if there was a default on payments.

A question was asked concerning the funding of public water supply systems and whether it was desired to tie these loans to water conservation standards for cities that have applied for funds. It was suggested that amendments could be made to 3 RS 1373 and staff confirmed that an amendment could be drafted. It was suggested that officials from the Kansas Water Office explain about incorporating language which would be consistent with its regional water strategy.

A member asked how many small communities needed new water systems and whether a change should be considered from the 5,000 population and the 10 percent figure. It also was suggested that small municipalities be encouraged to cooperate on regionalization, and use a fund to stimulate regional system development. The Committee directed the Secretary of KDHE to establish a priority ranking system, and that staff should address this system with an amendment.

Attention was called to a copy of a *Wall Street Journal* article, 8-11-93, entitled "Fading Garbage Crisis Leaves Incinerators Competing for Trash" (Attachment 24).

The Committee then turned its attention to the next topic which was the impact on Kansas of the federal Energy Policy Act. The Chairperson called upon Brian Moline of the State Corporation Commission (SCC) to provide testimony.

Mr. Moline presented an overview of the federal Energy Policy Act of 1992, (EPACT) (Attachment 25). Mr. Moline told members EPACT contains 30 titles which deal with energy policy which include: promoting efficiency in energy use by encouraging or mandating various programs or promoting efficiency standards for both public and private sectors; promoting development of new technologies by providing grants or tax incentives or mandating demonstration projects; and mandating a variety of studies by federal agencies.

It was stated that usually EPACT does not provide funds to states in these areas and if they do, then a large state match is necessary.

Mr. Moline explained that possible deregulation of electricity results in major policy changes involving larger numbers of consumers. These consumers have alternatives such as producing their own power or receiving better rates than smaller businesses.

Joe King, Meridian Corporation, presented a briefing on Energy Policy Act, Title I, Energy Efficiency (Attachment 26).

Dr. Dick Hayter, Associate Dean of Extension Outreach, Kansas State University, explained that his presence at the Committee meeting was due to his serving as a volunteer for a Governor's report on suggestions on Kansas energy policy (Attachment 27). Dr. Hayter stated that the written material was a document designed to evoke discussion and interest. He also stated that Kansas is very dependent on energy, and therefore its economy depends on a healthy oil and gas industry. Kansans use approximately 29 percent more energy per person than the national average. It was suggested that the state should take a pro-active stand on energy policy.

Dr. Hayter called attention to the Governor's Conference on Kansas Energy Policy to be held October 6-7 in Topeka and urged legislators to take an active part in improving the energy situation of Kansas (Attachment 27).

William Craven, Kansas Sierra Club, presented testimony, explaining that the 1992 federal Energy Policy Act covers dozens of topics which will affect all Americans and urged Kansas to explore methods to make the state more efficient in its use of energy. Mr. Craven called attention to copies of articles published on energy included in his written testimony (Attachment 28). He urged Kansas to consider installation of energy conservation measures in state buildings. Another area which should be considered is state building codes, which the state presently does not have.

A member questioned the implementation strategies for existing programs (page 22, Attachment 26). It was suggested that a pilot incentive program could be initiated with a local unit of government by training inspectors since they will already be visiting the buildings.

A member questioned the ASHRAE standard which deals with individual pieces of a composite system, basically commercial systems. It was noted that engineers being trained in the state are aware of the ASHRAE standards and what can be accomplished.

Mr. Moline was asked whether SCC has the authority it needs in the area of integrated resource planning (IRP). Mr. Moline replied that SCC believes it has the authority, but passage of legislation would make it certain. The member questioned whether the accounting by IRP could be state controlled. Mr. Moline stated it should become clearer when federal regulations are issued but he thought that more detailed accounting procedures will be necessary in order to implement the federal mandate.

Mr. Moline was asked about the intensity of the rules and regulations being considered by SCC regarding accountability of the utilities. Mr. Moline thought that it requires more input from utilities but they already have had considerable input into the process. Mr. Moline, when questioned concerning cross subsidy issues, explained that for every decision concerning one portion of the population it takes away from the other.

One member asked what SCC's role is in the area of excess generation; *i.e.*, a state's utility signing a long-term utilities contract out of state for excess capacity. It was stated that SCC takes into account all revenue situations. SCC control of the rate structure over what the utility could charge for the excess capacity is nonexistent, but it would be an FERC consideration.

Staff questioned Joe King, regarding pages 2 and 3 of his testimony, concerning residential and commercial building codes, and questioning whether the language was a mandate to certify. One area of the attachment says "the state **may** revise its code." Mr. King explained that residential and commercial sectors of the state must certify to DOE that they have reviewed their current standards. In the residential sector they can conduct that review and elect not to change it -- the actual adoption is voluntary. On the commercial side, the adoption of ASHRAE 9.1, 1989, is mandatory.

Charles Jones, KDHE, presented information concerning Subtitle D regulations regarding solid waste and, in particular, planning grants (Attachment 29). Mr. Jones explained the availability of solid waste planning grants which establish grant amounts based upon population of the county. These grants are available for evaluating the feasibility of continuing to operate existing landfills under the new Subtitle D solid waste regulations and for preparing comprehensive solid

waste management plans. Planning grants are provided by the revenue generated by a statewide tipping fee. Mr. Jones discussed the proposed extension of Subtitle D Landfill Regulations by EPA for inclusion into the final October 9 ruling.

Mr. Jones told members that grants will go to regions rather than individual counties. He stated that tipping fees are expected to be about \$2 million. However, this amount will decrease in later years to about \$1.5 million each year. Some exemptions have been requested from regulations due to the floods.

The issue of transfer stations, especially the aesthetic issues, will be the responsibility of the county commissioners. The key is finding a balance between the local entities and KDHE.

KDHE has completed a guidance document to assist those counties planning to close landfills and then use a transfer station to temporarily collect solid waste.

Mr. Jones briefly stated EPA regulations requiring groundwater monitoring in all landfills. KDHE anticipates that states may be granted flexibility to apply alternate standards to small landfills. Mr. Jones suggested to those legislators who have small landfills in their districts that those landfill personnel assess groundwater quality, obtain actual groundwater samples before the deadline, and close if contamination is present, thus avoiding Subtitle D corrective action requirements.

Stephen A. Hurst, Director, Kansas Water Office, reviewed the state's effort to acquire additional water supply storage capacity under the terms of the 1985 Memorandum of Understanding between the state and the U.S. Army Corps of Engineers (Attachment 30). It was explained that the 1985 Memorandum of Understanding provides for reallocation of water supply storage in certain reservoirs which were unavailable to the state to use for water supply purposes. This reallocated storage can be purchased by the state at original construction costs and interest rates, on one lump sum payment. The Memorandum of Understanding will expire in June, 1996. This purchase would permit state control of releases from water supply storage space in some major federal reservoirs.

Bob Best, Chairperson, Kansas Water Authority, briefed the Committee on the efforts of the Ad Hoc Committee to study options for the purchase of water storage supply capacity in federal reservoirs (Attachment 31). The Ad Hoc Committee recommended buying all storage within the next two fiscal years. Due to shortage of projected funds, the Ad Hoc Committee unanimously passed a strategy which included: (1) to dedicate \$1.5 million from the State Water Plan Fund to purchase the water supply capacity for Milford and Perry; (2) to recommend a one-year state sales tax to purchase the storage capacity recommended by the Ad Hoc Committee for acquisition; and (3) if such a sales tax fails to be enacted, to utilize revenue bonds to acquire the storage and to adopt the strategy for potential revenues sources to retire such bonds espoused in the draft legislation by the House Energy and Natural Resources Committee. The only exception to this last recommendation would be to strike the fourth revenue source (the State Water Plan Fund) from consideration.

Bill Caton, Kansas Development Finance Authority, commented that the Governor's office ruled out the use of any general funds for acquisition purposes and, therefore, the Ad Hoc Committee proposed other methods of funding the project. It was suggested that Kansas Development Finance Authority bonds would probably be the best financing method.

David L. Pope, Chief Engineer, stated to the Committee: "I strongly support the State of Kansas' acquisition of water storage supply in federal reservoirs in Kansas pursuant to the Memorandum of Understanding with the Corps of Engineers."

Mr. Pope also stated Kansas will never have a better opportunity to acquire water storage space at these prices (Attachment 32). He explained that water supplies in these federal reservoirs may be the only feasible source of water supply for significant future municipal and industrial water needs. This storage space should be acquired so that in the future the State of Kansas and not the federal government will have control over deciding how the water stored in those reservoirs will be used.

Mr. Pope explained that if a significant portion of State Water Plan Fund monies were to be used for this purchase, it was imperative to carefully study each project currently funded by the State Water Plan Fund and weigh the consequences of stopping, delaying, or reducing the funding.

Joyce Wolf, Kansas Audubon Council, presented testimony concerning assurances for acquisition of water storage (Attachment 33). The question as to whether the water being purchased would actually be available during times of prolonged drought, and also the question whether this purchase would negate any contract the US Corps of Engineers has with downstream users, was asked. Ms. Wolf also was concerned with the use of funds from the State Water Plan Fund and expressed the hope that another funding source could be found. She suggested making the one-year increase in state sales tax a permanent part of state funding for natural resource projects, which would be similar to Missouri's program.

Bill Fuller, Kansas Farm Bureau, presented testimony concerning acquisition of water storage supply capacity (Attachment 34). Mr. Fuller stated that the members of Farm Bureau had been contacted and proposed policy statements were presently being distributed with action being considered at their annual November meeting. Mr. Fuller urged caution and requested the Legislature not to use the State Water Plan Fund due to ongoing projects.

William M. Henry, Executive Vice-President, Kansas Engineering Society, supported the state exercising its option to act on the 1985 Memorandum of Understanding (Attachment 35). He stated that the cost is the lowest which can be obtained in the United States and the window of opportunity will expire in June, 1996. Mr. Henry explained that other states have tried to obtain water under the same circumstances and have been turned down by the Army Corps of Engineers. To pay the cost of these waters, he suggested that the State Water Plan Fund was one area as a source of revenue, another source would be state sales tax for this specific purpose, and if necessary, bonds.

Staff reviewed 3 RS 1380 dealing with funding for the proposed water acquisition. Funding sources in order of priority would be: (1) funds received from contracts entered into pursuant to the State Water Plan Storage Act or the Water Assurance Program Act; (2) the State Economic Development Initiatives Fund; (3) the State General Fund; and (4) the State Water Plan Fund.

A member of the Committee asked why the decision was made not to acquire water in the Elk City Reservoir and especially Marion Reservoir due to its central location. Due to major concerns over serious inflow problems and replenishment of the water in the Marion Reservoir, it was decided not to include it. Elk City was not included due to its location.

A member questioned whether the state really needs this water since most of the areas of Kansas that would be affected usually have sufficient rainfall. The response stated that the issue is not entirely involved with water supply, but also involved state control over its own resources.

A member questioned if the need for a public water supply was great enough to provide revenue that would at least pay for a part of the bonding effort. Terry Duvall, Manager, Water Marketing Plan, Kansas Water Office, told members this projected need is very difficult to predict. Ms. Duvall stated that in the next 20 years there would be considerable demand for this water. She also stated that the revenue stream likely would not be great enough to pay for it.

A member questioned what the revenue would be if all of the water was sold. Ms. Duvall explained that the rate structure could cover the bill over a period of 40 years. Contracts are made for a period of 40 years and they are renewable. After 40 years the only costs would be operation and maintenance. Several members stated that the state should buy the water and it should be paid for by user fees.

In answer to a question, Ms. Duvall explained that Water Assurance District No. 1 utilizes water from Milford, Tuttle Creek, and Perry reservoirs at the present time. She also explained to the Committee an assurance district is forming in the Neosho basin and in the Marais des Cygnes basin. The state requires up-front payment and therefore the district determines how to pay for its water. The assurance district in the Kansas River basin utilized a bonding method as well as taking advantage of the long-term repayment of their costs on Milford and Perry reservoirs. The member questioned increasing user fees and Ms. Duvall explained that he was looking at two different programs. Increasing user fees would require people to pay for water they were not presently using and therefore in ten years the costs would be paid. People who later wanted to use the water would have had the costs already paid. This rationale is one of the reasons user fees under the two programs were not considered for funding, because those people were not getting a direct benefit but would be paying the costs for those who used the water at a later date. The water marketing plan provides an offset procedure to calculate the rate. Other users coming later would pay increased costs. It was explained that the first 15 contracts signed were at a fixed rate. Subsequent contracts are adjusted annually based on the quantity of water used and the quantity sold. It was stated that the state will recoup its cost from those who use the water supply. Until users are faced with a growth or drought situation most people are not willing to pay for water.

A member questioned how active the marketing plan is. Ms. Duvall explained that the Water Office was not actively and aggressively selling water but rather they were there to provide a service to those people who decided they needed an additional water supply. The user pays for 50 percent of the cost, whether they use it or not.

The Chairperson, in response to a question concerning 3 RS 1380, stated he requested the legislation to address state funding of acquisition of water through KDFA bonds. It would only apply if bonds were used, not proceeds from a sales tax.

A member questioned whether there was a history of non-negotiation between the Corps of Engineers and the state and also questioned how the drawdown for navigation could happen. It was explained the Corps had the right to make releases for navigation purposes. The opinion was expressed that the release for navigation purposes was a statement for those who are involved in upstream litigation and strong protests have been made.

A member who resided close to Tuttle Creek questioned why he should vote to buy storage to benefit those downstream, especially when he received little benefit other than recreation and fishing. It was explained that if the state owns the water supply, then a comprehensive decision could be made for usage whether it be used for recreation, downstream users, or other benefits. When the Corps has control the reservoir can be drawdown quickly, which increases the probability there will be an adverse affect to someone in the district. With state control, the water is there and if it is not used, all other benefits are available.

A member questioned how much storage, percentage wise, would be purchased in the Milford Reservoir. The answer was about 50 percent. The Corps would have flood storage and flood management control but the state would control the conservation pool, especially important during times of drought. The state still would be paying ongoing maintenance and operation costs to the Corps. The total cost of the package recommended by the water authority is \$12 million.

A member questioned the ambiguity of the Water Authority concerning the sales tax issue, first mentioning a one-tenth of 1 percent sales tax and later a 1 cent sales tax. It was explained by the Water Authority that they wanted to defer to the Legislature and, therefore, the Legislature would determine what is the most appropriate percentage of sales tax. The member questioned the importance of the sales tax approach and it was explained that this was the most viable method for the state to fund acquisition costs. It was stated that water availability would help economic development.

A member indicated that the acquisition of this water was of the utmost importance to him and his district, but he did have concern over using a sales tax. He further stated that the longer some of the people waited to get into the system, the more they should pay to defray previous costs which were incurred.

The question was asked as to the present cost of water and the response was 14.179 cents per 1,000 gallons.

A member requested information as to whether the Water Office had any recommendations to change the law concerning marketing contracts. He also wanted to see some type of projected revenue from water users in order to factor in a conservative growth rate for water users. A need was expressed by a member for a projected debt service schedule to determine what portion of debt service might be covered by water users.

A member stated concern that animosity did not occur between districts over water issues, even though a district did not derive benefit from the water.

Steve Hurst explained to the Committee that the recommendation received from the Water Authority reflects consideration of payments that can reasonably be foreseen from customers at the present time and also is reflected in the deliberations of the Ad Hoc Committee.

The Chairperson commented that when the legislative battle concerning funding begins, it was his hope that all those in attendance would support the legislators in Tax, Appropriations, and Ways and Means committee meetings. Otherwise, the issue probably will not pass through the Legislature.

The Committee discussed the Condemnation of Water Rights issue. It was recommended that the Committee should wait until Dr. Peck provided his model legislation and it was the consensus of the Committee to wait until that time.

The Committee then discussed 3 RS 1376 concerning tipping fees for closure and post-closure cost of landfills. There was some discussion concerning adding "regional landfills" to line 9, however, the Committee decided to debate this topic in November. A member said that staff should obtain an example for an interlocal agreement, to see if there is a penalty if one of the counties withdraws.

Staff was directed to draft amendments concerning: the exemption of fly ash, tires, and other items which are exempt from the statewide tipping fee as outlined in 1993 H.B. 2428; whether privately owned and operated landfills could impose the same type of fee; and a means for counties to get out of an interlocal agreement.

In clarification to a proposed amendment, a member stated he did not want the county, where the landfill is located, to have veto power on the final say concerning tipping fees and all involved counties should have equal representation. The member was requested to confer with staff to ensure inclusion of these concerns.

The Committee then discussed 3 RS 1374, the proposed bill that would ban the burial of municipal incinerator waste. Information was previously requested to obtain rules and regulations and laws pertaining to municipal incinerator ash in the northeastern part of the United States. A request was also made concerning a pilot plan in New York concerning the salt mine and municipal incinerator ash.

The Committee then discussed the potential revolving loan program for pollution cleanup, 3 RS 1371. The Committee was interested in language changes to make sure the state and KDFA did not assume liability when making loans for pollution cleanup. It was stated that KDHE wanted to have this legislation in place in case funding would become available in the next couple of years.

A proposed amendment to 3 RS 1371 was circulated to members. It will be considered at the November meeting.

The Chairperson told the Committee it was his intention to have an energy policy bill that will meet the minimum standards as required by the federal government. He then would use this bill as a starting point for discussion concerning energy during the 1994 Legislative Session. Amendments can be debated at that time.

The Committee then briefly considered 3 RS 1380 and concluded that the bill would become active only in the event bond financing would be the chosen as the funding mechanism for acquisition of water storage supply capacity. A request was made for a debt service schedule to indicate what portion is not covered by user fees.

Staff was instructed to furnish a list of the various funding sources of the State Water Fund and provide it to Committee members.

A written request was received from some Committee members to have Wildlife and Parks explain the Sandhill Crane hunting season at the next meeting of the House Energy and Natural Resources Committee.

A reminder from a Committee member suggested that KDHE have time in the November meeting to discuss their rules and regulations on the solid waste disposal issue.

The meeting adjourned at 4:00 p.m.

Prepared by Raney Gilliland

Approved by Committee on:

November 18, 1993

(date)

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

Testimony Presented to

House Energy & Natural Resources Committee

By

Kansas Department of Health & Environment

House Bill on Water Supply Loans

The Department of Health and Environment supports this bill creating a loan fund to assist local government in financing public water supplies, water works.

Several things are occurring which make a water works loan fund appropriate. First, the needs of public water supplies have always been evident, especially with two-thirds of the State's systems serving less than 500 people. Secondly, there is a strong possibility of Federal seed money being made available to help states establish loan funds and the state has experience in administering a similar fund for wastewater systems. Third, discussions have occurred for several years through the water planning process studying ways to assure good water is provided to Kansas citizens by helping achieve system viability. The loan fund proposed here is consistent with the water plan. Finally, we think the loan fund is a way for Kansas to demonstrate leadership in providing this vital service, safe and adequate drinking water.

Discussions have occurred for years on how the State might assist local public water supplies. This state-local relationship most recently was the subject of a water plan initiative entitled "Water Supply Viability". The vision is improved public water supplies that are more reliable, improved water quality, an adequate utility base, all of which is characterized as a viable system. In some instances these goals can be obtained through interconnection with neighboring water systems or development of a regional system. We want to see the loan fund encourage or give priority to regional approaches. Conversely, we want to assure assistance programs do not work against regional options. Clear State policy encouraging the regional approach is necessary.

The State can do several things to encourage regional systems, including adopting policies and more grassroots level programs encouraging regional systems. The State could also offer financial incentives to encourage regional system development. The loan fund

could be a mechanism to help meet water works needs, and also encourage regional approaches.

In a loan fund the State would provide low interest loans for water works. The local municipality would pledge repayment to the fund which would be loaned again. KDHE has four years experience with a revolving loan fund wastewater systems. We have also been involved in a grants program for nearly 20 years. We have found the loan concept assures local responsibility since it is a loan, not a grant. With grants there is an understandable attitude of obtaining as much grant as possible. A properly constructed loan fund can last for a number of years, is predictable, and allows for long-term infrastructure planning, as opposed to the start and stop nature of grants. With public works projects, long-term planning and predictability is very important. Several congressional initiatives have proposed creation of a revolving loan fund for water supplies. This bill would allow the State to immediately put Federal funds to work if available.

We have several suggestions for improving the bill. We suggest the concepts in the Water Authority's planning document on viability of public water supplies be incorporated into this bill. This document addresses regional system concepts. Incorporation of the water plan initiative could be accomplished by directing the Secretary of Health and Environment to establish rules and regulations for the priority list encourages regional approaches.

We also suggest a requirement that a recipient establish and implement a user charge and operation and maintenance cost recovery system adequate to cover existing and future needs.

An issue which needs discussion is whether loans could be made to private utilities. This would certainly complicate the financial aspects of the loan and the bill does not allow loans to other than "municipalities". We would suggest this is an appropriate approach primarily due to the financial complications of making loans to municipal and private entities within the same program. Nationally this is a larger issue since private water supplies are common in other parts of the country.

Another detail involves Section 7(b) which allows the State to intercept the municipality's share of local ad valorem tax money being returned. Rural water districts and wholesale districts could be significant users of this fund and we need to study whether this or a similar requirement is needed for these systems. This section of the bill is modeled after the wastewater revolving loan fund which seeks to assure protection of the State's funds and repayment of loans. This was particularly important with the wastewater fund since the State leveraged through State bonds that

fund to provide an even larger pool of money for loans.

KDHE has found the wastewater loan fund very successful. Attached is a list of the wastewater loans made to date to give you a flavor of the existing wastewater program which this bill is modeled after. The Kansas Development Finance Authority has been instrumental in the success of this program. KDFA provides the financial advice which is critical to the successful program. This bill would continue the same relationship between KDHE and KDFA which is essential to a successful program.

Testimony presented by: Karl W. Mueldener
Director, Bureau of Water
September 14, 1993



Department of Health and Environment

Robert C. Harder, *Secretary*

Briefing to
House Energy & Natural Resources Committee
by
Kansas Department of Health & Environment
Wastewater State Revolving Fund - SRF

•CONCEPT:

- Low interest loans by State to local governments
- Loans for financing project construction
- Municipally-owned water pollution control projects
- Method of assistance and policy promotion

Figure 1: Concept Flow Chart (attached)

Figure 2: Actual Kansas SRF Leverage Flow Chart (attached)

•EXPERIENCE:

- Wastewater SRF - from Clean Water Act
 - Federal seed \$
 - Minimum 20% State match requirement
- KDHE/KDFA
 - Technical & programmatic management: KDHE
 - Financial expertise: KDFA
- EPA/Local
 - Federal seed \$, strings: EPA
 - Projects, agreements: Local
- Rates
 - By regulation, 60% of prior three months average 20 bond buyers index
 - Policy decision, how high or low?

•PERFORMANCE:

- 4 years, 27 loans, 22 entities, \$113 million
- FY 93 & 94 expect up to 50 additional, smaller projects

Figure 3: List of Participating Municipalities (attached)

Figure 4: Loan Rate History (attached)

•LEVERAGING:

- Kansas leveraged, or provided more than the required minimum 20% match to Federal funds:

\$ 51.8 M	Federal Seed
17.2 M	State Match
<u>54.0 M</u>	<u>State Leverage</u>
\$123.0 M	Total Fund*

*approximate as of 1993

•COMMENTS:

- SRF skeptics overcame, used to grants
- SRF only one tool, not overall solution
- Loans must be repaid - encourages economizing vs. grantsmanship
- SRF faster than grants
- SRF successful federal/state/local partnership
 - Teamwork evident

Figure 5: Loan Rate Structure in Other States (attached)

Figure 6: Kansas Water Pollution Control Revolving Fund Information Sheet (attached)

Briefing by: Karl W. Mueldener
Director, Bureau of Water
September 14, 1993

Figure 1
CONCEPT FLOW CHART

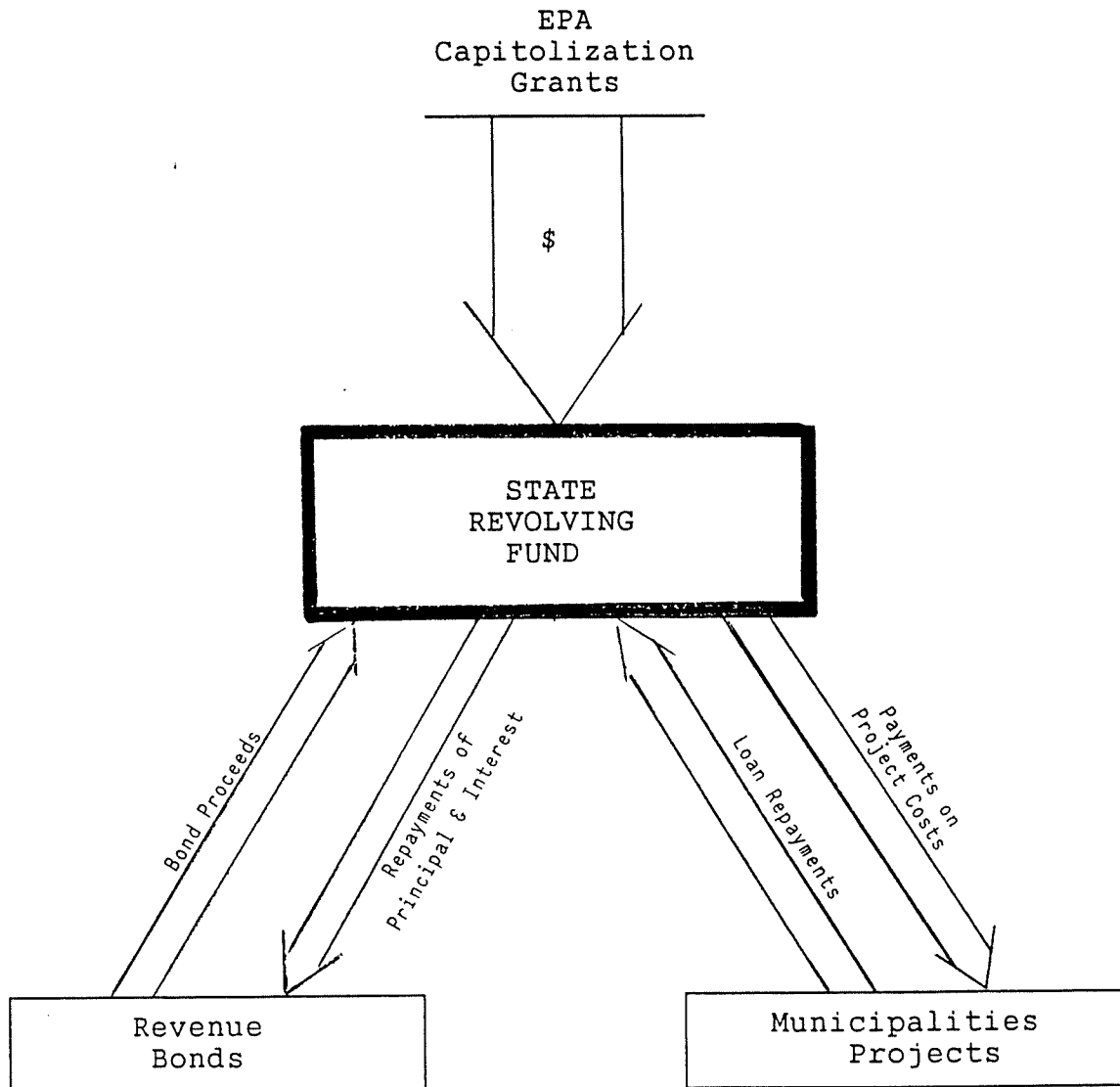


Figure 2

STATE OF KANSAS
Water Pollution Control Revolving Fund
Leveraged Financing

REVOLVING FUND

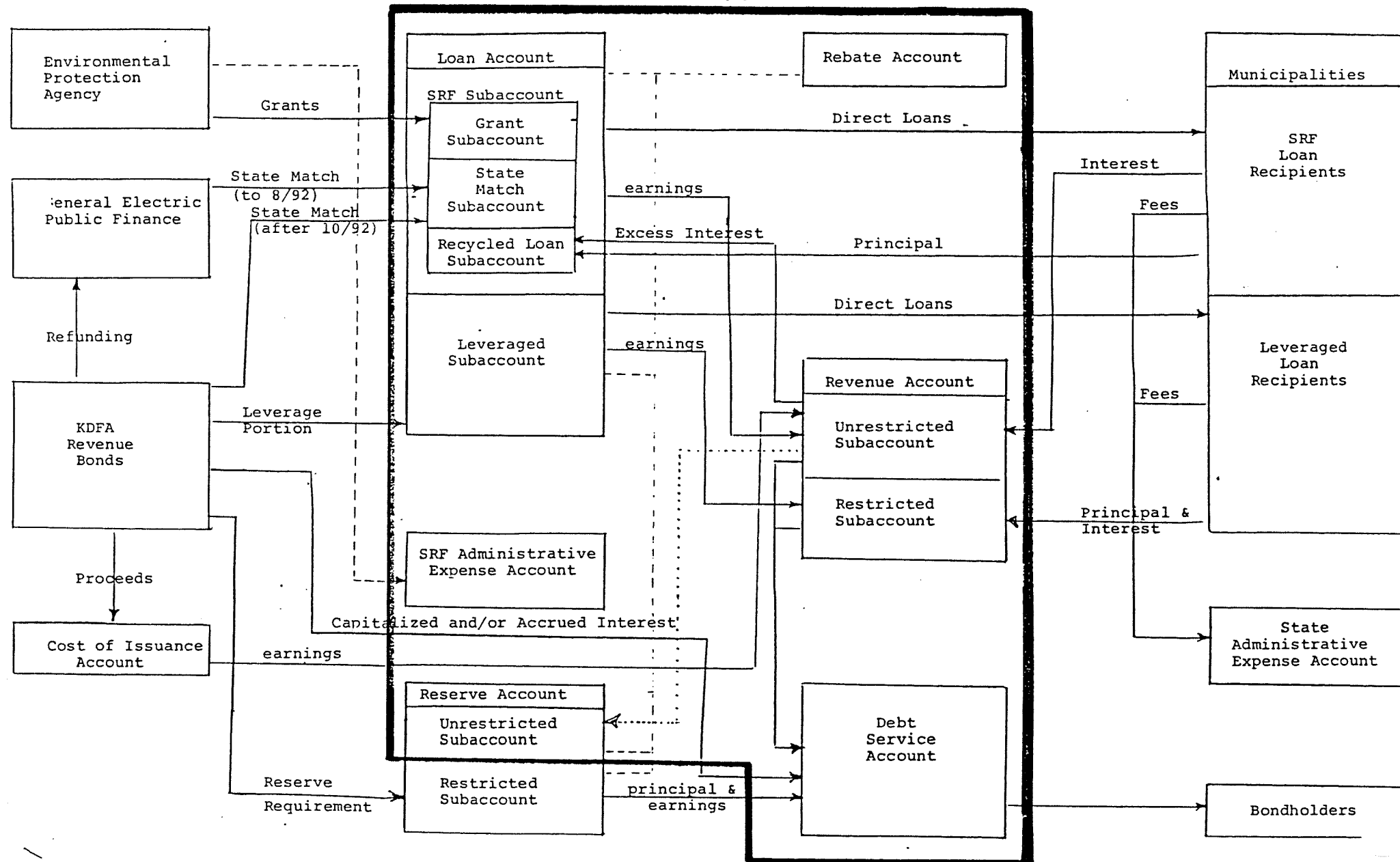


Figure 3

List of Municipalities in Wastewater Loan Program

The following lists those Municipalities which have executed a Loan Agreement with KDHE funded, in whole or in part, from the proceeds of the Bonds and Environmental Protection Agency Capitalization grants, its population and the estimated Loan amount.

<u>Municipality</u>	<u>Population</u>	<u>Loan Amount</u>
Johnson County, Kansas (6 Loans)	355,054	\$64,369,000
Hays, Kansas	17,767	6,080,000
Topeka, Kansas	119,883	29,835,125
Baldwin City, Kansas	2,961	367,290
Carbondale, Kansas	1,526	693,320
Edna, Kansas	438	69,800
Holton, Kansas	3,196	1,215,200
Independence, Kansas	9,942	543,000
Louisburg, Kansas	1,964	795,700
Meriden, Kansas	622	540,000
Milford, Kansas	384	313,000
Oswego, Kansas	1,870	480,000
Reno County, Kansas	62,389	400,000
Shawnee County, Kansas	160,976	996,800
Silver Lake, Kansas	1,390	351,500
Spring Hill, Kansas	2,191	872,000
Tonganoxie, Kansas	2,347	671,500
Leon, Kansas	700	130,000
Lenora, Kansas	450	161,780
Eureka, Kansas	3,400	2,446,000
Ashland, Kansas *	1,100	574,000
Hillsboro, Kansas	2,700	338,000

* Signature Pending

Figure 4

KWPCRF LOAN RATE HISTORY

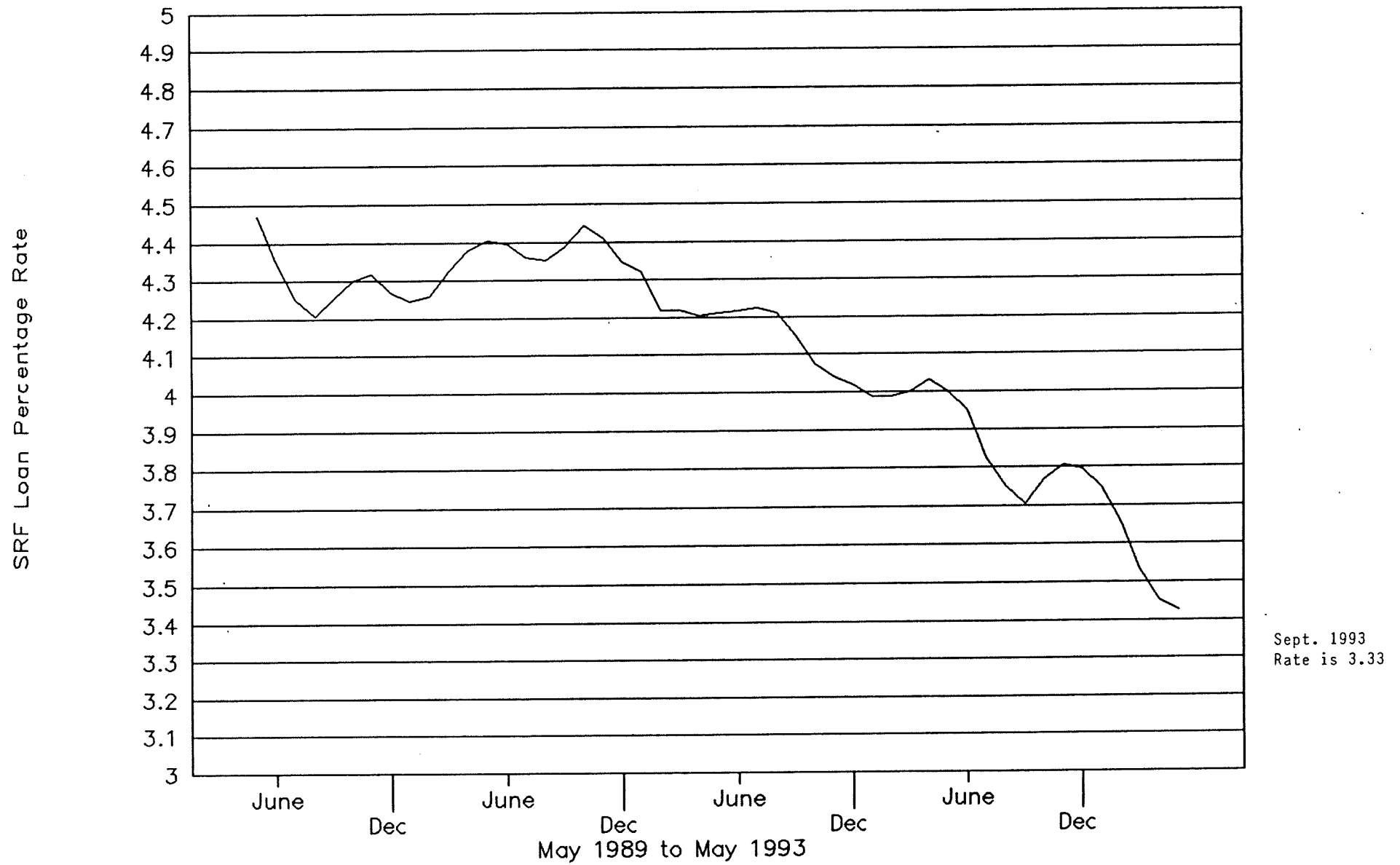


Figure 5

SRF Loan Interest Rate Structures of Forty-Seven Responding States(a)

State:	Rate	Explanation
Alabama	5%	Uniform rate on all loans.
Alaska	4% to 5%	Interest rate set at 66% of Municipal Bond Index for State G.O. bonds at time loan is signed.
Arizona	5%	Uniform rate on all loans.
Arkansas	3.5% to 4.0%	Uniform rate of 4% on all loans except for I&A projects, which are charged only 3.5% interest.
California	50% of market	Interest rate set at 1/2 that of most recent sale of State G.O. bonds; G.O. bond interest can not exceed 12%.
Colorado	4%; 65% of market	Direct loans - 4%; leveraged program loans - 65% of market.
Connecticut	2%	Additional subsidy of 20 to 50% State grant for all projects.
Delaware	2% to 5%	Rate varies depending on communities' ability to pay and cost per household in relation to income.
Florida	3% below market	3% below General Obligation 20-Bond Index for tax-exempt 20-yr bonds.
Georgia	2%	Uniform rate on all loans. Varies FY to FY.
Hawaii	3.5%	Uniform rate on all loans set at 50% of State G.O. bond on market at end of June each year.
Idaho	4%	Uniform rate on all loans.
Illinois	2.5% to 4.0%	2.5% charged for compliance needs existing as of 10/89; 1/2 market rate for others.
Indiana		Undetermined at this time.
Iowa	4.86%	Rate varies FY to FY based on State bond interest.
Kansas	60% of market	State sets rate based on 60% of prior 3 month average of 20 Bond Buyers Index.
Kentucky	2.3% to 4.3%	Interest rate depends on median household income of county.
Louisiana	5.5%	Rate subject to change annually based on review committee recommendations.
Maine	2% below market	Rate set 2% below Bond Bank's cost of funds.
Maryland	53%-70% of market	Interest rate depends on median household income of county. Rates may be as low as 0% in certain cases.
Massachusetts	45% "grant equivalency"	Rate may vary based on cost of borrowing. Additional subsidy (State grant) depends on communities' ability to pay.
Michigan	2%	Uniform rate on all loans.
Minnesota	0% to 6.05%	Rate varies depending on communities' ability to pay, household income, sewer service fees, and poverty.
Mississippi	3%	Uniform rate on all loans.
Missouri	50% of market	SRF interest rate equals 50% of market rate.

Continued

SRF Loan Interest Rate Structures of Forty-Seven Responding States(a)

State:	Rate	Explanation
Nebraska	3.5% to market	Rate varies depending on median household income, existing debt, and option of accelerated payback.
Nevada	65% of market	Uniform rate on all loans.
New Hampshire	Variable	Rate varies 1st 5yrs., 1/6 of G.O. Bond index 1st yr., 2/6 the 2nd, etc., after 6 yrs it's set 1% higher than the index.
New Jersey	3.5% to 4.0%	Varies from funding cycle to funding cycle based on cost of borrowing.
New Mexico	5%	Uniform rate on all loans.
New York	0% to 2/3 of market	Rate varies based on communities' ability to pay and interest rate on EFC bonds.
North Carolina	lesser of 1/2 market or 4%	Rate is set at the lesser of 50% of market (based on 20 year bond index) or 4%.
Oklahoma	60% of market	Varies depending on interest rate on 20 year tax exempt revenue bonds.
Oregon	0% then 3%	For first 5 years - 0%; from years 5 to 20 - 3%.
Pennsylvania	1% to 75% of market rate	Rate varies depending on communities' ability to pay; unemployment rate, user fees, economic distress factors.
Rhode Island	4% below market; variable	High risk loans-variable rate, low risk-4% below market with a longer repayment.
South Carolina	4.5% and 2%	Rate varies annually based on State G.O. bonds. For hardship cases, 2% flat rate.
South Dakota	3%	Uniform rate on all loans.
Tennessee	0% to market rate	Rate varies based on communities' ability to pay.
Texas	2% to 5.75%	Except for hardship loans the rate depends on interest rate on TWDB bonds for state match and overmatch.
Utah	0% to market Rate	Rate varies depending on communities' ability to pay.
Vermont	0% to 80% of market	Rate is 0% for CSOs, otherwise up to 80% of market based on treasurers discession.
Virginia	0% to 7%	Rate varies depending on communities' ability to pay.
Washington	0% to 5%	Rate varies depending on communities' ability to pay; also varies based on term of loan.
West Virginia	0% to 4%	Rate varies depending on communities' ability to pay; source of state match.
Wisconsin	0% to 7.5%	Rate varies depending on community ability to pay, and environmental priority by type of project.
Wyoming	0%	Uniform rate on all loans.

(a) Montana, North Dakota, and Ohio did not provide interest rate information for this report.

11-1



Department of Health and EnvironmentRobert C. Harder, *Secretary***Kansas Water Pollution Control Revolving Loan Fund**

- > A "Fund" administered by KDHE to provide low interest loans to Municipalities for Water Pollution Control Projects.
- > Funding provided by Capitalization Grants with additional Revenue Bonds issued through the Kansas Development Finance Authority.
- > "Revolving" fund designed to last into perpetuity, loan repayments from Municipalities are used to repay State borrowing, with excess returned to Fund to provide future loans.
- > "Municipalities" are Cities, County Sewer Districts, Improvement Districts with authority to levy ad valorem taxes.
- > "Water Pollution Control Projects" presently include sewage treatment plants, interceptors, I/I correction/control, collector sewers, major sewer rehabilitation.
- > To 'Qualify' for a loan, a project must submit a request to be included on the Priority List, have sufficiently high ranking to move to the Intended Use Plan, and submit a complete application including plans and specifications.
- > A 'Loan Agreement' is signed when the project design and KWPCRF application are complete.
- > Projects must comply with KDHE regulations for Facility Planning, Environmental Clearances, and Construction Contracts.
- > Repayment period can be up to 20 years; semi-annual repayments; first repayment due within 1 year of project completion; applicant must show a 'dedicated' source of revenue for repayment.
- > Interest rates vary slightly month to month, and range from 3.3-4.4%. Once a loan agreement is developed, and executed by KDHE and the Municipality, the scope of the project and the interest rate are fixed for the term of the loan. The loan amount may increase or decrease based on actual costs within the scope of the project.
- > Nearly all project costs can be included in the Loan amount including the costs of temporary financing and interest during construction. However the costs for land, easements, and private sewers cannot be included.
- > Up to 10% of monies must be made available to Communities of less than 5000 population.
- > For further information contact KDHE, Municipal Programs Section, (913) 296-5534 or -5527.



Department of Health and Environment

Robert C. Harder, Secretary

May 14, 1993

To Division of Environment Staff:

Some months ago, the Division of Environment embarked upon a plan to reorganize. As the plan nears complete implementation, I want to thank staff for your past and future support.

To insure we remain focused on the division goals relating to the reorganization, I emphasize some of those goals and objectives related to the district offices.

As stated in August of 1992 the goals were:

- * Strengthening district offices in terms of:
 - providing local educational outreach;
 - increasing technical support to local government/business;
 - tailoring programs to regional conditions; and
 - serving as a more complete regional resource.
- * Taking a more proactive approach to environmental protection through pollution prevention.
- * Improving efficiency.
- * Providing greater support to small businesses and communities.
- * Coordinating more effectively with other agencies.
- * Implementing recent legislation in an effective fashion.
- * Carry out Division of Environment programs at the local level in coordination with program bureau staff.
- * Establish and maintain a community outreach program with local officials in each district.
- * Determine local needs and concerns and make recommendations to the Division.

**BUREAU OF DISTRICT OPERATIONS
INCLUDES HOME TELEPHONE NUMBERS**

NORTH CENTRAL OFFICE - SALINA 913-827-9639

Tom Byerley - District Environmental Administrator

Brunetti, Rick	Waste	913-823-8195	Hass, Gary	Radiation	913-823-2815
Chisam, Don	Water	913-667-2293	Lang, Scott	Remediation	913-823-8924
Debauche, H.	Remediation	913-823-6457	Richard, Max	Water	913-827-3926
Denning, Peter	Air Quality	913-827-8876	Roberts, Brad	Water	913-227-4253
Geist, Ron	Water	913-827-7185	Zerr, Delbert	Water	913-827-3323

NORTH EAST OFFICE - LAWRENCE 913-842-4600

Duncan, Howard - District Environmental Administrator- 913-887-6477

Bronaugh, R	Waste	913-845-2308	Lee, Carl	Water	913-235-6808
Coulter, Lyle	Radiation	816-436-7273	McCool, Pat	Water	913-842-1795
Finger, Bennie	Water	913-933-2972	Montgomery, V	Water	913-888-3229
Fischer, Jim	Waste	913-796-6262	Rosewicz, Phil	Water	913-723-3426
Hipple, Bob	Water	913-594-2935	Roth, Meredith	Remediation	913-226-3987
Kellerman, Dan	Remediation	913-865-0514	Simpson, Pat	Air	913-862-0539
Lamfers, Jeff	Water	913-888-3756	Slade, Jack	Remediation	913-266-6448

NORTH WEST OFFICE - HAYS 913-625-5664

Ken Brooks - District Environmental Administrator -

Adams, Ron	Remediation	913-628-2938	Schmidt, Karen	Waste	913-625-4980
Armstrong, D.	Water	913-735-2828	Thompson, Bob	Water	913-628-3533
Larson, Michael	Remediation	913-625-4110	Windholz, N	Water	913-625-9371
Robinson, Rick	Air	913-628-8898			

SOUTH CENTRAL OFFICE - WICHITA 316-838-1071

Mark Bradbury - District Environmental Administrator - 316-838-8346

Branscum, Dave	Air	316-263-2104	Marcotte, S	Remediation	316-945-9019
Butler, David	Air	316-684-4151	Newby, Richard	Waste	316-838-9304
Capsey, Larry	Water	316-267-6500	Parker, Kyle	Remediation	316-773-8039
Goetz, J.P.	Water	316-729-0748	Perez, Gil	Waste	316-942-6781
Hansen, Teresa	Waste	316-943-1918	Spencer, Leo	Radiation	316-684-2293
Hooper, Julie	Water	316-733-1932	Taleb, Abbas	Water	316-685-0012
Husain, Meer	Remediation	316-683-4396			

SOUTH EAST OFFICE - CHANUTE 316-431-2390

David Stutt - District Environmental Administrator -

Ellis, Jim	Water	316-431-9116	Thornton, Bill	Remediation	316-431-6438
Getchell, Charles	Water	316-431-1576	Tobyne, Bryce	Waste	316-431-4542
Heape, William	Water	316-473-2426	Tucker, Ron	Water	316-431-3388
Ranabargar, L	Air	316-431-0066	Wilson, Tim	Remediation	316-251-2036

SOUTH WEST OFFICE - DODGE CITY 316-225-0596

Ubel, Don - District Environmental Administrator- 316-225-1697

Buchanan, Rick	Waste	316-227-2829	Morrow, Chance	Water	316-225-4830
Doubek, Doug	Remediation	316-855-3281	Neese, Wayne	Air	316-225-3368
Guernsey, Allen	Water	316-225-4738	Spencer, Charles	Water	316-225-3298

bdolist2



KANSAS

KANSAS DEVELOPMENT FINANCE AUTHORITY

Joan Finney
Governor

Wm. F. Caton
President

TESTIMONY FOR NATURAL RESOURCES COMMITTEE

BILL CATON, PRESIDENT KANSAS DEVELOPMENT FINANCE AUTHORITY

Thank you for the opportunity to testify regarding the creation of revolving loan programs for public water supply development and pollution cleanup. My testimony will focus on the past success the State has had on its wastewater treatment revolving loan program.

Kansas Department of Health and Environment and Kansas Development Finance Authority (KDFA) has leveraged EPA funds into a revolving loan program which provides Kansas communities with low interest rate loans for wastewater treatment projects. The level of interest rate reduction depends upon the amount of federal grant money injected into the program. The goal of the revolving fund program is to provide adequate funding at the lowest possible interest rate and keep the fund perpetual or "revolving".

Without going into boring and technical details, let me point to a few facts that has made this program successful.

- The fund was designed to provide \$130 million for local entities at interest rates 40% below market rates.
- The bond issue that provides approximately ½ of the fund, received an AA+ rating from Moodys and Aa from Standard and Poors which is an exceptionally high rating. This is due in part to the credit quality of the local participants and to the level of security pledged to the State as required by the Statutes.
- The fund was designed to allow the State to provide the minimum match funds by borrowing the State's portion (match money) and having it repaid in the program cash flows.
- The market demand for Kansas quality bonds keeps interest rates at a minimum.
- KDFA's expertise and experience in issuing bonds helps keep the costs of issuance to a minimum, thus preserving more funds for program use.

While each revolving fund must be uniquely designed for its specific program, we have a successful model to use to create other effective programs. The perpetual feature of revolving fund programs make them a very cost effective way to provide funding to programs with long term goals and paybacks.

The State Revolving Loan Program for wastewater treatment is an excellent example of Federal, State and local participation in a program that benefits all involved parties.

I am available to answer any questions.

House Ex NR
Sept. 14-15, 1993

State of Kansas
Water Pollution Control Revolving Loan Program
Detail of Projects
As Of August 31, 1993

Description/ Account Number	Amount of Loan Agreement	Total Project Payments To Date	Balance Outstanding
Mission Main Phase IV.....			
.....No. 1167-04	4,978,200.00	4,707,114.14	4,297,055.37
Turkey Creek, Phase II.....			
.....No. 1168-02	3,069,300.00	3,018,150.85	2,854,377.02
Milford.....			
.....No. 1236-01	313,000.00	302,067.65	274,450.79
Indian Creek Lower Basin, Phase III			
.....No. 0611-08	3,195,800.00	2,999,840.04	2,821,583.89
Reno County.....			
.....No. 1237-01	354,103.59	359,446.34	337,000.00
Turkey Creek, Phase III.....			
.....No. 1168-03	3,835,700.00	3,482,334.50	3,341,155.72
Indian Creek Lower Basin, Phase IV.			
.....No. 0611-09	2,100,000.00	1,752,469.17	1,692,516.82
City of Holton.....			
.....No. 1281-01	1,215,200.00	1,175,672.12	1,155,202.28
City of Meriden.....			
.....No. 1283-01	540,000.00	455,035.14	431,820.73
City of Louisburg.....			
.....No. 1275-01	795,700.00	660,470.25	642,095.63
Shawnee County Sewer Dist. No. 42..			
.....No. 1274-01	996,800.00	996,800.00	980,687.12
City of Silver Lake.....			
.....No. 1269-01	351,500.00	340,452.65	328,089.61
Spring Hill.....			
.....No. 1217-01	872,000.00	776,042.56	759,361.06
City of Edna.....			
.....No. 1254-01	69,800.00	69,800.00	68,526.14
City of Hays.....			
.....No. 1280-01	6,080,000.00	3,867,467.96	3,867,467.96
City of Tonganoxie.....			
.....No. 1299-01	671,500.00	671,500.00	671,500.00
City of Baldwin.....			
.....No. 1211-01	367,290.00	292,851.27	292,851.27

26

State of Kansas
Water Pollution Control Revolving Loan Program
Detail of Projects
As Of August 31, 1993

Description/ Account Number	Amount of Loan Agreement	Total Project Payments To Date	Balance Outstanding
City of Independence.....			
.....No. 1241-01	543,000.00	326,953.12	326,953.12
City of Carbondale.....			
.....No. 1277-01	693,320.00	348,787.00	348,787.00
City of Oswego.....			
.....No. 1276-01	480,000.00	177,519.52	177,519.52
City of North Topeka.....			
.....No. 1273-01	29,835,125.00	192,023.32	192,023.32
City of Leon.....			
.....No. 1311-01	130,000.00	15,136.61	15,136.61
City of Lenora.....			
.....No. 1300-01	161,780.00	46,156.28	46,156.28
City of Eureka.....			
.....No. 1307-01	2,446,000.00	0.00	0.00
Mill Creek.....			
.....No. 1293-01	47,190,000.00	1,708,944.92	1,708,944.92
	111,285,118.59	28,743,035.41	27,631,262.18



**THE LEAGUE
OF KANSAS
MUNICIPALITIES**

**Municipal
Legislative**

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Energy and Natural Resources
FROM: Harry Herington, League Attorney
RE: Revolving Loan Fund For Public Water Supply Development
DATE: September 14, 1993

Thank you for the opportunity to appear today in general support of the proposal to create a revolving loan fund at the state level for public water supply development. Proposals that are pending at this time at the federal level for the funding of such programs at the state level indicate the desirability of moving forward with the adoption of a statutory framework for such a program in Kansas. Due to hard work by KDHE and the Kansas Water Authority the existing wastewater revolving loan fund has proven to be an effective way of making below market rate financing available to the cities of the state that are engaged in the construction of wastewater system improvements. The League expects that KDHE will be an effective state partner in the creation of a similar program for public water supplies.

While we voice our general support for this program, it is important to note that it is necessary only because the federal government has ignored its obligations to fully fund the cost of compliance with the mandates of the federal Safe Drinking Water Act (SDWA). In August I participated in five of ten workshops held around the state in which local officials were informed of the burdensome and overwhelming cost of compliance with simply the monitoring costs of the SDWA. As cities and RWDs struggle to finance monitoring costs, major system improvements are likely in those areas in which minimum contaminant levels (MCLs) are exceeded. The capital costs in such public water supply systems are expected to be extraordinary, and some type of financial assistance appears in order.

Let's not fool ourselves, however. Not only has Congress failed to own up to its financial responsibility for the unfunded SDWA mandate, but the current proposal in Congress for a public water supply system program would be funded by slashing existing funding of the wastewater treatment program by 50%. We urge you to join us in protesting this "solution" to a problem which has been fashioned by Congress and which really requires extensive amendments to the SDWA rather than a federal shell game.

If federal funding for this program is inadequate, as we expect, the Kansas Water Authority and the legislature will be asked to dedicate State Water Plan funds or other sources of revenue to fund the program. We respectfully suggest this would be a very justifiable use of existing Water Plan funds, but we recommend that no consideration be given to increasing the current Water Plan fee fund levy in order to finance this initiative. Cities and their ratepayers already are bearing a significant cost of financing this fund (i.e., \$3 million annually). State Water Plan funding of this new program should be considered from **existing** revenues. In the alternative, funding from the State General Fund should be considered as well.

Thank you for your consideration of this proposal and our comments. Please let me know if you have any questions. We look forward to working with you in finding ways to soften the blow of the SDWA for the cities of Kansas.

House Ex NR
Sept. 14-15, 1993 #3

Testimony by
Stephen A. Hurst, Director
Kansas Water Office
before the
House Committee on Energy and Natural Resources

September 14, 1993

Re: House Bill on Revolving Loan Fund for
Public Water Supply Development

Thank you Mr. Chairman and members of the Committee: I am Stephen A. Hurst, Director of the Kansas Water Office. I appreciate the opportunity to appear before you today in support of the proposed House Bill establishing a loan fund for public water supply development.

In July of 1993, the Kansas Water Authority approved as an addition to the *Kansas Water Plan* a sub-section entitled "Ensuring the Viability of Public Water Supply Systems". This sub-section was prepared in response to a changing environment for public water supply development with increased emphasis on water quality as well as quantity concerns. The sub-section contains recommendations to accomplish the following objectives: (1) Ensure the viability of existing systems, (2) discourage the creation of nonviable new systems and (3) encourage the formation of regional public water supply systems and other forms of regional cooperation. This sub-section has received general support from a variety of interests.

A key recommendation contained in this *Kansas Water Plan* sub-section is the establishment of a revolving loan fund administered by the Kansas Department of Health and Environment for public water supply development and management which encourages regional cooperative projects. The sub-section also recommends the development of regional strategies for the state's major river basins to guide future water supply development.

The Kansas Water Office supports the proposed House Bill with amendments as a vehicle for addressing the policy recommendations contained in the State Water Plan as described above. The proposed bill should be amended to clearly recognize regional projects and solutions as a priority for funding. Also, regional solutions considered for loans should be consistent with any regional strategies developed through the *Kansas Water Plan* basin planning process. In addition, we suggest that approved water conservation plans consistent with state guidelines be required from each entity involved in regional water supply projects. Water conservation plans are currently required from participants in the Water Marketing and Water Assurance Programs.

Introduction and passage of this proposed legislation with the recommended amendments would implement a significant recommendation in the *Kansas Water Plan* addressing the long term viability of public water supplies in Kansas. The Kansas Water Office urges its favorable consideration by the committee.

Thank you for the opportunity to testify.

House E + NR
Sept. 14-15, 1993
Attachment #4

THE KANSAS CONTRACTORS ASSOCIATION, INC.



1923 - 1993

70

YEARS OF
EXCELLENCE

OFFICERS

DON POPEJOY, President
Ulysses, Kansas

MIKE WELCH, Vice President
Topeka, Kansas

ORVILLE SPRAY, JR., Treasurer
Great Bend, Kansas

STAFF

DANIEL W. RAMLOW, Executive Director
ROBERT E. TOTTEN, Public Affairs Director
JAMES S. RAMSAY, Member Services Director

316 SW 33RD ST PO BOX 5061
TOPEKA KS 66605-0061
PHONE (913) 266-4152
FAX (913) 266-6191

DIRECTORS

DICK BROWN
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Hutchinson, Kansas
BILL KLAVER, JR.
Kingman, Kansas
JOHN KOGER, JR.
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PAUL MALM
Lindsborg, Kansas
STAN SCUDDER
Newton, Kansas
JAMES K. SNOOK
Wichita, Kansas
WAYNE VAN METER
Kansas City, Missouri
ROBERT WALSHIRE
Topeka, Kansas

TESTIMONY

BY THE KANSAS CONTRACTORS ASSOCIATION

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

REGARDING

THE STATE REVOLVING LOAN FUND FOR CLEAN WATER

Mr. Chairman, and members of the House Energy and Natural Resources Committee, I want to thank you for allowing me the opportunity to appear before you this morning to address the need for a state revolving loan fund for clean water.

My name is Bob Totten. I am the Public Affairs Director for the Kansas Contractors Association. Our association represents more than 330 heavy, highway, and municipal utility contractor and associate member firms in the Kansas construction industry.

I am here today to support your efforts to establish a state revolving fund for public water supplies. Our membership believes the measure before you is one of the best methods in building adequate clean water facilities in Kansas.

In 1987, Congress established the state revolving fund program as a means for continuing clean water progress while gradually transferring the administration of the clean water program and ultimately funding of the program from the federal government to the states. To ensure that previous accomplishments would not be undermined and that progress would continue,

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a phaseout of the federal program was instituted. The phaseout called for a gradual reduction in federal grants and the establishment of state revolving loan funds to finance the program into the future.

Kansas has been on the forefront of using the revolving loan funds for waste water facilities but it has not addressed the need for a fund for clean water facilities. With the advent of more stringent EPA guidelines, many of our smaller communities are finding it more difficult to meet the new guidelines. This, coupled with a declining water infrastructure, is necessitating a need for additional funds at a low interest rate, to build new and improved clean water facilities throughout the state.

The measure before you today is our state's efforts to provide adequate funding mechanisms for constructing facilities to keep our water clean. Unlike construction grant programs, the state revolving fund will eventually be self-perpetuating. Under the present plan, local governments will be required to establish user charge systems to pay back the loans they use for water treatment facilities. The fund allows repayments to go back into the state revolving funds, providing money for future clean water needs.

This method allows a small amount of money to be used to build needed and necessary water treatment facilities so that our citizens can live better.

With new EPA standards and other improvements needed for our infrastructure, our contractor members estimate there is a need for over 50 million dollars in improved water treatment facilities in the state. I urge you to endorse both programs so that we can address our state needs in the area of water. I stand ready for any questions.

Hearings on Bill Regarding the
Condemnation of Water Rights

Professor John C. Peck
University of Kansas
School of Law

September 14, 1993

-
- I. Introduction
 - II. Background law of water rights: a summary of the law
 - III. Background law of eminent domain
 - IV. Summary of the condemnation study
 - V. My proposed act
 - VI. The proposed bill
 - VII. Conclusion
-

I. Introduction

II. Background law of water rights: a summary of the law

- A. Kansas follows the western states' prior appropriation doctrine--first in time is first in right.
- B. A person obtains a water right by applying for, and receiving, a permit from the Division of Water Resources of the State Board of Agriculture.
- C. Water rights are real property interests, akin to real estate.
- D. They are generally associated with land; in the words of the statute, they are "appurtenant to land."
- E. As such they are the subject of transfers, both voluntary and involuntary transfers--i.e., changes in ownership.
- F. Every water right, whether from streams or from groundwater, has various characteristics (priority date, type of use, place of use and point of diversion, rate of withdrawal--both instantaneous and total amount per year).
- G. Water rights, being property rights, have value, the value depending upon numerous factors (size, quality of water, quantity of water available, priority date, type of use, location in relation of other rights, type of water source (groundwater or river)), etc.).
- H. While water rights are the subject of transfers, both

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voluntary and involuntary, two other types of property relating to water should be considered in any comprehensive study of the subject at hand: water and water contracts..

III. Background law of eminent domain

- A. Two terms: Eminent domain and condemnation
- B. Basic law

IV. Summary of the Condemnation Study

A. Kansas law on condemnation

- 1. Constitution
- 2. Statutes
 - a. Condemnation procedure act (K.S.A. §§ 26-501, et seq.)
 - b. Water appropriation act (K.S.A. §§ 82a-701, et seq.)
 - c. Old irrigation statutes (Chapter 42, K.S.A.)
 - d. Water transfer act (K.S.A. §§ 82a-1501, et seq.)
 - e. Entities with statutory condemnation power
 - f. Property subject to taking
 - g. Cities in particular
- 3. A summary of the questions in the law on condemnation of water rights
 - a. What entities can take water rights?
 - b. Is there a distance limitation on such power?
 - c. If water rights are subject to taking by condemnation, whose rights can be taken and who can take them?
 - (1) For example, should cities be able to take irrigation rights, industrial rights, recreation rights, hydropower rights, or domestic rights?
 - (2) Should a city be able to take the rights of an electric power utility?
 - (3) Should a state agency be able to take a city's rights, or visa versa?
 - (4) If a city can take rights, should it matter what use the city will make of the right?

- (a) For example, does it matter that the city will use the water in part for a golf course or lawn watering, when the right that is being taken is an irrigation right?
- (b) Or, for example, should a city be able to take an industrial right, and then make it available to commercial and industrial users on the city distribution system?
- (5) What should the duties of the condemnor be in regard to its own conservation plans and practices?
- (6) Should water contracts held by cities and industries with the state of Kansas under the state water marketing program from federal reservoirs be subject to condemnation?
- (7) What showing should be necessary that the taking is for a public purpose?

B. The law of other states

V. My proposed act

- A. I concluded after making this study that we might consider a comprehensive water rights condemnation act to answer some of the lingering questions.
- B. I proposed an act that would clear up some of the questions raised in the study.
- C. I focused on cities and proposed that cities have power to condemn water rights anywhere in the state--arguably what current law now allows.
- D. I stated that my proposal was not offered as a model act, but rather as an attempt to place some of the issues on the table.
- E. I have been working over my proposed act with Kent Weatherby of Western Resources, who will be my co-author on an article on this subject in this year's Kansas Law Review. With his suggestions, which come from a different perspective, I am making numerous changes in my original proposal.

VI. The proposed bill

- A. The proposed bill is short and to the point. It would limit a political subdivision's power of condemnation to water rights within its boundaries.
- B. This bill would certainly answer one of the questions that needs to be answered--i.e., how far away can a city or other political entity go to condemn water?
- C. These entities will generally not find such rights within their boundaries, so this bill would result in requiring cities to obtain rights only by purchase. The Kansas Supreme Court stated in the 1918 Evel v. City of Utica case: " . . . water is obtained in most cities from places outside of the municipal limits . . . it is equally well known that purer and better water can be obtained some distance away from the territory occupied by the people of the city."
- D. One effect of the bill would be that water rights very near the city or other entity would immediately become much more valuable than they are now, giving the holder a potential windfall or causing the city to try to go even further away to acquire water rights.
- E. There are probably numerous other repercussions that others will mention.

VII. Conclusion

- A. This subject is complex with numerous questions that should be addressed before the need arises.
- B. It deserves detailed study on the part of the legislature--perhaps over the course of a couple of years, with a view to answering, in the legislative process, the questions about the current state of the law.
- C. The Water Authority, comprised of representatives of most of the various water interests, seems a logical group to conduct the study and to propose legislation.
- D. It took 10 years to get where we are now on water transfer legislation.
- E. I recommend not acting hastily; give yourselves time.

Testimony before the House Committee on Energy & Natural Resources
September 14, 1993
RE: Condemnation of Water Rights
By David L. Pope, Chief Engineer-Director
Division of Water Resources
Kansas State Board of Agriculture

Chairman Holmes and members of the committee, thank you for this opportunity to appear to testify concerning condemnation of water rights.

I would agree with Professor Peck that the law concerning condemnation of water rights does not appear to be clear. While it would seem logical that this area of the law should be tidied up, I am not aware of any specific major problems that have been caused by this lack of clarity.

Although the Division of Water Resources is not directly involved in condemning water rights, nor in other entities' condemnation of water rights, it is indirectly involved. The Division is involved in all cases where, as a result of the condemnation or sale of an existing water right, there will be a change in type of use, place of use, and/or point of diversion. Even if an entity, such as a municipality, condemns or purchases a water right from some other user, such as an irrigator, the city can not utilize that water right if it is necessary to change the point of diversion, the place of use, and/or the type of use without applying for and receiving the approval of the Chief Engineer. If change approvals were necessary pursuant to the Kansas Water Appropriation Act to utilize a condemned or purchased water right, the need for the water would have to be justified and conditions would be attached to the change approval to protect other existing water right holders from impairment or increased consumptive use after the change.

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Secondly, if the use of the condemned or purchased water right would involve a "water transfer", as defined in Chapter 219 of the 1993 Session Laws of Kansas as "the diversion and transportation of water in a quantity of 2,000 acre feet or more per year for beneficial use at a point of use outside the 35 mile radius from the point of diversion of such water", it would be subject to the provisions of that act. Those water rights which were condemned or purchased which would involve a "water transfer" would be analyzed to determine whether the transfer was in the best interest of the State of Kansas.

I think the committee should keep in prospective that even though a water right is condemned, generally various other approvals will also be necessary before that water right may be utilized by the new owner. For condemnation of water rights this would include approval of any changes to the right under the Kansas Water Appropriation Act and perhaps a water transfer proceeding.

For modifications to a water marketing contract, approval of the Kansas Water Authority would be necessary because those contracts do not authorize the use of the water outside the geographic limits in the contract without approval of the Water Authority.

I would specifically urge that any law that is passed expressly require that those existing statutory procedures must be complied with and particularly that the condemnation law NOT EXEMPT any condemned water right from such processes.

Obviously any decision restricting condemnation of water rights in a geographical sense is a policy one, very similar to the type of policy decision made pursuant to the Water Transfer Act. Whatever limits are set by the legislature, I would urge you to very carefully consider who you are protecting and from what.

Let's take a hypothetical situation of a small western Kansas town who currently has several small wells within its corporate boundaries. A chemical spill of some sort contaminates all of the water supply within the corporate boundaries of the municipality for several years. Assume the area around the city is fully appropriated and closed to new appropriations; consequently, the municipality must now acquire existing water rights. Obviously the smaller the town, the less resources the town has to build pipelines great distances. The more limited the physical area within which the municipality can look for water rights, the more likely it will be subjected to price gouging.

A similar situation could result if a city in an area closed to new water appropriations needs more water and it has no water supply physically located within its corporate boundaries, at all, due to natural limitations.

On the other hand, a larger municipality or regional water supply system is more likely to be able to afford to get water further away, giving it more people to bargain with concerning price and thus keeping the cost of its water supply more reasonable.

I realize that the legislature is facing a dilemma. There may be a very fine line which must be drawn between protecting people against having their water rights condemned unnecessarily versus allowing municipalities, after considering all reasonable alternatives, the right to have the necessary tools to protect their citizens from water shortages.

At this time I would be happy to answer any questions you might have. I again thank you for this opportunity to appear here today.



SIERRA CLUB

Kansas Chapter

House Committee on Energy and Natural Resources
Testimony of William Craven
Legislative Coordinator,
Kansas Sierra Club
September 14, 1993

Condemnation of Water Rights

At this point, the Sierra Club has more questions than answers on this topic, although we think it is important that the subject be thoroughly studied. The same can be said, incidentally, for many of the topics selected for review in these two days of interim hearings. It is an eclectic and interesting mixture of issues.

My statements on this very complicated subject should be considered tentative. My review of this topic has been limited, although the source I consulted, Professor John Peck's monologue, called "Condemnation of Water and Water Rights in Kansas," must be praised both for its thoroughness and its literacy. As many of you know, Professor Peck has made invaluable contributions to the scholarly literature on Kansas water law.

I appreciate the fact that he observed that many will not agree with the theory behind his proposed model act or the specific language of the proposed model act. Indeed, he himself calls it the basis for opening discussion on this issue, and in that, I concur. I guess my questions begin with this question: Why should cities be allowed to condemn water rights at all, until attempts at purchase have failed, and attempts at conservation have been proven inadequate? And the second question is related: Shouldn't any purchase—or indeed any condemnation—also have a prerequisite the requirement that the city have in place a rigorous conservation plan?

I have other questions pertaining to the proposed model act, which I freely acknowledge may be attributable to my unfamiliarity with some of these issues. First, Sec. 4(a) of the proposed act permits municipal condemnation "for any purpose other than domestic or municipal use." I'm not sure that language reflects the intent of Professor Peck, but if it does, I don't understand why cities need to condemn water if the water is not to be used for municipal uses.

Second, I wonder about the wisdom of establishing a policy set forth in Sec. 4(c) allowing cities to condemn

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water or water rights or water contracts anywhere in the state with no concern as the city's lawful boundaries. I am not suggesting that cities be permitted to condemn water only within their municipal boundaries or spheres of influence, but I do question the wisdom, for example, of Johnson County cities condemning water 80 or 120 or even 200 miles away from them.

Third, I wonder about the wisdom of allowing a municipality to condemn contract rights already held by industry. Why is the assumption valid that municipal uses are of higher importance than a given industry's?

Finally, I would hope that any new statute on this subject condition condemnation on conservation practices already in place and on even stricter conservation practices to take effect after the condemnation becomes effective. This issue was presented last year in the context of the water transfer act, and I would hope that similar mandates be built into this proposal. I use the word "mandate" advisedly, Mr. Chairman, recalling our appearance earlier this summer in Hutchinson at the field hearings on the Clean Water Act.

I would also hope that purely cosmetic and unessential uses of water obtained by condemnation be prohibited. Such prohibitions should extend to car washing, lawn watering, golf course irrigation, and similar practices. In other words, the water which is obtained by condemnation should be applied to essential public purposes and any law should state that quite clearly.

Professor Peck's paper raises many other intriguing questions, including the issues surrounding 707 (b) of the Water Appropriation Act, and I would be happy to elaborate on these other issues at the committee's convenience, should it so desire.

Thank you for an opportunity to testify on this matter.



Re: Condemnation of Water Rights

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2 - Would it be possible to create a conflict among industries? For example, if part of a municipal water supply includes water for businesses and industries located within the incorporated boundaries of the city, what advantage would those entities enjoy over the industry whose supply was being considered for condemnation?

It almost seems incongruent that municipalities would be likely to condemn water or water rights of industries given the fact that cities are highly dependent on attracting and/or maintaining a sound commercial and industrial basis for their economies, or coonversely, could this policy become one more tool that cities would use to try to "beat out the competition" in attracting industry to their door step?

3 - Another area that greatly concerns the Council is the historic lack of incentive for municipalities to practice stringent water conservation measures. Given the broad power of condemnation under the proposed act, we suggest that the same kind of mandatory conservation measures as was incorporated into the Water Transfers Act be included in any policy that would permit cities to condemn water and water rights. Noting the potential for inter-industry and inter-city competition as mentioned in #2, perhaps any additional water to be used by cities under condemnation proceedings should be limited to that for residential use only, and again only after implementation of stringent conservation measures.

4 - We are also concerned that in the "preference listing" there is no mention of water for agricultural purposes other than irrigation nor is water for wildlife purposes mentioned. For example, where in the list does water for stock-watering purposes occur or at what point could cities exercise an option to condemn water from industrial water-supply contracts and potentially draw down water storage in reservoirs which may adversely affect aquatic life or recreational purposes?

Clearly, there are a number of difficult questions and concerns that must be answered before instituting a policy that grants such broad condemnation powers to a municipality. We appreciate this opportunity to offer our comments and we hope the committee will proceed with caution before sending this proposal on for floor debate.



THE LEAGUE OF KANSAS MUNICIPALITIES

Municipal Legislative Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Energy and Natural Resources

FROM: Chris McKenzie, Executive Director

DATE: September 14, 1993

RE: Condemnation of Water, Water Rights or Water Contract Rights

Thank you for the opportunity to appear today in general opposition to the concepts embodied in the proposed legislation before the Committee restricting municipal condemnation powers in matters involving water to the corporate limits of the city.

Our reasons for opposing this measure are the following:

(1) **No Proven Need.** Before any legislation is passed there usually is a strongly enunciated statement of need. While the growing number of appropriation applications may indicate the growing potential for litigation concerning municipal condemnation of water interests, we are unaware of any instances in recent years in which cities have used or threatened to use their eminent domain powers to acquire water, water rights, and water contract rights. The mere availability of this right, however, is essential to keeping the cost of voluntary purchase of such rights as low as possible.

(2) **Water Transfer Act.** If the purpose of this proposal is to make sure a city, RWD or other water-supplying entity does not go outside its primary community of interest to secure water, this would appear unnecessary since the enactment of the Kansas Water Transfer Act in 1982 and its subsequent amendment in 1993.

(3) **Home Rule and Community Survival.** As noted by the Kansas Supreme Court in the case of Eval v. City of Utica (1918), the location of the source of water for most cities is generally outside the city limits. This is as true today as it was in 1918. Karl Muldenor, Director of the Bureau of Water Supply for KDHE, estimates that 1/2 or more cities derive their water supply from sources outside the city limits. This would primarily include cities that rely on either contract water supplies in eastern Kansas or groundwater supplies in western and elsewhere in Kansas. As demonstrated by the recent water shortage in Des Moines, Iowa, cities need considerable flexibility in planning to meet their future water supply needs. As a result, eminent domain laws should favor sound water system planning by cities.

(4) **Water Right Preferences Would Be Disturbed.** In his 1992 monograph, Condemnation of Water and Water Rights in Kansas, Professor John Peck points out that K.S.A. 82a-707 contains a listing of preferences for water uses that puts municipal use ahead of irrigation, industry, recreation and water power. While there can be reasonable debate about the meaning of these priorities, they do reflect the legislature's perception of general priorities concerning water use in the state. A strict limitation such as that proposed by the bill would significantly undermine the meaning of this preference scheme.

RECOMMENDATION: We urge you to report the proposed bill adversely. In lieu it we respectfully recommend careful consideration of the proposed legislation in Professor Jorn's Peck's monograph. In it he addressed most of the major unsettled issues in this area.

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State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

(913) 296-0461
(913) 296-8112 (FAX)

DATE: July 1, 1993

TO: Governor Joan Finney & Low Level Radioactive Waste Advisory Group

FROM: Robert C. Harder, ^{RCH} Secretary

RE: CIC Meeting, Lincoln, NE, June 28 and 29
Southeast Compact Import Committee Meeting, June 30

My thanks to all of you for the support you gave as we tried to hold Nebraska to their commitment to be the continuing host state under the Central States Compact.

I am enclosing the statements we made as we moved through the last three days. Hopefully, they are self-explanatory. If you have any questions, please give me a call.

A special thanks to Representative Holmes, Brian Moline, Pat Hurley, Harold Spiker, Bill Mondt and Charles Jones who were present in Lincoln to help in the negotiations and to give moral support

A second special thanks to Senator Sallee, Representative Holmes and Charles Jones who traveled with the Secretary to Nashville to present our minority report to the Southeast Compact Import Committee.

All of the help, support and guidance at every point was appreciated. We are hopeful the Southeast Compact will let Kansas and others continue going to Barnwell provided Nebraska assumes its appropriate responsibilities. The Southeast Compact Commission may not make a decision until August 1993.

Again, my thanks to all of you. If you have questions, please let me hear from you.

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State of Kansas
Joan Finney, Governor



Department of Health and Environment
Robert C. Harder, Secretary

POSITION OF THE STATE OF KANSAS

The State of Kansas cannot support the "Continuous Progress" report as currently worded. We recommend that the meeting with the Import Policy Committee of the Southeast Compact Commission be deferred. By deferring, we will have time to draft a blueprint for action which will advance, rather than impair, the Central Interstate Commission's goal of siting a regional facility.

Kansas fully appreciates and shares the concerns of those member states who seek continued access to Barnwell. We believe, however, that the SEC Import Policy Committee will recognize the "Continuous Progress" report for what it is: a plan which offers little hope and promises only ongoing delay and frustration.

Until recently, the CIC led the nation in its enviable progress in meeting milestones and advancing the development of a regional facility. Unfortunately, this report -- in concert with the suit over community consent, and the announced intent-to-deny -- leads us further from the path of commitment and good faith efforts which sponsored past accomplishments. If adopted by the CIC, the "Continued Progress" report, as currently drafted, has the potential to trash the years worth of effort and the \$50 million spent in Nebraska, starting the process all over again. Kansas simply cannot sanction the waste and delays which are embodied in this report.

Kansas is mindful of public concerns over health and safety, and shares the state's commitment to protecting the well-being of public health and the environment.

Kansas has been successful participant in 22 interstate compacts, and we remain fully committed to the success of the CIC. We believe that future statement of progress, which adequately addresses the concerns of all states and interested parties, can and must be drafted before entering into further discussion with the Southeast Compact Commission.

June 28, 1993

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State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

MEMORANDUM

TO: Danny Valentine
FR: Charles Jones *49*
RE: Continuous Progress Report
DA: 28 June 1993

We met with Secretary Harder and briefed him on our discussion of earlier this afternoon.

Kansas continues to insist that the following statements be included in the Contingency Plan of the Continuous Progress report:

Nebraska will continue to serve as Host State.

Should the Boyd County site prove unlicensable, Nebraska agrees to pursue alternative sites in Nebraska.

If we can overcome threshold concerns by including these statements in the report's Contingency Plan, we would be happy to meet tonight to discuss additional issues. If the statements cannot be included, we believe that the gap is too great to allow for useful discussion.

cc: Secretary Harder



Department of Health and Environment

Robert C. Harder, Secretary

STATEMENT TO THE CENTRAL INTERSTATE
LOW-LEVEL RADIOACTIVE WASTE COMMISSION

SECRETARY ROBERT C. HARDER

Kansas wishes to propose an amendment to the Contingency Plan included in the Continuous Progress Report.

There is no joy in being the outside member of a five member body. However, as I have thought through the issues facing us today, I arrive at conclusions which place me as the outside member.

The CIC Continuous Progress Report would seem to suggest progress to the Southeast, and well it should. However, the Continuous Progress Report notes a lawsuit on the question of community consent and an administrative ruling of intent-to-deny. The Continuous Progress Report notes Nebraska's desire for further clarification of Host State status, with the implication that the Host State designation would be subject to redetermination, with the clock starting over. This means the losing of six years of activity and at least the expenditure of over \$50 million. The Timeline for the Contingency Plan proposes a time span of seven and one-half years. Conservatively, we are looking at thirteen and one-half years to become operational and untold millions of dollars in expenditures.

For myself, as a person involved in state government for over thirty years, my desire has always been to see government work. The citizenry has reached a point where they are nearly convinced that government can't work and can't do problem solving. Let's not confirm citizen cynicism.

Compacts are mechanisms the states use to solve problems which cross state lines. The states have the obligation to make these compacts work. Today, we are at a testing point and a determination as to whether we can make this work. The Compact will work only if each state takes seriously the provision in the Compact law which states:

"Each party state has the right to rely on the good faith performance of each other party state."

The CIC is concerned and will continue to be concerned about the well-being of all citizens within the states. That concern is best expressed by moving ahead with a single site in the Host State, and by avoiding multiple sites within the five states.

Through this day we have heard information regarding financial liability which may fall on the Compact and its member states. Recently, there has been discussion in California about not continuing with a disposal site. It is my understanding that the major generators in California became concerned about the abandonment or delay of a site, and indicated to the State of California the prospect of recovering monetary damages for past inactivity as well as the future costs incurred by the companies as a result of lack of disposal capacity. Those liability issues need to be further explored and resolved in relation to the developments within the CIC.

During the 1993 Legislative Session, one part of the KDHE legislative program was to secure the amendments to the Compact language which had been insisted upon by Nebraska and adopted by the other three states. This was legislation which had failed to be passed in the two previous sessions.

As I appeared before the legislative committees, the constant question because of the nature of the material in the amendments was: Is Nebraska operating in good faith? As the discussion related to the Continuous Progress Report has continued, I find myself less sure of the answer I gave during the Legislative Session when I said that Nebraska was indeed acting in good faith and that the amendments were appropriate.

I reported to our Governor and the Legislature that Nebraska is the Host State for a period of 30 years or until a facility has 2.5 million cubic feet of low-level waste. I cannot agree to any other position than this without full review by the Governor and Legislature.

The way in which the CIC can show progress and move ahead to revolve pressing issues is through adoption of the following two amendments as a part of the Contingency Plan:

1. Nebraska remains the Host State; and
2. If the current site is deemed unacceptable for any reason, Nebraska remains the Host State and responsible for securing or providing a licensable site.

June 29 1993

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

STATEMENT TO THE IMPORT POLICY COMMITTEE
SOUTHEAST COMPACT COMMISSION

SECRETARY ROBERT C. HARDER

Kansas comes before the Import Policy Committee with a dual purpose in mind. We come to voice our protest against the "Continuous Progress Report" as presented by the Central Interstate Compact Commission. At the same time, we come to join our fellow states in urging the SEC to grant continued access to the Barnwell disposal facility through July 1, 1994.

The State of Kansas cannot support the "Continuous Progress Report" as currently worded. We believe that the report -- particularly the Contingency Plan -- contains elements which put years worth of effort and more than \$50 million at even greater risk than they currently face. In our opinion, the report advances questions about Host State status which, in combination with other troubling issues, simply adds to those problems first noted by this Committee as it considered CIC progress in light of the suit over community consent and the announced intent-to-deny. Kansas simply cannot sanction this report or any other impediment to completing the CIC goal of developing regional disposal capacity.

Nonetheless, we sincerely hope that the Import Policy Committee will reconsider the decision to cut off CIC access to Barnwell. Until recently, the CIC led the nation with its enviable progress in meeting milestones and advancing development of regional disposal capacity. In spite of these recent setbacks, we believe that the CIC has moved ahead in a manner which rivals many of those states and compacts which continue to enjoy access to Barnwell. While Kansas has made provisions to manage its low-level waste without the interim access to Barnwell, it is our understanding that some of the other member states face dire shortages of storage capacity which may adversely impact their ability to provide certain medical therapies and to complete important research projects. We submit to you that the Compact's efforts have been sincere and most aggressive, and that punishing the entire Compact for the recalcitrance of one state is neither equitable nor likely to accomplish anything more than furthering erosion of the CIC and frustrating the development of regional capacity.

Kansas recognizes that our appearance here today raises a bit of a conundrum for the Import Policy Committee: how can you support the reestablishment of access, when one of the member states is challenging its own Compact's claims of diligent pursuit of progress?

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In response, Kansas offers two suggestions which might, if acted upon by the Import Policy Committee both help put the CIC back on track and allow for continued access to Barnwell.

Kansas recommends that the SCC make access to Barnwell dependent upon inclusion of the following statements in the Contingency Plan of the "Continuous Progress" Report:

1. Nebraska remains the Host State; and
2. If the current site is deemed unacceptable for any reason, Nebraska remains the Host State and responsible for securing or providing a licensable site within that State.

If the member states of the CIC pursue inclusion of those statements in good faith and find themselves simply unable to secure the cooperation of Nebraska, Kansas would recommend that the other four CIC states, either jointly or independently, be allowed to seek access to Barnwell.

Kansas greatly appreciates being allowed to appear before the Import Policy Committee to express its concerns and present its recommendations.

June 30, 1993

KANSAS POSITION STATEMENT ON DRAFT #6

Kansas has developed the following position statement on Draft #6. The Kansas position was developed in consultation with representatives from the State Legislature, the Attorney General's Office, Major and Minor Generators, the State Corporation Commission, KDHE, and the academic community. There was no dissent in support for the Kansas position.

Kansas does not support Draft #6, especially its Contingency Plan, for the following reasons:

1. it does not reaffirm Nebraska's Host State responsibilities;
2. it contains elements which may cause undue delays by requiring legislative action in Nebraska or among the Compact States;
3. it provides opportunities to establish technical and community consent requirements which exceed existing state laws and rules and regulations approved by the CIC; and
4. it allows for selection of a new developer, putting the \$45 million investment in the proposed project at great risk.

Kansas would support a position statement adopted by the CIC for the purpose of regaining access to Barnwell containing the following elements:

1. Nebraska affirms its responsibilities unequivocally as Host State, consistent with Article V of the CIC;
2. Candidate and Potential Sites are to be located in Nebraska;
3. Nebraska's DEQ and DOH shall
 - a. enter productive discussions with the applicant to resolve issues associated with the Intent-to-Deny,
 - b. base site license decisions solely on the issues of health, safety and site suitability, and
 - c. suggest actions which correct any deficiencies which may be used to deny licensure;
4. Nebraska commits to exercise prudent regulatory cost control by limiting reviews to threshold issues until the Intent-to-Deny matter is resolved;
5. Major Generators commit to continue funding the prelicensing costs of the Butte-site facility;
6. In the event the Butte site proves unlicensable,
 - a. provisions of Article V of the CIC shall determine the process for selection of an alternate site,
 - b. all parties would proceed in good faith to facilitate and expedite the siting process, and
 - c. to the maximum extent feasible, development of an alternate site would be built upon developed plans and work products and the already expended financial investment.

Kansas will offer this proposal at the June 28-29 meeting of the CIC and may voice its concerns in other appropriate forums.



Department of Health and Environment

Robert C. Harder, Secretary

Testimony Presented to

House Energy and Natural Resources Committee

By

Kansas Department of Health and Environment

Disposition of County Tipping Fees

KDHE stands in support of this bill, which would ensure that tipping fees collected for facility closure costs will be used solely for that purpose. House Bill 2801, passed by the 1992 Legislature, directed the Secretary to require a trust fund, surety bond, cash bond, secured trust fund, irrevocable letter of credit or insurance to pay costs of closure and postclosure cleanup. In lieu of such funding approaches, House Bill 2801 provided for a financial test to meet financial assurance requirements. Ad valorem taxing authority was determined to be a sufficient demonstration of financial assurance.

As part of the permitting process, applicants are required to project their closure costs. There is, however, no requirement to actually collect closure costs during the active life of a facility. At this point it appears that few publicly-owned landfills will collect closure funds on a pay-as-you-go basis. KDHE has encouraged, in the strongest terms possible, the inclusion of closure funding in tipping fees assessed to facility users. The bill before you today will help ensure that monies collected for the purpose of facility closure are not diverted to some unrelated use in the future.

While the management and use of county-collected funds generally lies well beyond the purview of KDHE, we feel compelled to voice our support for this bill. Too often, when funding availability fails, cleaning up environmental problems falls upon the State. As the agency responsible for parcelling out inadequate remedial dollars, we strongly support the idea of early collection and dedication of county tipping fees to be used for site closure.

I'd be happy to answer any questions you might have.

Testimony presented by: Charles F. Jones
Director, Division of Environment
September 14, 1993



SIERRA CLUB

Kansas Chapter

House Committee on Energy and Natural Resources
Testimony of William Craven
Legislative Coordinator,
Kansas Sierra Club
September 14, 1993

Tipping Fees Used for Closure and Post-Closure of Landfills

With the understanding stated in the bill in Sec. 1 (b) that such tipping fees are "in addition to any other fee provided by law," the Sierra Club has no opposition to this proposal.

Mr. Chairman, I don't think I used all my allotted time, but that is all I have to say on this proposal.

Thank you for providing this opportunity to testify.

House ENR
Sept. 14-15, 1993
Attachment # 13

**TESTIMONY
OF
WHITNEY B. DAMRON
OF
PETE MCGILL & ASSOCIATES
ON BEHALF OF
WMX TECHNOLOGIES, INC.
PRESENTED BEFORE
THE HOUSE
ENERGY & NATURAL RESOURCES
COMMITTEE**

September 14 ,1993

RE: Bill Draft No. 3 RS 1376

*House E & NR
Sept 14-15-1993
Attachment #14*

Good afternoon Chairman Holmes and members of the House Committee on Energy & Natural Resources. My name is Whitney Damron of Pete McGill & Associates appearing before you today on behalf of WMX Technologies, Inc., formerly known as Waste Management, Inc., to address a few comments on Bill Draft No. 3 RS 1376 dealing with tipping fees for closure and post closure costs of a solid waste disposal facility. With me today is Keith Jackson, Director of Government Affairs for Waste Management of North America - Midwest, and Frasier Russell of Wheelabrator Technologies, Inc., a majority-owned subsidiary of WMX Technologies, Inc.

After visiting with Chairman Holmes, it is our understanding that this bill draft was introduced at the request of a county commissioner and intended to apply only to municipally owned and operated solid waste disposal facilities. Our facilities are already required to meet bonding and financial responsibility requirements and would not require additional tipping fees to ensure proper closure.

In order to clarify the bill to reflect its original intent, we would suggest Bill Draft No. 3 RS 1376 be amended to read on Page One, Line 9 as follows:

publicly owned and operated solid waste disposal area located in such county.

We believe this, or similar language would better reflect the original intent of Bill Draft No. 3 RS 1376. We would be happy to stand for any questions.

COMPACT SITUATION

SENATE BILL 1206

(PASSED BY 1993 TEXAS LEGISLATURE AND
SIGNED BY GOVERNOR ON JUNE 11, 1994)

- NAMES THREE STATES AS MEMBERS OF
TEXAS COMPACT - - TEXAS, MAINE, & VERMONT
- CREATES A COMPACT COMMISSION^(NOT A STATE AGENCY) COMPOSED
OF SIX MEMBERS FROM TEXAS AND ONE EACH
FROM MAINE AND VERMONT

TX-voting power
Meetings held in Austin

Texas Low-Level Radioactive Waste Disposal Authority

House Ex NR
Sept. 14-15, 1993
Attachment #15

COMPACT SITUATION

SENATE BILL 1206 CONTINUED

- ALLOWS COMPACT COMMISSION TO APPROVE IMPORTATION OF ADDITIONAL WASTE INTO TEXAS UNDER CERTAIN CONDITIONS*
- PROVIDES THAT THE HOST STATE (TEXAS) WILL HAVE FULL CONTROL OVER THE SITE
- REQUIRES MAINE AND VERMONT EACH TO CONTRIBUTE \$25 MILLION TO TEXAS FOR ^{1/2 due first} THE PRIVILEGE OF USING THE SITE
Money, once paid, will not be refunded.

*50-yr period estimate of waste to be disposed of in TX
Maine & VT not to exceed 20% of figure (together)*



Not to exceed 27,000 cu ft in any given yr.

Texas Low-Level Radioactive Waste Disposal Authority

COMPACT SITUATION

SENATE BILL 1206 CONTINUED

- REQUIRES MAINE AND VERMONT EACH TO CONTRIBUTE \$2.5 MILLION TO THE HOST COUNTY (HUDSPETH) FOR COMMUNITY ASSISTANCE
- CONTAINS PROVISIONS FOR ENFORCEMENT, TERMINATION, AND WITHDRAWAL

* Compact Commission has authority to accept add'l waste from another state so long as caps are not exceeded.

Texas Low-Level Radioactive Waste Disposal Authority

COMPACT SITUATION

STATUS

ADOPTED BY MAINE LEGISLATURE

*Referendum in November
(Statewide; binding)*

VERMONT GOVERNOR EXPECTED
TO SIGN EXECUTIVE ORDER *(NOT EXPECTED)*

*Legislature not in session
until Jan '94.*

APPROVAL BY CONGRESS AS
EARLY AS DECEMBER, 1993

*NOT LIKELY
PROBABLY NEXT SPRING*

Texas Low-Level Radioactive Waste Disposal Authority

FROM 018 544 1886

P 1



Texas Low-Level Radioactive Waste Disposal Authority

The Texas Low-Level Radioactive Waste Disposal Authority was created by the Texas Legislature in 1981 in response to the directive of the federal Low-Level Radioactive Waste Policy Act of 1980 that each state be responsible for the disposal of its low-level radioactive waste. The Authority was commissioned by Texas law to select, prepare, construct, operate, maintain, decommission, close and finance a disposal site for low-level waste produced in Texas.

By late 1984, the Authority had completed an extensive statewide screening of possible disposal areas and had identified certain regions that were more suitable than others. Excellent potential sites were identified in several regions, including south Texas, far west Texas and northwest Texas.

In 1985, Congress, dissatisfied with the slow pace of development of new low-level waste sites, passed the Low-Level Radioactive Waste Policy Amendments Act. The Act set out a series of milestones that states must meet to provide new facilities, and specified a final date of January 1, 1996, by when new facilities must be completed. To the present, the State has complied with such milestones.

In 1985, the Texas Legislature amended the Authority's statute to require, among other things, that the Authority give preference to the location of a disposal facility on land already owned by the State. These amendments directed the siting search to far west Texas where virtually all the favorable state-owned lands are located. A detailed study of the state lands revealed that the most preferable tracts were located in Hudspeth County, which has a population of approximately 2,500 people.

Having identified these preferred areas, the Authority selected two sites for further analysis. In early 1987, the Authority was prepared to designate one site located 11 miles northeast of Fort Hancock as the potential disposal site. However, the County of El Paso, located to the west of Hudspeth County, secured a temporary injunction against further siting efforts in Hudspeth County. The injunction was overturned by the El Paso Court of Appeals and El Paso County's application for writ of error was denied by the Texas Supreme Court in January 1988.

In mid-1988, the Authority opened a local office in Hudspeth County to inform local citizens of the Authority's activities and to coordinate the technical studies underway. These studies, approved by the Authority's Board of Directors at a cost of around \$1.8 million were largely complete. They addressed in detail the hydrology, geology, meteorology, topography, archaeology and other technical aspects of the proposed Fort Hancock site and surrounding areas.

EXHIBIT C

FROM 915 844 1006

P 1

Based on 18 months of detailed technical work in Hudspeth County, the Authority in May 1990 identified the Fort Hancock site as the preferred disposal site. El Paso County, Hudspeth County and other plaintiffs continued to pursue litigation against the Authority to prevent the location of the site at Fort Hancock. Trial on the plaintiffs' petition was held in September 1990. In January 1991, the court held in favor of the plaintiffs and prohibited further work on the Fort Hancock site. The Authority appealed the decision.

On March 15, 1991, Governor Ann Richards urged the Authority to abandon the Fort Hancock site and seek an alternate site within Hudspeth County. The Authority's Board of Directors responded by authorizing the staff on April 2, 1991, to begin an alternate site search. The Board additionally noted that the alternate site search would require additional expenditures of state funds and would result in the Authority's missing critical federal deadlines.

In May 1991 the Texas Legislature defined a 400 square mile area within Hudspeth County for an alternate site search. This provided the Authority with site access and eminent domain powers and required priority review of the license application by the Texas Department of Health. The former site located at Fort Hancock was not included in the new siting area and is not eligible for further consideration.

At the Authority's request, its appeal of the Fort Hancock lawsuit was dismissed on July 9, 1991. The appeal to the lower court's decision was no longer necessary due to the fact that the site selection area had been redefined.

By August of 1991 a tract of land had been designated as the proposed disposal area. This 16,000-acre tract, known as the Pasken Ranch, is located approximately 80 miles east of the El Paso city limits, near the town of Sierra Blanca in the Chihuahuan Desert. Initial site characterization began in November 1991.

In February 1992 the Authority's Board approved the purchase of the Pasken Ranch, as well as the filing of an application to operate the disposal facility. The Authority filed the license application in March and officially purchased the property in June of that year.

Currently, site characterization continues on 1,800 acres of the property. This process is expected to be completed by the end of summer 1993. The site is currently scheduled to open by July 1, 1996.

FACILITY DESCRIPTION

1,000 ACRES TOTAL

200 ACRES DISPOSAL

BELOW GRADE

CONCRETE CANISTERS FILLED WITH GROUT

SEGREGATED DISPOSAL UNITS

60,000 - 100,000 CU. FT. / YR. CAPACITY

FACILITY COST - - \$ 20 MILLION

Texas Low-Level Radioactive Waste Disposal Authority

TELECOPY

FROM

THE

US ECOLOGY, INC.

LINCOLN OFFICE

Gold's Galleria

1033 "O" Street, Suite 416

Lincoln, NE 68508

(402) 476-8049

FAX (402) 476-8059

TELECOPY TO (PERSON): WARREN WOODTELECOPY FROM (PERSON): J. NEAL

DATE SENT: _____ TIME SENT: _____ est

NUMBER OF PAGES: _____ (excluding this page) 4

OPERATOR: _____

NOTE: PLEASE DISTRIBUTE TO: Warren - 2 stories
show how extreme conditions
have been in Boyd Co. the third
explains how the site has
performed during that time
The fourth shows how "apple-dog"
water worries site opponents.

LIN COLA PM
7/15/93

STATE/LOCAL

Rains said no problem at waste site

US Ecology project manager says
water is accumulating as expected

ASSOCIATED PRESS

A developer says the rains that have pounded Boyd County have not caused problems on the site where a five-state compact wants to build a storage facility for low-level radioactive waste.

John DeOld, project manager for US Ecology, said Wednesday that while a lot of water has accumulated on portions of the site, "it is accumulating where we expect it to."

The spot where the storage area would be located has experienced no problems, he said.

US Ecology is developing the site for the Central Interstate Low-Level Radioactive Waste Compact.

The state has indicated it will not license the site because it is on wetlands where ponding might be a problem.

"The important thing we're keeping track of is that the ground water is not breaching the surface, particularly in the southern part of the site, which is where we would have our disposal cells" for nuclear waste, DeOld said. "The site is doing very well."

"We have measured approximately 5 inches of rain in a 72-hour period, but we have designed the site to safely accommodate 30 inches of rain in a 24-hour period," he said.

Nuclear waste in steel containers

would be stored in a building that would have a concrete floor 4 feet thick, with walls and ceilings up to 4 inches thick, he said.

"The floor of these cells, under the worst imaginable, conceivable flood would still be 3 or 4 feet ... above the highest possible flooding situation," DeOld said.

When construction and earth work are completed "there will be no chance of any flooding or ponding on the site that we would actually use for the facility," he said.

"US Ecology remains confident that the facility is performing as designed with all of the rain accumulated in recent weeks," he said.

DeOld noted opponents of the site

previously accused US Ecology of evaluating the site during a drought period.

"Now we have one of the wettest periods on record, and we are continuing to get data from the site, and it continues to show it will function safely, as designed," he said.

Gov. Ben Nelson has filed an action in federal court that could block construction of the facility in Boyd County because of disagreements over whether contractually required "community consent" had been acquired in the area.

States in the compact include Nebraska, Oklahoma, Kansas, Arkansas and Louisiana.

NOFOLK 7/15/93

Heavy rain sends creek into Lynch

OMAHA, Neb. (AP) Residents of Lynch in northern Nebraska were cleaning up Wednesday after heavy rain sent Ponca Creek through as many as 20 houses in the tiny community.

"I'm in the middle of my house and I'm standing in mud up to my knees," Lynch Village Board Chairman Larry Halstead said.

"All I can see is mud," he said from Lynch.

No one in the area has seen such flooding in 30 years, Halstead said. There also were reports of county road and bridge damage along the creek.

Halstead said the creek rose rapidly Tuesday afternoon and the water flowed into 14-20 homes in the Boyd County community of 300. He said many residents spent a good part of the night sandbagging to keep floodwaters away from the town's hospital.

Earl Moody, administrator of the Niobrara Valley Hospital in Lynch, said sandbags were obtained from

the state highway department and from Verdigré. They were placed around the south and west side of the hospital by volunteers who came from all over.

The water came close to one corner of the hospital property but never entered the hospital.

Moody said a dike that protects the community washed out on the creek.

The Ponca Creek stage at Verdel in neighboring Knox County early Wednesday was 19.9 feet and rising, more than four feet over the record set in March 1960.

Near Verdel, the creek was over a county road, some farm driveways and many fields.

The threat of heavy storms eased, but flooding problems continued in many parts of the state.

In southeast Nebraska, the Big Blue River was out of its banks near Crete, with minor lowland flooding reported.

High water closed Nebraska Highway 51 east of Bancroft in

Northeast Nebraska.

The Dodge County Sheriff's office said U.S. Highway 77 was closed by flooding on Maple Creek about seven miles north of Fremont in eastern Nebraska.

But Nebraska 92 and U.S. 77 in Saunders County were open Wednesday after floodwaters receded there.

A stubborn frontal boundary that has brought storms to Nebraska for more than two weeks sagged south into Kansas Wednesday, easing the threat of storms in the Cornhusker state.

Heavy thunderstorms swept Nebraska again Tuesday night.

A flash flood warning was issued for Omaha and surrounding counties Tuesday night when storms dumping from 3 to 4 inches of rain pushed east from Nuckolls County to Saunders, Seward and Lancaster counties.

Street flooding was reported in Grand Island Tuesday after the Wood River flooded.

Lincoln PM
7/14/93

28 STATE/LOCAL

Downpour today prompts new warning

Boyd County flooding Tuesday reported worst in many years

BY JOURNAL WRITERS
and Associated Press

Most creeks and rivers in southeast and central Nebraska slid back into their banks today, a day after heavy rains triggered a new round of sporadic flooding. But areas of heavy rain from Lincoln to near Plattsmouth late this morning prompted yet another caution from the National Weather Service.

Water was reported ankle deep in some parts of north Lincoln late this morning.

The worst situation overnight apparently was in far north Nebraska, where the National Weather Service reported the "worst flooding in many years" along Ponca Creek in Boyd County.

At least eight homes were flooded in Lynch with many more having flooded basements, the weather service said.

Nearby Bristow also had some flooded homes.

The creek was back within its banks at both towns by midday today, the weather service said.

Isolated cases of lowland flooding continued today along the Big Blue River in Crete, Turkey Creek in Wilber and Wahoo Creek in Ithaca, according to the weather service.

Tuesday's rain pushed Sand Creek out of its banks near Wahoo and tem-

porarily closed U.S. 77 north of the city. The highway reopened early this morning.

Evening storms, which in less than half an hour dumped as much as 3 to 4 inches of rain in some areas, pushed northeast from Nuckolls County to Seward, Lancaster and Saunders counties.

The runoff from the rain temporarily blocked low spots on U.S. 34 east of Seward and other county roads, said Dave Wood, Seward County deputy sheriff.

Meanwhile, volunteers in Plattsmouth filled sandbags to protect the city's water treatment plant and water supply from potential flooding.

"It was just a precaution," said Cass County Sheriff Bill Brueggemann.

The city's water plant is within a mile of where the Platte empties into the Missouri River.

A rain-swelled Pawnee Lake west of Lincoln dumped excess water into campgrounds on its north side, according to a Lancaster County sheriff's deputy.

Parts of the campground are

closed.

Isolated heavy rains swelled the Big Blue River basin north of Crete, creating lowland flooding. The river was expected to crest this morning at 21.5 feet, 3.5 feet above flood stage, the weather service said.

Earlier Tuesday, a round of thunderstorms dumped 2 to more than 4 inches of rain south of Grand Island and 4.25 inches south of Shelton.

More than 3 inches of rain fell at Wood River, sending Wood River out of its banks. Some street flooding was reported in Grand Island and Wood River.

Volunteers packed 10,000 sandbags and stacked them on the banks of Wood River at the south edge of Grand Island Tuesday evening in an effort to keep the water out of streets and homes there.

Meanwhile, Missouri officials are hoping that Nebraskans will help repair the Missouri River bridge near Rulo.

The bridge is still structurally safe but the Missouri end of the structure is washing away and threatening to take U.S. 159 with it.

"The bridge is still there, and so is the concrete at the east end," said Steve Knobbe, Missouri Highway maintenance and traffic engineer. "The dirt fill that leads to the bridge is washing out. We are in danger of losing the whole road."

The U.S. 159 crossing from Missouri's Holt County into Nebraska has been closed for several days because of flooding.

Knobbe said he plans to meet with Nebraska highway authorities today to see if that state will help pay toward the costs of getting the bridge back into service.

Gov. Ben Nelson today declined to say whether Nebraska would help "until we have an opportunity to discuss it with them."

Rainfall totals for the 24 hours ending at 7 a.m. today included:

Lincoln airport.....	0.28	Fremont.....	0.2
Alexandria.....	0.55	Friend.....	0.72
Ashland.....	1.25	Garland.....	1.21
Auburn.....	0.5	Hebron.....	0.72
Beatrice.....	1	Herman.....	2.25
Bernington.....	0.37	Hickman.....	0.15
Blair.....	0.07	Hubbard.....	1.35
Brock.....	1.05	Humboldt.....	1.54
Brownville.....	0.5	Irwin.....	1.25
Burns.....	0.45	Keokuk.....	1.15
Burchard.....	0.52	Lebanon.....	2.55
Columbus.....	2.35	Rock.....	0.04
Crab Orchard.....	1.3	Table Rock.....	1.94
Dier.....	2.77	Union.....	0.83
Farber.....	0.3	Vesperaio.....	0.22
Farmington.....	1.24	Virginia.....	0.9
Fitch.....	0.7	Weston.....	1.07

OMAHA 8/31/93

US Ecology Redraws Site In Boyd to Miss Wetlands

BY PAUL HAMMEL
WORLD-HERALD BUREAU

Lincoln — US Ecology submitted its downsized plan Monday for a low-level radioactive waste repository in Boyd County in hopes of alleviating environmental concerns about wetlands.

The new plan would reduce the site from 320 acres to 110 acres. It also calls for moving the concrete-reinforced waste cells to avoid 42.6 acres of wetlands within the original boundaries.

In January, two state agencies said they planned to reject the location because of wetlands and poor drainage on the site. A hearing on the agencies' intent to deny use of the site will be held in October in Valentine.

"We hope that this will provide the two state agencies with the information to moot the intent to deny," said US Ecology spokesman Jim Neal in Lincoln.

Randy Wood, director of the Nebras-

ka Department of Environmental Quality, has previously indicated that he would move to cancel the hearing if US Ecology redrew its site to exclude wetlands. Wood did not return messages Monday.

Wood and State Health Director Mark Horton would have to agree that the site satisfies the wetlands question in order to cancel the procedure.

Neal said the redrawn site does not eliminate all questions about wetlands, but it would allow the debate to focus on whether the hydrology of the site would have an impact on health and safety.

Two attorneys representing groups fighting the project denounced the revised plan.

"It's sleight-of-hand and changes nothing about the environmental impact of a very, very dangerous facility," said Bob Eye, a Lawrence, Kan., attorney.

Please turn to Page 15, Col. 2

US Ecology Redraws Plan For Waste Site

Continued from Page 9

who represents Save Boyd County, a group opposed to the facility.

Pat Knapp of Lincoln, attorney for the Boyd County Monitoring Committee, said the committee is not convinced the new, smaller site is devoid of wetlands. She said the committee's wetland consultant visited the site last week and found ankle-deep water and floating water lilies where the waste cells would be located.

Neal said opponents were looking for anything "muddy and wet" to derail the project.

"Standing water is standing water," he said. "That doesn't make it a wetland. If it did, the Gold's Galleria parking lot would be a wetland." US Ecology's Lincoln office is in Gold's Galleria, a downtown Lincoln office building.

Revising the project would cost about \$15 million more and delay the project about two years, according to US Ecology estimates. It would cost \$140 million and not open until late 1997 or 1998 under those estimates.

Some savings would be realized, Neal said. The new site requires only one soil and concrete closure cap atop the waste cells and only one holding pond for storm runoff (three each were in the original plans) and less fencing.

Gov. Nelson, during the 1990 gubernatorial campaign, had said he thought it was unlikely that a facility would be built in Boyd County or Nebraska, if he was elected.

During an interview last week, Nelson acknowledged that the statement was made during a campaign and that he gained more knowledge about the wetlands issue after he became governor.

Nelson said he withdrew his plans to place a moratorium on the project after learning that US Ecology was addressing the wetlands issue.

"What I do know what is likely is that the process is moving forward and there has been some improvement in the area of the compact," Nelson said. "Additionally, the relationship between the generators and the Governor's Office has improved."

The governor said other water issues need to be addressed at the Boyd County site besides the existence of wetlands.



Department of Health and Environment

Robert C. Harder, Secretary

Testimony Presented to House Energy and Natural Resources Committee

By

Kansas Department of Health and Environment

Prohibition on the Disposal of Municipal Incinerator Ash

This matter arises out of a proposal, brought before KDHE by an existing in-state industry, which would import municipal incinerator ash via train, convert the ash into a slurry, then inject the slurry into a salt mine for final disposal. There are technical questions which KDHE must and will consider. Our immediate concern is more in the area of policy. At present, there are no municipal solid waste incinerators operating in Kansas. Given the legislature's expressed concern about importation of out-of-state waste, we think it would be worthwhile to consider the threshold question about the appropriateness of such an operation in Kansas.

In framing the state's policy on this issue, there are several side issues which should be kept in mind.

While there are no Kansas MSW incinerators, two commercial medical waste incinerators and three wastewater treatment sludge incinerators currently operate in the state. Additionally, some Kansas counties are exploring the feasibility of solid waste incineration. We assume there is no intent to impact these in-state operations. We suggest that the legislative language be tailored carefully to reflect that intent.

The future holds many preferred and innovative ways to manage solid waste. One of those innovative technologies applies waste-to-energy systems, whereby waste is incinerated and the heat used for productive purposes. We need to be sure to not discourage the development and application of innovative technologies as we seek to address this bill.

In June of this year, the United States Supreme Court agreed to hear a case concerning the possible designation of solid waste incinerator ash as a hazardous waste. Because incineration does not reduce things beyond their elemental

H.B. on Disposal of Municipal Incinerator Ash
Page 2

state, metals tend to concentrate in incinerator ash. Should it be determined that incinerator ash is a hazardous waste, it would be subject to the more stringent management and disposal regulations contained in RCRA.

As with all importation matters, the bill before you today must take into consideration the constitutional issues involved in restrictions on interstate commerce.

Having set out the central issue and side matters, KDHE looks to the legislature for guidance. We will be happy to try to answer any questions you might have.

Testimony presented by: Charles F. Jones
Director, Division of Environment
September 14, 1993



SIERRA CLUB

Kansas Chapter

House Committee on Energy and Natural Resources
Testimony of William Craven
Legislative Coordinator,
Kansas Sierra Club
September 14, 1993

Burial of Municipal Incinerator Waste

Thank you, Mr. Chairman, for providing an opportunity to testify on this proposal. I should state that I didn't have a copy of the measure when I prepared this testimony, but my understanding is that it prohibits the burial of out-of-state municipal incinerator waste in Kansas. Assuming that to be true, the Sierra Club strongly endorses that prohibition.

The plain and simple fact is that incineration makes the toxic substances which are incinerated more mobile in the environment. Such typical household wastes as batteries, to cite only one example, contain metals which when incinerated are transformed into their most soluble form. Therefore, these metals are highly leachable over the course of time. The only way to control the "leachability" (and that may not be a real word) of these metals is to control the pH, or acidity of them. But the inherent contradiction of incineration is that some metals leach at a high pH and some leach at a low pH. There are many other household waste products with the same characteristics.

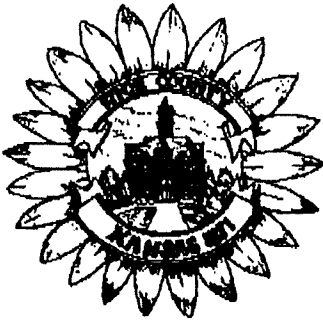
Two kinds of ash are created during incineration. There is fly ash, which by weight is the smaller portion, but which by toxicity, is much more dangerous than the other kind of ash, called bottom ash. Fly ash is much more dangerous because it has a higher ratio of toxics and metals. In most instances, bottom ash is not toxic.

The problem, however, is that the incinerator industry, on a nationwide basis, routinely mixes fly ash and bottom ash, and calls it "combined ash." My understanding is that various incinerator operators are frantically looking for a disposal site for this combined ash.

House E+NR
Sept. 14-15, 1993
Attachment #17

environmentally sound that shipping this material hundreds of miles across the country, which standing alone, is foolish. The simple truth is that leaching is inevitable, even if the process takes hundreds of years.

The Sierra Club strongly endorses the ban you are considering.

BOARD OF
COMMISSIONERSCOURTHOUSE
(316) 257-2232
or
(316) 257-3039

Rice County

LYONS, KANSAS 67554

September 13, 1993

Peter Powell
Steve Kadel
Lyons Salt Company
RR 2
Lyons, Kansas 67554

Gentlemen:

Please consider this letter as our response to your presentation concerning the backfill project at the Lyons Salt Company. We feel that it is a very innovative idea. We understand the project could also result in significant economic impact for Rice County when you open new market opportunities for your salt products.

Since we are always sensitive to environmental concerns, we appreciate your commitment to this project being based upon a decision by the Supreme Court that this material will be declared non-hazardous.

Based upon the facts presented and the information given to us that all environmental concerns will be addressed, we would enthusiastically support this project.

Sincerely,

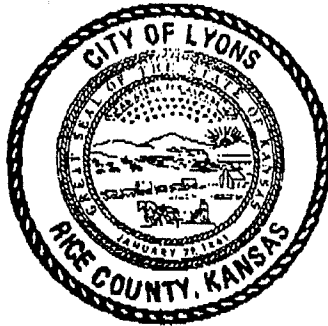
Mary Bolton, Chairman

Bill Oswalt, Commissioner

Frank Dill, Commissioner

MB:na

House ExNR
Sept. 14-15, 1993
Attachment 18



City of Lyons

P.O. Box 808 • 217 East Avenue South
LYONS, KANSAS 67554
(316) 257-2320
FAX (316) 257-3743

RECEIVED
SEP 10 1993
Ans'd.....

September 7, 1993

MAYOR
Charles Nichols
(316) 257-2324

Mr. Steve Kadel
LYONS SALT CO.
American Road
Lyons, KS 67554

CITY ADMINISTRATOR
Dewey Breese
(316) 257-3741

Dear Mr. Kadel:

CITY CLERK
Norma Miller
(316) 257-2320

CHIEF OF POLICE
Dennis Luck
(316) 257-2355

CITY ATTORNEY
Firman Gladow
(316) 257-5134

CITY TREASURER
Joyce Hannah
(316) 257-2831

The governing body of the City of Lyons, Kansas has been asked to give its preliminary approval of a concept whereby the residue from the incineration of municipal waste would be used in conjunction with other materials to form a concrete-like material to be placed in the Lyons Salt Co. mine near Lyons, Kansas. It is our understanding that the material would set up, or harden, and form a support structure for mined-out cavities and would also assist in air circulation for your present ongoing mine operations.

Presently, the site on which Lyons Salt Company office and above-ground facilities are located is in an area zoned heavy industrial, or I-1. It is our belief that areas under which much of the mined-out area is located are zoned A-1, or agricultural. It would appear that handling and processing of the material in the industrial area would be consistent with the zoning regulations for that zone. It would also appear that storage of the material in an A-1 area below ground would be consistent with the A-1 zoning classification.

The governing body takes the position that if the material to be brought to Lyons, Kansas is non-hazardous, is environmentally safe, is handled in an environmentally safe manner, is approved by the State Department of Health and Environment, (including shipping, handling and placement), and the material, or the use of the same, would create no hazard to the people in the area or environment, then this governing body endorses your proposed project.

Yours very truly,

CHARLES E. NICHOLS
Mayor

House E + NR
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Attachment # 19



THE LEAGUE OF KANSAS MUNICIPALITIES

Municipal Legislative Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Energy and natural Resources

FROM:  Chris McKenzie, Executive Director

DATE: September 14, 1993

RE: Proposed Ban on Disposal of Municipal Solid Waste Incinerator Ash

Thank you for the opportunity to appear in regard to the above proposal. As I understand it, the proposed bill would prohibit the disposal of municipal solid waste incinerator ash at a solid waste disposal area--in other words, a sanitary landfill. While there may be sound policy reasons to enact such a ban on the disposal of such wastes from sources outside Kansas, let me identify some concerns which the bill raises about the disposal of such ash from sources inside the state:

(1) The proposal would include within its scope ash which results from the incineration of wastewater sludges at existing sites in the state of Kansas. I understand three (3) such sites exist, including incinerators in Kansas City, Kansas and Johnson County. The prohibition on the disposal of such ash in landfills in Kansas would impose a special burden on those local governments. In the instance of the Kansas City, Kansas incinerator, it handles sludge from other city wastewater treatment plants. If the bill goes forward, some type of exemption for already existing facilities may be in order.

(2) The proposal would effectively preclude the development in Kansas in the future of waste to energy power plant facilities. While no such facility has yet been constructed in Kansas, such facilities are operable in Ames, Iowa and elsewhere around the country. The policy question is: Should we put another obstacle in the way of the construction of such facilities?

(3) The status of ash generated by a municipal solid waste incinerator under federal law is presently unclear. In 1991 the U.S. Circuit Court of Appeals for the Seventh Circuit handed down a decision in the case of Environmental Defense Fund v. City of Chicago in which the court concluded that such ash is "hazardous waste" that must be disposed of in accordance with Subtitle C of the Resource Conservation and Recovery Act of 1976 rather than under Subtitle D (solid waste landfills). I understand this case is currently under review by the U.S. Supreme Court. If the Supreme Court affirms the holding of the Court of Appeals, the disposal of incinerator ash will be severely limited to only licensed hazardous waste facilities. In other words, the necessity for state regulation of this issue may be preempted by federal law.

The issues raised by the proposed bill certainly bear discussion and consideration. We urge you to review this matter carefully over the next few months with an eye out for action by the Supreme Court in the above referenced case. In any case, protection for the three (3) existing incinerator facilities would seem appropriate.

*House E & NR
Sept. 14-15, 1993
Attachment # 20*

Testimony on 3 RS 1374
On Behalf of the Integrated Waste Services Association
House Committee on Energy and Natural Resources

The Integrated Waste Services Association ("IWSA") is the nation's principle advocacy group to represent companies pursuing the integrated approach to municipal solid waste management ("MSW"). The IWSA seeks to promote the integrated approach, which includes making optimal use of reduction, recycling, waste-to-energy ("WTE"), and landfilling to solve the nation's garbage dilemma. Although the member firms of IWSA are active in all aspects of managing MSW, the association's primary focus is promoting WTE as part of community integrated programs. WTE is also known as trash-to-energy, resource recovery and municipal waste combustion ("MWC").

The IWSA opposes House Bill 3 RS 1374 which would ban the disposal of MSW combustor ash in landfills. Many scientific studies conducted over the past decade have demonstrated that this ash is neither hazardous nor toxic and can be safely managed under the federal Resource Conservation and Recovery Act ("RCRA") Subtitle D guidelines.

In 1992 William K. Reilly, the Administrator of the EPA issued a memorandum which exempts MWC ash from hazardous waste regulation under RCRA Section 3001(i). Section 3001(i) states, in part, that a WTE facility "shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous waste if such facility receives and burns only household waste and non hazardous commercial and industrial waste. Reilly added that MWC ash can be safely managed under RCRA non-hazardous Subtitle D regulations, promulgated for sanitary landfills in 1991 and that "impediments hindering the development and operation of commercially viable resource recovery facilities should be eliminated wherever practicable."

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Among the scientific research that has been done on ash are tests that were conducted by the California Department of Health Services. These studies of ash from a WTE plant in Modesto concluded that ash from the facility "possesses mitigating physical and chemical characteristics rendering it insignificant as a hazard to human health and safety, livestock and wildlife." EPA's long-term study of WTE ash in Marion County, Oregon, has repeatedly found that rainwater "leachate" filtering through such ash has about the same chemical make-up as sea water.

In addition to being a solid waste that can be safely managed at modern landfills, ash is being reused in several states. In Florida, where 30% of the state's garbage is processed at 14 waste-to-energy facilities, ash may be used as cover for landfills. The DER in Florida has also approved ash from several WTE facilities for use in roadbed construction. At least five other states - Maryland, Minnesota, New Jersey, New York and New Hampshire - are in the midst of pilot programs to reuse WTE ash. New York's recently revised Solid Waste regulations provide for beneficial reuse of ash including its use as landfill cover and for roadbed construction at landfill facilities.

The IWSA supports sound, responsible regulations that ensure the operations of WTE plants in a manner that is protective of human health and the environment. Scientific evidence combined with decades of operational experience have proven that WTE ash can be safely disposed of in modern landfills as well as can help close the recycling loop through beneficial reuse.

This bill would limit options of Kansas communities that may elect to move forward with a WTE facility in the future. Such communities would be forced by this legislation to rely on out-of-state disposal for their WTE ash. We oppose, therefore, legislation which would apply a blanket prohibition of ash disposal at modern landfills.

Thank you for your consideration of our comments.

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

Testimony Presented to

House Energy and Natural Resources Committee

by

Kansas Department of Health and Environment

Revolving Loan Fund for Investigation
Remediation of State and Local Government Sites

KDHE supports the proposed plan to establish a revolving loan fund to assist municipalities in dealing with contaminated sites in their area.

Federal and State legislation has forced us all to examine current and past storage, use and disposal practices for industrial, agricultural and household chemicals. Many substances which were once widely used and accepted have now been identified as being hazardous to public health and/or the environment. Often governmental entities are unable to bear the financial burden necessary to perform the required environmental investigations and cleanup.

Pollution of soil and waters constitutes a menace to public health; creates public nuisances; damages the environment; and impairs domestic, agricultural, recreational and other legitimate beneficial uses of the soil and water. As such, it is essential for the public health, safety and welfare of the state and its residents and advantageous to the state and local government taxpayers to undertake a program to financially assist response actions to investigate and remediate said pollution.

Frequently state agencies and local governments are willing to clean up a contaminated site. However, funding such a cleanup may be a problem. In most cases, loans are not available through financial institutions as the risk is considered too great.

An account should be established in the state treasury to provide financial assistance (loans) at low interest to qualifying governmental entities for investigation and remediation activities.

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HB on Revolving Loan Fund
Investigation/Remediation of Sites
Page 2

KDHE has identified at least twenty sites which would qualify for loans. At a generalized average cost of three hundred fifty thousand dollars per site, approximately seven million dollars is needed.

The initial capital necessary to establish such a fund could be derived from any combination of State General Funds, State Water Plan Funds, or Economic Development Funds. Any city, county, or other public agency could contribute moneys to the proposed account.

The ultimate goal of the state is to identify permanent solutions to environmental problems in Kansas. A State Revolving Loan Fund will provide a mechanism for the state to work cooperatively with local governments in addressing environmental problems.

Testimony presented by: Charles Jones
Director, Division of Environment
September 15, 1993



THE LEAGUE OF KANSAS MUNICIPALITIES

Municipal Legislative Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Energy and Natural Resources

FROM: Harry Herington, League Attorney

RE: Contamination Remediation Loan Fund

DATE: September 15, 1993

Thank you for the opportunity to appear today in general support of the proposal to create a contamination remediation loan fund to assist municipalities with contamination remediation projects. Currently most Kansas municipalities do not seriously consider contamination remediation projects that might protect their areas from health risks because they lack the financial ability to complete such a project. Funding available from the State is limited to a few select programs and federal funding is primarily limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) which is known as the Superfund.

Cities are not only reluctant to request financial assistance from the Superfund but will usually employ whatever means are available to avoid being deemed a Superfund site. The economic ramifications of being declared a Superfund site could be devastating for a city. Businesses are reluctant to develop and financial institutions are unwilling to lend money in areas that have been declared a Superfund site due to a justified concern of being considered an indirect responsible party by the Environmental Protection Agency. The party may then be forced to contribute to the remediation costs. For these obvious reasons, an additional source of funding is necessary for municipalities to engage in contamination remediation projects.

While we appear in support of this program, we are concerned with the availability of funding that would be necessary to make this loan fund a success. If federal funding for this program is inadequate or nonexistent, as we expect, the legislature will likely be asked to dedicate funds from the State Water Plan funds, the State General Fund and other sources of revenue to fund the program. We respectfully suggest this would be a justifiable use of those existing funds, but as I stated yesterday when speaking on the revolving loan fund for public water supply development, we recommend that no consideration be given to increasing the current Water Plan fee fund levy in order to finance this initiative. Cities and their ratepayers already are bearing a significant cost of financing this fund (i.e., \$3 million annually). It is our hope that funding of the contamination remediation loan fund from the State Water Plan will be derived from **existing** revenues. In the alternative, funding from the State General Fund should be considered as well.

Thank you for your consideration of this proposal and our comments. Please let me know if you have any questions. We look forward to working with you in finding ways to assist municipalities with contamination remediation projects.

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UP IN SMOKE WST

Fading Garbage Crisis

Leaves Incinerators

Competing for Trash

Municipalities Are Dismayed;
Waste-to-Energy Fever
Burns Local Taxpayers

Trapped in the 'Death Spiral'

By JEFF BAILEY

Staff Reporter of THE WALL STREET JOURNAL

It might seem a blessing in this cluttered world, but from Florida to New Hampshire to Wisconsin, communities are running short of trash. And it is costing them money.

The municipalities collectively spent billions of dollars to build big incinerators, but now don't have enough refuse to keep the plants burning full blast. La Crosse, Wis., can't fill half the capacity of an incinerator built there in 1988. Bay County, Fla., resorted to buying wood chips to stoke its incinerator. And Warren County, N.J., uses undercover trash cops to stake out the bridges over the Delaware River to Pennsylvania to make sure no trash leaves the Garden State.

"We need trash," asserts Lori Parrish, a commissioner in Broward County, Fla. Officials there are literally rummaging around the rest of South Florida to find garbage to feed their \$500 million pair of incinerators. "It's killing us," she says.

Technological Triumph

Promoted as "waste-to-energy" plants because they also produce electricity, the incinerators were touted as the triumph of technology over trash. They would assure that cities for decades had a place to dispose of waste, while lessening the need for sprawling dumps. To varying degrees, environmental officials at the state and federal level encouraged an incinerator building binge during the 1980s, with 142 plants now burning about 30 million tons a year, or 16% of the nation's trash.

But the officials paid little mind to the economics of burning trash. Very simply, the current economics are terrible, requiring residential and commercial customers—as well as taxpayers—to pay hundreds of millions of dollars a year over and above the going market rate for trash disposal. The average incinerator disposal fee is \$56 a ton, twice the \$28 average at dumps, reports Solid Waste Price Digest, a trade journal.

Municipal officials made the plunge

into trash burning with the best advice money could buy, hiring engineering consultants, Wall Street investment bankers and bond lawyers, all of whom have profited handsomely from fees connected to bond underwritings to finance incinerators. But almost none of these people were sufficiently skeptical of the so-called garbage crisis, a perceived shortage of dump capacity that, in the 1980s, pushed up dump fees and frightened public officials into thinking that disposal prices would climb ever upward.

Bigger Wasn't Better

An incinerator, went the logic, allowed a city to lock in a disposal price for 20 years or more. So why not build it big? With the extra capacity, an incinerator could reap hefty profits by taking trash from elsewhere at escalating market rates.

The garbage crisis, though it appealed perfectly to the nation's collective guilt over throwing away so much stuff, was more fiction than fact. In truth, trash companies, led by WMX Technologies Inc. (formerly Waste Management Inc.) and Browning-Ferris Industries Inc., along with municipalities, created huge amounts of disposal capacity in recent years. As with office buildings and airlines, a space glut has led to fierce price-cutting as dump and incinerator owners compete for refuse.

Incinerators "weren't designed to be economic," contends Douglas R. Augenthaler, a trash stock analyst at Oppenheimer & Co. in New York. "They were designed to replace a disappearing asset [dumps] that didn't disappear."

Moreover, many municipalities and their consultants overestimated the amount of trash they would be generating, failing to foresee sharp reductions from recycling and the recession; a slower economy generates less waste. Incinerators need to operate at full capacity to make the most of electricity production, which also brings in revenue, and to service debt of as much as \$300 million per plant. Cities therefore have been forced to bid for trash on the open market, often at disposal fees far below what their own residents must pay.

Risk vs. Reward

Nearly all the incinerators are operated — and many owned — by companies such as WMX Technologies, Ogden Corp., and Westinghouse Electric Corp. In hindsight, the public sector got most of the risks and the private sector most of the rewards in building waste-to-energy facilities. Typically, the municipality provided financing; the company guaranteed the thing would work; the municipality guaranteed a certain amount of trash at a set price.

Then the market price for disposal plunged. So, Broward County trash burns for \$55 a ton at its two big incinerators, but waste from elsewhere is welcomed as cheaply as \$42. In Montgomery County, Pa., locals pay \$63.50 while outsiders can dump for \$41. "It was supposed to work the other way around," says Donald Silversen, Montgomery County's trash chief. "It's a sore point."

At its worst, a shortfall of trash begets a

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Up in Smoke: Trash Proves to Be A Costly Fuel for Big Incinerators

Continued From First Page

higher local dump fee to cover fixed costs, which chases away local haulers and begets a bigger shortfall: "the death spiral," waste officials call it. A Claremont, N.H., plant is in full spin, with a \$96.50-a-ton fee for local trash, a \$40-a-ton fee to attract outside waste, and every indication the disparity will worsen. "It's an endless cycle," says Allen Dusault, head of the New Hampshire-Vermont Solid Waste Project.

Construction Nearly Halted

And things could go from bad to worse for the economics of incineration. Cities are facing huge costs to fit all but the newest plants with modern air-pollution-control systems. Utilities are fighting back against a federal law that forces them to buy electricity from incinerators at above-market prices. And the Supreme Court has agreed to hear two cases, either of which could prove devastating for municipalities, bondholders, taxpayers and companies that own incinerators. All of this has brought construction of new plants to a near halt.

In one case, the high court will decide whether the ash left over from trash burning should be treated as a hazardous waste. A federal appeals court in Chicago says it should, while one in New York says it shouldn't.

As of now, the 8.5 million tons a year of ash mostly go to garbage dumps at relatively cheap rates. Environmental groups contend ash should be treated as hazardous because it contains heavy metals. Municipalities assert ash poses no health threat. Moreover, they say, if the justices declare ash a hazardous waste, ash disposal costs could rise tenfold, adding \$3.5 billion to the cost of operating the country's 142 incinerators. That could force incinerators to roughly triple the disposal fee they charge for trash to more than \$150 a ton, the municipalities say. Many would simply close, which could lead to billions of dollars of bond defaults.

The high court also will consider a challenge to flow control, a practice permitting a municipality to commandeer all the trash within its borders and direct it to a favored disposal site. Because many incinerators charge prices far higher than nearby dumps, only with flow control do they remain viable.

Flow Control Debate

Haulers hate flow control because it makes them pay more per-ton to dump their loads. Their argument, successful in several lower-court cases, is that the practice illegally restricts interstate commerce. Most incinerators are close enough to a state line to be vulnerable to that claim, especially since haulers have become more adept at compacting trash to cheaply carry big loads long distances by truck and rail.

Already, 15 million tons of trash a year cross a state line to be dumped, as the disposal business becomes more regional and less local. J.P. Mascaro & Sons, a regional

Pennsylvania hauler, says it saves money by trucking loads 300 miles to a West Virginia dump it owns, for instance, than pay a \$53-a-ton fee designated control in the Philadelphia suburbs.

A decision against flow control could spark an all-out price war in the disposal business. Dominant haulers WMX Technologies and Browning-Ferris control huge amounts of dump space where they would like to take more trash. Dumps, with relatively low fixed costs, could ride out a price war. Many cash-hungry incinerators couldn't. "If we lose flow control, those contracts [between cities and incinerator operators] are null and void," says H. Lanier Hickman Jr., head of the Solid Waste Association of North America, a group of mostly municipal trash officials. And the more than \$10 billion of bonds outstanding that back incinerator projects "are belly up."

Flow control was "a legal device that allowed you to not look at the economics," says Marie Pisecki, who rates trash-related bonds at Moody's Investors Service. But people are looking now. Municipal-bond-fund managers, such as John Nuveen & Co. with \$350 million in trash-related bonds and Van Kampen Merritt Investment Advisory Corp. with \$264 million, are trying to determine which projects are most vulnerable. Sandy D'Imperio, an official at bond insurer Ambac Indemnity Corp., which insures bonds issued to build 10 incineration projects, says a loss of flow control would cause "very severe" problems in the business. Susan Epstein, at Municipal Bond Investors Assurance Inc., another insurer, says, "We're taking a re-look at our exposure."

Whose Trash Is It?

The U.S. Conference of Mayors is lobbying Congress to pass flow-control legislation should the court strike the practice down. But even as the law of the land in 26 states, officials say flow control is tough to enforce. Columbus, Ohio, estimates it loses about 15% of the trash that is supposed to go to its 2,000-ton-a-day incinerator. The Franklin County Sheriff is investigating and \$5,000-a-day fines are possible for violators. But commercial haulers in particular routinely cross municipal borders on their routes. So whose trash is it?

"The reality of the trash business is quite different than the legal structure," says William Darcy, head of the Connecticut state agency that oversees trash burning. Incinerators charge as much as \$79 a ton there, while dump space can be had for \$50. "If we had 1,000 enforcement officers, we could stop the cheating," he says.

To survive without legal flow control, some municipalities are resorting to what they call "economic flow control." In essence, they set the disposal fee at an incinerator low enough to attract trash, then stuff the rest of the costs into the tax base.

That is how Montgomery County, Md., plans to make its proposed 1,800-ton-a-day, \$325 million incineration project viable. The affluent county, just north of Washington D.C., is surrounded by relatively cheap and very abundant disposal in Virginia, West Virginia and southeastern Pennsylvania. On the whole, says Stephen L. Schweich, an analyst with Robertson, Ste-

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pher. So. in San Francisco, "It's cheap go to Philadelphia" to dispose of Montgomery County trash.

But the county wanted to handle its own trash and isn't keen on dumps. Annual trash-collection fees, which also fund a zealous recycling program, are expected to rise from \$146 a household next year to \$246 by 1999.

Columbus, Ohio, tried to keep its incinerator competitive for 10 years, roughly matching the price of a nearby dump, but the effort required subsidies of more than \$100 million in total. The city recently threw in the towel, gave the burner to a regional-waste authority and adopted legal flow control, which it hopes will remain legal.

No Dump Ambiance

Despite the problems, it is easy to see how municipal officials fall in love with incinerators. But for the trash trucks rolling across outdoor scales, they resemble a power plant, not a dump. No rats. No seagulls. Smells stay inside the walls.

The control room, run by engineers, has enough dials, meters and video monitors to resemble a small nuclear plant. Trucks pull into an enclosed dock to dump into a giant trash chamber six stories tall. High above, two crane operators continually fluff the mound and slowly feed trash toward a burning grate that slopes downward. The heat fires boilers that make steam for electricity.

Incineration owners complain that the Environmental Protection Agency isn't hard enough on dumps, which give them a cost advantage, but the agency says it is neutral. "The stuff that goes up the [incinerator] stack affects more people than [garbage water] going into the groundwater," says Bruce Weddle, EPA's trash chief.

Companies promote the plants as a "partnership" with the community. But it is a rocky marriage in a glutted market. Broward County is mad at WMX Technologies, which owns and operates twin 2,250-ton-a-day burners there. The incinerators are suffering a shortfall that could hit 100,000 tons this year. Under a so-called put-or-pay deal, the county pays for at least 1,095,000 tons even if it incinerates, or puts, less. WMX Technologies also owns a big dump in the county, and accepts trash that could be burned. WMX took more than two million tons of trash to the dump during the eight months ended March 31, most of it from the Hurricane Andrew cleanup. The company says the hurricane trash was too wet to burn. Steve Alexander, a Broward County official, observes, "One of the partners in this deal is making a whole lot of money."

The company and the county are in talks to ease the burden of the shortfall. "We're going to do everything we can to make sure they're happy," says a WMX Technologies spokesman. But that likely will require taking more trash from neighboring Dade County, which also is hurting. Lower volume at its disposal sites already

forced Dade to raise prices to \$59 a ton from \$45 in January.

Connecticut officials are fighting WMX Technologies' plan to build another incinerator in the state because they say it would take trash from already-struggling plants there. La Crosse County, Wis., sued its engineering consultants for overestimating the area's trash volume. The county collected \$2.6 million.

Price of Clean Air

The Clean Air Act, meanwhile, is making incineration costlier still. Pinellas County, Fla., expects retrofitting its 3,000-ton-a-day burner to comply with air standards will cost anywhere from \$100 million to \$200 million, including lost electricity revenue and disposal fees while the plant is down. That could force the county to double its disposal fee from \$37.50 a ton, says the county's trash chief, Bob Van Deman.

Having guessed wrong on the direction of disposal prices, incineration promoters luckily can take advantage of a federal program that guessed wrong on energy prices. Utilities are required to buy electricity from so-called nonutility generators, or NUGs, at prices often based on early 1980s projections that oil prices would skyrocket. So, while electricity changes hands these days between utilities at 1 cent to 3 cents a kilowatt hour, some incinerators can get as much as 11 cents.

(A ton of trash burned yields about 600 kilowatts, so 2 cents a kilowatt equals \$12 a ton, 4 cents \$24 a ton and so forth.)

Utilities are trying to limit new NUGs and renegotiate such high-priced contracts. Niagara Mohawk Power Corp., which has a glut of power, is forced to buy NUG electricity at 6 cents a kilowatt and then sell it at 1 or 2 cents, a \$400 million annual cost. Southern California Edison Co. spends \$750 million a year above market rates to buy NUG power, a spokesman says. "That's why our rates are so high."

Dumps, Hauling and Economics Prove Major Issues

By JEFF BAILEY

Staff Reporter of THE WALL STREET JOURNAL

The trash-incineration industry is heading into what promises to be a severe shakeout, as weaker competitors give up on a business in which growth has stalled and the two dominant players pursue radically different strategies.

Ogden Corp., No. 1 in the business with a 26% market share through its Ogden Projects Inc. unit, relies heavily on contracts with municipalities to bring trash to its 24 so-called waste-to-energy plants. It has no hauling business to feed the incinerators.

WMX Technologies Inc., No. 2 with a 20% share through its Wheelabrator Technologies Inc. unit, uses its dominant U.S. trash-hauling business to help feed its 14 plants and is far less reliant on guarantees from cities that they will deliver trash. That could prove a big edge in the more competitive times ahead.

Profits remain strong at both companies, though falling disposal fees and a slowdown in new plant construction could change that.

Earlier this year, Swedish industrial giant Asea Brown Boveri AB sold its U.S. trash burners for \$47 million to Ogden Projects. Occidental Petroleum Corp. sold its big Niagara Falls, N.Y., incinerator to American Ref-Fuel Co., a joint venture of No. 2 hauler Browning-Ferris Industries Inc. and Air Products & Chemicals Inc.

And Westinghouse Electric Corp. confirms that it offered its incineration plants to WMX Technologies, but that no agreement was reached. Westinghouse owns a huge \$300 million plant in Delaware County, Pa., part of the glutted Philadelphia market. The facility is losing money. The company won't say if the business overall is profitable.

Foster Wheeler Corp. and Montenay SA, a big French services concern, both say they are in the business to stay though disappointed by the slowdown.

Companies piled into the business during the 1980s, thinking — like municipalities — that dump capacity was shrinking. And, according to a report prepared by analysts at Kidder, Peabody & Co., they were attracted by other reasons: Pre-1986 tax laws gave big tax credits for capital investments; cities offered cheap, tax-free financing; energy costs seemed sure to rise, making alternative forms of electricity generation valuable; and some big engineering and construction companies were looking for new things to build.

Dozens of communities awarded contracts to build incinerators in the mid-1980s, but then the backpedaling began. According to Kidder, cancellations of already-awarded projects have exceeded new projects annually since 1987.

Even with the disposal glut in many markets, the industry continues to use the mythical "garbage crisis" as a marketing tool. A WMX Technologies promotional

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brochure warns "this nation is quickly running out of places to dispose of trash." Ogden Projects' annual report sees "available landfill space vanishing." And the incineration-industry group, Integrated Waste Services Association, still talks of "solving the garbage crisis," though its president, B. Kent Burton, says in his speeches that he has downgraded the "crisis" to a "problem."

Because of the differing strategies of its two biggest members, Ogden and Wheelabrator, the association hasn't yet taken a position on flow control, the most important issue facing the industry. Ogden is strongly in favor of flow control, which allows a municipality to direct all its trash to a designated disposal site, while WMX Technologies and its Wheelabrator unit don't have a position.

Without flow control, Ogden would be vulnerable to haulers, including those owned by WMX and Browning-Ferris, that want to take trash to their own dumps rather than to Ogden's incinerators.

Ogden is increasingly critical of dumps on environmental grounds. "Raw refuse creates a toxic soup [in dumps]. It will ultimately come up," says Scott G. Mackin, president and chief operating officer of Ogden Projects. The Environmental Protection Agency considers a well-built dump safe, and is slowly moving to close unsafe ones. Dumps have been WMX Technologies most profitable business.

Mr. Mackin sees no need for Ogden to link up with a hauler nationally. He expects that an economic recovery, an increase in oil prices and the public's hatred of dumps will all come together to spur growth again for the incineration industry.

**PRESENTATION TO HOUSE ENERGY COMMITTEE
ON ENERGY POLICY ACT
BY KCC**

SEPTEMBER 15, 1992

OVERVIEW

- The Energy Policy Act of 1992 (EPACT) became law on October 24, 1992. EPACT is a comprehensive package of federal legislation addressing many different aspects of national energy policy.
- Contains thirty titles which deal with energy policy in various ways, including: encouraging more competition in the electric industry by changing federal regulation; promoting efficiency in energy use by encouraging or mandating various programs or efficiency standards for both public and private sectors; promoting development of new technologies by providing grants or tax incentives or mandating demonstration projects; and mandating a host of studies by federal agencies.
- With regard to states, EPACT:
 - 1.) imposes a few mandates requiring specific actions by certain deadlines;
 - 2.) creates changes which may necessitate responses in the future; and
 - 3.) provides opportunities for potential benefits for state programs.

MANDATORY ACTIONS:

Building codes, IRP, Wholesale Power Purchases and SECP

BUILDING CODES - Separate presentation

IRP PROVISIONS - Electric and Natural Gas Utilities

Electric utilities: Section 111 amends PURPA (Section 111) to require state regulatory authority consideration of three new standards with regard to electric utilities:

Integrated Resource Planning - - Utilities should be required to employ a planning and selection process for new energy resources that:

- Evaluates the full range of resource alternatives, including new generation, power purchases, energy conservation and efficiency, cogeneration and renewable resources.
- Provides adequate service at the lowest system cost consistent with considerations of diversity, reliability, dispatchability, and other factors of risk.
- Accounts for verification of energy savings achieved through energy conservation and efficiency, including durability.
- Treats demand and supply resources on a consistent and integrated basis.

Demand-side Profitability - - Utility rates allowed by commission should be such that:

- Investments in, and expenditures for, energy conservation, efficiency and other demand-side management (DSM) measures are to be at least as profitable as those for new generation, transmission, and distribution facilities.
- Consideration to be given to lost income from reduced sales.
- Conservation, efficiency, and other DSM measures to be monitored and evaluated.

Supply-side Efficiency - - State commissions are to consider ratemaking policies to:

- Encourage utility investments in, and expenditures for, cost effective improvements in generation, transmission and distribution.
- Remove existing disincentives and provide incentives.

Natural gas utilities: Section 115 amends PURPA (Section 303) to require state regulatory authority consideration of two new standards with regard to natural gas utilities:

IRP - - Utilities required to employ planning which:

- Provides for systematic comparison between DSM and gas supply to minimize life-cycle costs of service.
- Takes into account considerations of diversity, reliability, dispatchability, and other factors of risk.
- Treats demand and supply to gas consumers on a consistent and integrated basis.

Demand-side Profitability - - Utility rates allowed by commission should be such that:

- Investments in, and expenditures for, energy conservation, load shifting programs and other demand-side management (DSM) measures are to be at least as profitable as those for acquisition or construction of supplies and facilities.
- Consideration to be given to lost income from reduced sales, particularly in ensuring recovery of fixed cost.
- Net revenues should be linked, at least in part, to the utility's performance in implementing cost effective programs.

Small business proviso: If a commission decides to implement either the IRP or Demand-side Profitability standards for electric or natural gas utilities, it shall also:

- Consider the impact of such implementation on small businesses engaged in the provision of energy conservation, efficiency or other DSM measures.
- Implement the standard to assure that utilities not provided with unfair competitive advantage.

Procedural requirements: Any required IRP filings are to:

- Be updated on a regular basis.
- Allow an opportunity for public participation and comment.
- Contain a requirement that the plan be implemented after approval of the state commission.
- (For gas filings) Provide for methods of validating performances.

Status of KCC proceedings:

- Staff's initial draft has been formally circulated for comments, including comments on whether the proposed IRP rules adequately address the EPACT standards.
- After any revisions, will be submitted to Secretary of Administration and Attorney General's office for approval, then published in Kansas Register for notice prior to hearing.
- Commission adoption sometime in fall? EPACT requires consideration by October 23, 1994, for gas and October 23, 1995, for electric.
- Currently proposed timetable calls for utilities to file plans every three years on staggered basis. First filing in July of 1994 with subsequent filings every three months.

EPACT provisions affecting IRP - Numerous provisions and programs will have indirect impact on both demand-side management of energy use and supply-side considerations. Subtitle C of Title I deals with establishment of efficiency standards for appliances and equipment. A few other examples:

- Section 123(i) requires DOE to issue, by October 23, 1993, recommendations to states for establishing incentive programs for accelerating voluntary replacement of existing showerheads, faucets, and other plumbing products with more efficient products.
- Section 1912 amends the Internal Revenue Code to exclude from gross income the value of any subsidy provided by a utility for installation of an energy conservation measure.
- Section 1205 requires DOE to study whether conventional taxation and ratemaking results in bias regarding renewable energy sources.
- Section 3013 requires DOE to encourage state and local governments to consider allowing installation of geothermal heat pumps.

WHOLESALE POWER PURCHASES - ELECTRIC UTILITIES

Section 712: Amends PURPA (Section 111) to require state commission consideration of four standards relating to electric utilities' long-term purchases of wholesale power.

- The impact on the utility's cost of capital of such purchases.
- Whether an exempt wholesale generator's (EWG) capital structure which tends to be proportionately more debt than the utility's threatens reliability or provides the EWG with an unfair advantage.
- Whether the commission should implement procedures for advance approval or disapproval of such long term purchases.
- Whether reasonable assurance of fuel supply should be a condition of such approval.

Status of KCC Proceedings:

- A hearing was held on August 25th after notice to all electric utilities and other interested parties.
- Five parties filed testimony and eight filed comments.
- The parties agreed by stipulation that the standards should not be adopted and that the issues should be addressed on a case-by-case basis, possibly in connection with each company's IRP filings.
- KCC required by EPACT to make written decision by October 23, 1993.

STATE ENERGY CONSERVATION ACT

Section 141(c) - Amends the Energy Policy and Conservation Act to require states to allow left turns "from a one-way street onto a one-way street at a red light after stopping."

NECESSARY RESPONSES:
EWG'S AND TRANSMISSION ACCESS

EXEMPT WHOLESALE GENERATORS

Title VII, Subtitle A (Sections 711, 713) - Amended Public Utility Holding Company Act (PUHCA) to remove corporate and geographic restrictions affecting ownership of power facilities generating electricity exclusively for sale at wholesale.

- Part of EPACT's goal to encourage more competition in power generation; transmission access other major component.
- Removes some of the advantages that have been given to PURPA qualifying facilities (less than 30 megawatts) not subject to restrictions.
- Eliminates substantial Securities and Exchange Commission (SEC) oversight but requires FERC certification and approval of rates of Exempt Wholesale Generators (EWG's).

State Commission Responses - EPACT expected to result in more independent power production and less vertically-integrated electric utilities. As part of IRP process, KCC will need to evaluate individual potential long term power purchases with regard to cost, reliability, risk and other factors, including those set out in Section 712. EPACT also explicitly requires state commission action in two situations:

- Utilities may not purchase power from EWG which is affiliate or associate unless state(s) find:
 - That it has sufficient regulatory authority and resources to exercise duties.
 - That purchase will benefit consumers, not violate state law (including IRP), not provide EWG with unfair competitive advantage, and is in public interest.
- Utilities may not "spin off" generating facility that was "rate-based" (as of date of EPACT) to EWG status, unless state(s) finds that such status:
 - Benefits consumers, is in public interest, and does not violate state law.

TRANSMISSION ACCESS

Title VII, Subtitle B (Sections 721 & 722) - Amends Federal Power Act to expand FERC authority with regard to provision of transmission services to wholesale generators.

- Purpose to provide for more open access to transmission services as part of more competitive wholesale market.
- Allows FERC to order transmitting utility to provide services if would not unreasonably impair continued reliability.
- Remove prior restriction that could not affect existing wholesale supplier/customer relationships.
- Rates for transmission services are to:
 - Permit recovery of costs, including economic costs and costs of enlargement of facilities.
 - Promote economically efficient transmission and generation of electricity.
 - Be just, reasonable, and not unduly discriminatory or preferential.
 - To extent practicable, recover costs from wholesale generator and not transmitting utility's existing customers.

State Commission Responses:

- Although FERC may order enlargement of transmission facilities to provide service, state or local requirements, such as transmission siting act or environmental protection requirements, still apply. Transmitting utility utility excused from FERC order if it fails, after good faith effort, to obtain such necessary approvals.
- State authority concerning transmission of electric energy directly to an ultimate consumer, ("retail wheeling"), expressly preserved by EPACT. There are likely to be requests in future for KCC to order transmission services directly for benefit of end user. Raises very difficult policy and cost questions.

POTENTIAL OPPORTUNITIES

- Section 112 authorizes grants to state regulatory authorities to fund participation in energy efficiency proceedings by nonprofit subgrantees of the Weatherization Assistance Program.
- Section 131 authorizes grants to states (if funds are appropriated) to be used by universities, state and local governmental entities, utilities and other appropriate institutions for promotion of energy efficiency in process oriented industries (food and food products, petroleum and coal, etc.).

DOE to establish eligibility criteria by October 23, 1993, which is to include state adoption of IRP standards.

- Section 142 authorizes grants (to extent funds are made available) to entities receiving weatherization assistance program funding for development of arrangements with utilities or private sector interests to use non-Federal assistance in installing energy efficiency improvements in low-income housing or for supporting technical transfer regarding such weatherization.
- Section 141 amends State Energy Conservation Program (SECP) to authorize grants up to \$1 million per state to establish revolving funds to finance energy efficiency improvements in state and local buildings.

Eligibility requirements are: State (or majority of local government units) adoption of ASHRAE standards 90.1-1989 for commercial buildings; adoption of CABO Model Energy Code 1992 for residential buildings; and 3 to 1 state matching funding.

- Section 409 authorizes grants to states to assist in implementation of state plans to accelerate introduction and use of alternative fueled vehicles. DOE to issue, by October 23, 1993, guidelines for state plans and invite Governors of each state to submit plans within one year thereafter. Plans to examine numerous specific aspects of promoting alternative fueled vehicles.

Eligibility requirements include state funding of at least 20% of cost of activities for which assistance is provided.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Jim Robinson, Chairman
F.S. Jack Alexander
Rachel C. Lipman

In the Matter of a General Investigation)
upon the Commission's own Motion to) Docket No.
establish general policies with regard to) 180,056-U
Integrated Resource Plans for all Kansas)
jurisdictional gas and electric utilities.)

ORDER

NOW, the above-entitled matter comes on for consideration and determination upon the Commission's own motion. Having examined all of its files and records, and thereby being fully advised in all the premises, finds:

1. That the purpose of the Commission in opening this docket on its own motion is to investigate the need for regulations concerning Integrated Resource Planning by jurisdictional utilities in Kansas, and to explore the feasibility and desirability of requiring electric and natural gas jurisdictional utilities to file periodic Integrated Resource Plans with the Commission.

2. That it is necessary and in the public interest for the Commission to conduct such general investigation into Integrated Resource Planning for the purpose of establishing a general policy concerning the requirement of electric and natural gas utilities to file periodic Integrated Resource Plans and to determine the form and content of such plans and to develop proposed regulations in this area.

3. That said proposed Integrated Resource Plans would be the result of a utility resource planning process that meets Kansas's projected energy needs at the least cost to consumers and shareholders while maintaining reliable and adequate service to existing and future customers by placing equal emphasis on the selection of demand-side management programs and supply-side options in the development of resource options for the respective utility industry.

4. To date, approximately 31 other state commissions have adopted Integrated Resource Plan requirements for utilities within their jurisdictions. The Commission intends to consider the successes and failures associated with the efforts of other state commissions in determining which regulatory requirements to adopt.

5. That the Commission hereby expresses its intent to develop proposed regulations concerning Integrated Resource Planning in accordance with the Kansas Administrative Procedures Act.

The initial step in this process shall be a series of workshops, which shall be open to all interested parties. The intent of these workshops shall be two-fold: a) data gathering by Commission staff on questions raised by this general investigation and (b) an attempt to reach consensus on issues, where feasible, prior to the proposal of regulations. It is hoped that this process will reduce the number and complexity of issues which are subsequently raised during the public comment period for the proposed regulations.

6. That the Commission shall soon issue a procedural order setting out specific issues to be addressed by workshop participants and a procedural schedule for the workshop process.

7. That the Commission expects that considerable time and effort will be spent by its staff on this investigation and that it may be necessary for the Commission to employ special staff to assist in the conduct of this investigation. The Commission consequently contemplates assessing the various natural gas and electric utilities subject to the jurisdiction of this Commission to defray the expenses of investigation in proportion to the gross Kansas revenues of such utilities, as evidenced by their annual reports to the Commission. Although the Commission contemplates that there will be an initial evaluation of Integrated Resource Planning for both electric and gas utilities, it is possible that this investigation will be conducted in separate phases for the different types of utilities. Consequently, any assessment order will provide for appropriate assessments in the event that such separation occurs.

8. That a hearing for purposes of determining the necessity of such general investigation and to assess the cost thereof pursuant to the provisions of K.S.A. 66-1502 should be held, at which time said utilities may be heard as to the necessity of such general investigation and may show cause, if any there be, why such investigation should not be made or why the costs thereof should not be assessed against said utilities.

9. That this order will serve as notice to all electric and natural gas public utilities certificated and subject to the jurisdiction of this Commission.

IT IS, THEREFORE, BY THE COMMISSION, CONSIDERED, ADJUDGED, AND ORDERED:

That the State Corporation Commission, by this order, hereby undertakes upon its own motion a general investigation for the purpose of: (1) Establishing a general policy and adjusting regulations with regard to the development and filing of periodic Integrated Resource Plans by electric and natural gas jurisdictional utilities; and (2) establishing a workshop process for receiving input from interested parties concerning the form and content of proposed regulations to implement the filing requirement of Integrated Resource Plans.

IT IS FURTHER ORDERED THAT:

A hearing will be held before the Commission beginning on March 12, 1992, at 9:00 a.m. in the Commission's First Floor Hearing Room, 1500 S.W. Arrowhead Road, Topeka, Kansas. At such time, all said utilities may be heard as to the necessity of such general investigation and may show cause, if any there be, why such investigation should not be made or why the costs thereof should not be assessed against said utilities.

IT IS FURTHER ORDERED THAT:

This order shall serve as notice to all electric and natural gas public utilities certificated by and subject to the jurisdiction of this Commission as evidenced by the addendum attached hereto, and that a copy of this order shall be served on all such utilities.

IT IS FURTHER ORDERED THAT:

The Commission retain jurisdiction of the parties and of the subject matter for the purpose of entering such further order or orders as it may from time to time deem necessary and expedient.

BY THE COMMISSION IT IS SO ORDERED.

Robinson, Chmn.; Alexander, Com.; Lipman, Com.

Dated: JAN. 28 1992

ORDER MAILED

JAN 29 1992

Judith McConnell

Executive
Director

Judith McConnell
Executive Director

LMC:sls

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Jim Robinson, Chairman
F.S. Jack Alexander
Rachel C. Lipman

In the Matter of the Investigation)
of the § 712 standards of the) Docket No. 186,371-U
Energy Policy Act of 1992.)

ORDER

Now, the above-captioned matter comes on for consideration before the State Corporation Commission of the State of Kansas (Commission). Having considered its files and being fully advised in the premises, the Commission finds and concludes as follows:

1. On March 31, 1993, the Commission issued an order establishing the docket for the Commission to investigate and make a general evaluation of the subject matter of § 712 of the Federal Energy Policy Act of 1992. (EPACT)

2. A prehearing conference was conducted on May 14, 1993 at which time the following petitions for Leave to Intervene were granted:

Sunflower Electric Power Corporation

Atchison Casting Corporation

The Boeing Company

FMC Corporation

General Motors Corporation

LaFarge Corporation

Quaker Oats Company

Citizens' Utility Ratepayer Board

Kansas City Power & Light Company
Empire District Electric Company
Kansas Electric Cooperative, Inc.
Western Resources, Inc.
UtiliCorp United, Inc.

After discussion, the parties agreed that this matter should be conducted in accordance with the following procedural schedule:

- a. Utility and Intervenor testimony was filed July 12, 1993.
- b. The testimony of Staff was filed July 23, 1993.
- c. Reply or rebuttal testimony was filed August 9, 1993.
- d. A technical hearing commenced on August 25, 1993 at 10:00 a.m. in the Commission's first floor hearing room, 1500 SW Arrowhead Road, Topeka, Kansas.

3. As a result of settlement negotiations, the parties reached an agreement that the Commission should decline to adopt any of the ratemaking standards included in § 712 of EPACT by generic rule. The parties executed a written Stipulation and Agreement (Attached as Exhibit A) and presented the Agreement to the Commission at the public hearing convened on August 25, 1993, at which time the Commission took the matter under advisement.

FINDINGS AND CONCLUSIONS

4. The Commission finds that it has jurisdiction of the parties and the subject matter.

5. The Commission finds that the settlement reached by the

parties is in the public interest and satisfactorily addresses the issues raised and should be approved.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

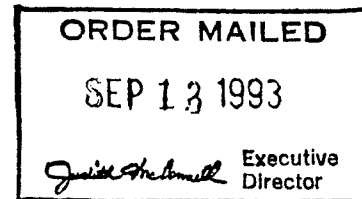
The Stipulation and Agreement in the above-identified docket is hereby approved subject to the findings set out above.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering into such further order or orders as it may deem necessary or proper.

BY THE COMMISSION IT IS SO ORDERED.

Robinson, Chm.; Alexander, Com.; Lipman, Com.

Dated: SEP. 13 1993



JUDITH McCONNELL
EXECUTIVE DIRECTOR

LMC:lab

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Jim Robinson, Chairman
 F.S. Jack Alexander
 Rachel C. Lipman

In the Matter of the Investigation)
of the § 712 Standards of the) Docket No. 186,371-U
Energy Policy Act of 1992.)

STIPULATION AND AGREEMENT

The Kansas Corporation Commission staff (Staff), Kansas City Power & Light Co. (KCPL), Western Resources, Inc. (Western), Citizens' Utility Ratepayer Board (CURB), the Atchison Casting Corp., Boeing Co., FMC Corp., General Motors Corp., La Farge Corp., Quaker, and Kansas Industrial Consumers (KIC), Kansas Electric Power Corporation (KepCo), Sunflower Electric Power Cooperative (Sunflower), UtiliCorp United, Inc. (UtiliCorp), Empire District Electric Co. (Empire) and, Kansas Electric Cooperatives, Inc. (KEC) have met in settlement conference and have reached the following stipulation and agreement. This Stipulation and Agreement is submitted to the Commission by the above-mentioned parties for approval pursuant to the terms set out herein.

I. DESCRIPTION OF THE PROCEEDINGS

On October 24, 1992, the Energy Policy Act of 1992 (Energy Policy Act) was signed into law. Section 712 of the Energy Policy Act amends §111(d) of the Public Utility Regulatory Policies Act

of 1978 (PURPA)¹ and requires that not later than one year after enactment, i.e., by October 23, 1993, state utility regulatory bodies, including the State Corporation Commission of the State of Kansas (Commission) shall consider and make a determination concerning whether it is appropriate to implement standards regarding the following:

(i) the potential for increases or decreases in the costs of capital and the resulting increases or decreases in retail rates that may result for utilities that use purchases of long-term wholesale power to meet electric demand in lieu of the construction of new generating facilities;

(ii) whether the use by exempt wholesale generators (EWGs) of capital structures which employ proportionally greater amounts of debt than the capital structures of utilities that are required or allowed to consider the purchase of long-term wholesale power supplies as a means of meeting electric demand threatens reliability or provides an unfair advantage for EWGs over such utilities;

(iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply; and

(iv) whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy.

¹PURPA is codified at 16 USC §§ 2601, et seq.

Section 712 also provides that a state commission may take such action, including action with respect to the allowable capital structure of EWGs, as it may determine to be in the public interest as a result of performing the aforementioned evaluations.

2. Under § 111(b) of PURPA, the consideration previously referred to is required to be made after public notice and is required to be made in writing, based upon findings included in such determination and upon the evidence presented at the hearing, and available to the public.

3. On May 14, 1993, a prehearing conference was held and a procedural schedule was agreed upon and the date of August 25, 1993, at 10:00 a.m. was set for a technical hearing in this matter.

The following stipulation is hereby submitted to the Commission for its consideration and approval in complete resolution of Case No. 186,371-U. The undersigned parties hereby stipulate and agree as follows:

II. TERMS OF THE STIPULATION AND AGREEMENT

1. Regarding Section 111 (d) (10) (A) (i) of PURPA, pursuant to Section 712 of EPACT, the parties stipulate and recommend that the Commission make the determination that, based upon a general evaluation of the evidence presented by the parties, it is inappropriate and unnecessary to adopt generic standards or procedures regarding this issue in this proceeding. Instead, the Commission should determine that this issue properly is reviewed on a case-by-case basis, and should find that

opportunities already exist for such review.

2. Regarding Section 111 (d) (10) (A) (ii) of PURPA, pursuant to Section 712 of EPACT, the parties stipulate and recommend that the Commission make the determination that, based upon a general evaluation of the evidence presented by the parties, it is inappropriate and unnecessary to adopt generic standards or procedures regarding this issue in this proceeding. Instead, the Commission should find that, for the present, the market should determine the levels of risk and appropriate pricing associated with EWG projects, and opportunities already exist for the Commission to review, on a case-by-case basis, the financial and operational effects of EWG contracts on purchasing utilities.

3. Regarding Section 111 (d) (10) (A) (iii) of PURPA, pursuant to Section 712 of EPACT, the parties stipulate and recommend that the Commission make the determination that, based upon a general evaluation of the evidence presented by the parties, it is unnecessary to adopt generic standards or procedures requiring advance approval of long-term wholesale power agreements in this proceeding. Nothing in this stipulation precludes a party from asserting that the Commission should, or should not, approve a particular long-term wholesale power agreement in a future proceeding.

4. Regarding Section 111 (d) (10) (A) (iv) of PURPA, pursuant to Section 712 of EPACT, because the parties have stipulated and recommended that the Commission not adopt standard or procedures regarding advance approval of long-term wholesale

power agreements, the parties stipulate and recommend that the Commission make the determination that, based upon a general evaluation of the evidence presented by the parties, it is unnecessary to adopt generic standards or procedures in this proceeding regarding whether to require, as a condition for the approval of the purchase of power, that there be reasonable assurances of fuel supply adequacy.

5. None of the parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence, that may underlie this Stipulation and Agreement, or for which provision is made in this Stipulation and Agreement.

6. This Stipulation and Agreement represents a negotiated settlement for the sole purpose of addressing the requirements of Section 111(d) (10) (A) of PURPA and Section 712 of EPACT. Except as specified herein, the parties to this Stipulation and Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation and Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve the instant Stipulation and Agreement in this instant proceeding, or in any way condition its approval of same.

7. The provisions of this Stipulation and Agreement have resulted from extensive negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Stipulation and Agreement in total, it shall be void and no party hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof unless otherwise provided herein.

8. The prepared testimonies and schedules of the following witnesses shall be received into evidence without the necessity of these witnesses taking the witness stand:

Staff
Don Low

Kansas City Power & Light Company

Michael W. Ranger
John J. DeStefano
Steven W. Cattron

Citizens' Utility Ratepayer Board
Stephen G. Hill

Kansas Industrial Consumers
Thomas J. Knobloch

Western Resources, Inc.
Earnest Lehman

It is also stipulated that the following written comments shall be given notice by the Commission and become a part of the record in this matter without objection:

Comments of:

UtiliCorp
Union Power Corporation
Electric Generation Association
Kansas Electric Cooperatives, Inc.,

Kansas Electric Power Cooperative, Inc., and
Sunflower Electric Power Corporation-jointly.
Western Resources, Inc.
CURB
Enron Power Corp.-U.S.

9. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the signatories waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Commission rules; and their respective rights to judicial review pursuant to Kansas law. This waiver applies only to a Commission Order issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matter not explicitly addressed by this Stipulation and Agreement.

10. This Stipulation and Agreement may be executed in several counterparts and all so executed shall constitute but one and the same instrument binding all parties hereto, notwithstanding that all of the parties are not signatory to the same counterparts, each of which shall be fully effective as an original.

WHEREFORE, on behalf of their respective clients, the undersigned attorneys respectfully request that the Commission approve this Stipulation and Agreement in its entirety and that the Commission issue an order in this matter approving the same.

Dated this 25th day of August, 1993.

* * *

Energy Policy Act of 1992

Title I—ENERGY EFFICIENCY

Subtitle A—Buildings

- Sec. 101. Building energy efficiency standards.**
- Sec. 102. Residential energy efficiency ratings.**
- Sec. 103. Energy efficient lighting and building centers.**
- Sec. 104. Manufactured housing energy efficiency.**
- Sec. 105. Energy efficient mortgages.**
- Sec. 106. Energy efficient mortgages pilot program.**

* * * * *

House Energy & Natural Resources Interim Committee • 15 Sep '93 • EPAct '92 Briefing • Joseph E. King, AIA

House E+NR
Sept. 14-15, 1993
Attachment #26

UPDATING STATE BUILDING ENERGY EFFICIENCY CODES SEC. 101

RESIDENTIAL BUILDING ENERGY CODES

- ✱ Each State shall certify to the Secretary of the U. S. Department of Energy by October 1994:
 - ➡ It has reviewed the provisions of its residential building code regarding energy efficiency, and
 - ➡ Made a determination as to whether it is appropriate for such State to revise such standard to meet or exceed the Conference of American Building Officials (CABO) Model Energy Code (MEC), 1992.
 - ➡ Determination must be made after public hearing and notice, and in writing.
 - ➡ Each State **may** revise its code or may decline (VOLUNTARY).
 - ➡ States electing to decline shall submit a written explanation to the Secretary and make such explanation public.
- ✱ Automatic update cycle of items 2, 3, 4, and 5 when MEC is updated.

26-2

COMMERCIAL BUILDING ENERGY CODE UPDATES

- ✱ Each State **shall** certify to the Secretary of the U. S. Department of Energy by October 1994 (MANDATORY):
 - ➡ It has reviewed and updated the provisions of its commercial building code regarding energy efficiency.
 - ➡ Demonstrate that such code provisions meet or exceed ASHRAE 90.1-1989.
- ✱ Automatic update cycle of items 1 & 2 when ASHRAE 90.1 is updated.
- ✱ The Secretary shall permit extensions if a State demonstrates a good faith effort to comply.
- ✱ The Secretary shall provide technical assistance to the States.

DOE has sent letter regarding technical assistance to States.
- ✱ The Secretary shall provide incentive funding to the States.

Guidance on funding expected in February, 1994. Total fund \$850K

EXISTING KANSAS BUILDING ENERGY CODE(S)

- ✱ **There is no statewide building code.**

- ➞ Previous legislative efforts have failed.

- ✱ **Kansas Corporation Commission Thermal Treatment Standards.**

The KCC opened Docket No. 110,766-U on Thermal Treatment Standards for Electric and Gas Service in 1976.

- ➞ Rules and Regulations became effective November, 1979 for electric service and November, 1977 for gas service for residential and commercial buildings.
- ➞ Owner must provide the utility with certificate of compliance before service is connected. If an architect or contractor were employed, they must provide supporting statements.

4-78

★ Thermal Efficiency Standards

RESIDENTIAL

- Storm windows and storm doors.
- Heat loss, based on ASHRAE *Fundamentals*, shall not exceed 35 Btus per square foot of floor area, at a design temperature differential of 80° F with a maximum of 1½ air changes per hour.
- After November 1, 1979, all air conditioning and heat pump systems shall have an energy efficiency ratio (EER) of 8.0 or greater.

Current federal minimum SEER is ≥ 10.0

COMMERCIAL

- Heat loss, based on ASHRAE *Fundamentals*, shall not exceed 35 Btus per square foot of floor area, at a design temperature differential of 80° F.
- In addition to the air conditioner and heat pump requirements stated above for residential, air conditioners over 65,000 Btu/hr shall have an energy efficiency ratio, as contained in ASHRAE 90-75, of 7.5 or more.

Current federal minimum EER for 65,000 - 135,000 Btu/hr is 8.9

★ Lighting Efficiency Standards

- 1979 Session Laws, Chapter 235, gave the KCC authority to adopt rules and regulations establishing maximum lighting efficiency standards for public buildings constructed after 1 January, 1980.
- The law directs the KCC to use the same method of compliance previously adopted for thermal treatment standards—architect/engineer certification prior to electrical service connection by the utility.
- The KCC developed Kansas Administrative Regulations 27-7-1, adopting by reference sections of ASHRAE/IES 90-75R dtd 1977 as the Kansas Lighting Standards (approved by 1980 Legislature).
- Original statute was modified by the 1983 Legislature.
- Current standards were drafted in 1975. Changes in lighting technology and design practices have made them outdated.

26.6

★ **Building and Energy Codes Used by Kansas State and Local Governments**

➡ **State Government**

Design to meet ASHRAE/IES 90.1-1989. Compliance methods per Division of Architectural Services.

➡ **Local Governments**

Some local units of government may have adopted energy standards as part of their building codes.

CURRENT BUILDING ENERGY CODES IN OTHER STATES

☀ The Nation

➡ RESIDENTIAL

No Energy Standards:	14 States
State Written:	11 States
MEC:	10 States
ASHRAE:	15 States

➡ COMMERCIAL

No Energy Standards:	
State Written:	
MEC:	
ASHRAE:	

CURRENT BUILDING ENERGY CODES IN OTHER STATES

✱ The Region

➞ RESIDENTIAL

Missouri	No Statewide building code No State Energy Standards (local codes only)
Iowa	UBC/CABO Statewide residential building code 1989 Model Energy Code
Nebraska	No Statewide building Code 1983 Model Energy Code
Oklahoma	No Statewide Building Code No State Energy Standards (local codes only)
Colorado	No Statewide Building Code No State Energy Standards (local codes only)

CURRENT BUILDING ENERGY CODES IN OTHER STATES

☀ The Region

➡ COMMERCIAL

Missouri No Statewide building code
 No State Energy Standards (local codes only)

Iowa

Nebraska 1983 Model Energy Code

Oklahoma BOCA National Building Code
 Lighting Standard based on BOCA Energy Code

Colorado

26-10

CABO'S MODEL ENERGY CODE (MEC)

✱ Origin

- ➞ The MEC was originally developed by Building Officials and Code Administrators International (BOCA); International Conference of Building Officials (ICB); National Conference of States on Building Codes and Standards (NCSBCS); and Southern Building Code Conference International (SBCCI) under contract with the U.S. DOE.
- ➞ Maintained by Council of American Building Officials (CABO).
- ➞ Updated annually.

✱ Code Structure.

- ➞ Annual energy analysis compliance.
- ➞ Acceptable practice compliance (prescriptive).

CABO'S MODEL ENERGY CODE (MEC)

✳ Representative Requirements for Kansas

	Current (KCC)	MEC '92	NAECA
➡ Envelope			
Wall insulation	-----	R-5 (w/ windows)	NA
Ceiling insulation	35 Btu per Ft ²	R-30	
Basement insulation	heat loss	R-10	
Windows	-----		
➡ HVAC			
Air-conditioner SEER	7.6 (EER)	7.8 (EER)	10.0
Heat Pump HSPF	None		
Furnace Efficiency	None	74% (SS)	78% (AFUE)
➡ Water Heating	None	13.6 Btu/h/ft ² max. loss rate	.62 EF gas .95 EF elec.
➡ Appliances	None	None	Yes
➡ Lighting	None	No	Yes
➡ Passive Solar	None	Yes	NA
➡ Water Conservation	None	None	Yes

ASHRAE/IES STANDARD 90.1 - 1989: ENERGY EFFICIENT DESIGN OF NEW BUILDINGS EXCEPT NEW LOW-RISE RESIDENTIAL BUILDINGS

✱ Origin

- The American Society of Heating, Refrigerating, and Air-conditioning Engineers is a professional society with a membership of 50,000+ engineers and allied professionals involved in design, research, development, manufacturing, sales, installation, and maintenance of building and process heating and cooling systems.
- ASHRAE maintains 90 standing committees and 66 standards projects committees, a major function of which is the ongoing evolution of some 88 standards addressing everything from testing methods for solar collectors to procedures for reclaiming refrigerants.
- Standards developed by standard projects committees are subject to extensive review by the entire organization, and are only adopted after consensus of the membership. The review process for major standards, like 90.1, often requires several years. Originally submitted in 1989, 90.1 was approved by ASHRAE in 1992.
- ASHRAE Standard 90.1 supersedes Standard 90-75, adopted in 1977, and 90A- 1980, adopted in 1988. It is now on a five year update cycle, and a new version of the standard is expected in draft form for peer review in mid-1994.

ASHRAE/IES STANDARD 90.1 - 1989

☀ Code Structure

➤ Basic Requirements

Basis requirements must be met for electric power, lighting, auxiliary systems, building envelope, HVAC systems and equipment, water heating, and energy management, regardless of the method of compliance.

➤ Prescriptive Method

Compliance with tabular or easily calculated values for lighting, building envelope, HVAC systems, and water heating systems is the simplest option.

➤ System Performance Method

The system performance method provides greater design flexibility for **lighting** and **envelope** systems, allowing a less efficient measure to be off-set by a more efficient one. The Standard includes easy to use software to evaluate compliance.

ASHRAE/IES STANDARD 90.1 - 1989

➡ Energy Cost Budget Method

The energy cost budget method (ECB) allows the building designers complete freedom, provided they meet the Basic Requirements and the estimated annual energy cost of the building does not exceed the estimated annual energy cost of a building design to meet Prescriptive and/or Performance compliance requirements.

ECB compliance requires the conceptual design and evaluation of two buildings:

- 1) Proposed design, and
- 2) Complying design.

Evaluation of estimated energy costs requires sophisticated computer simulation.

ASHRAE/IES STANDARD 90.1 - 1989

☀ Representative Requirements for Kansas Commercial Buildings Office Buildings

	Current (KCC)	ASHRAE 90.1
➡ Lighting	3 W/SF	1.65 W/SF
➡ Envelope	35 Btu/SF/floor area heat loss	Basic Requirements + Alternative Compliance Packages (ACP), i.e., R-11 walls in Topeka
➡ HVAC	Only large air-conditioners	Detailed Requirements for systems and equipment
➡ Hot Water	None	77% Gas .94 EF Electric

ASHRAE/IES STANDARD 90.1 - 1989 AND CABO'S MODEL ENERGY CODE (MEC) FISCAL IMPACT

✱ Estimated Cost of Compliance

- ➡ First Cost
- ➡ Design Fees
- ➡ Enforcement
- ➡ Energy Savings Value
- ➡ Cost/Benefit

OTHER MODEL BUILDING ENERGY CODES AND STANDARDS

Other model codes for building energy efficiency are in use, particularly for residential buildings.

✱ Residential

- MEC 1993
- ASHRAE 90.2 (near adoption)
- Federal mandatory standards for Federal housing
- Federal voluntary standard
- Other state developed standards

✱ Commercial

- ASHRAE/IES 90.1 - 1994
- Federal mandatory standards for Federal buildings (based on ASHRAE 90.1-'89, but stricter)
- MEC 92 (covers residential and commercial)
- Other state developed standards

ISSUES RELATED TO BUILDING ENERGY STANDARDS

- ✱ The KCC's Utility Integrated Resource Planning (IRP)
 - ➔ IRP is intended to achieve balance between supply and demand options for meeting energy needs.
 - ➔ Requires utilities to evaluate energy efficiency investments in buildings (demand-side management (DSM)).
 - ➔ If efficiency improvements cost less than avoided cost, utilities are given financial incentives to invest in them.
 - ➔ DSM needs a base for new and remodeled buildings to ensure utility (all rate payers) do not pay for efficiency investments that are cost effective for the building owner.

ISSUES RELATED TO BUILDING ENERGY STANDARDS

✱ The Advantages and Disadvantages of Codes

ADVANTAGES

- Codes level the playing field—cutting energy efficiency below the minimum is no longer a means of achieving a lower first cost.
- Codes help adjust for the lack of market influence in rental property (build it for yourself—make it efficient, built it to rent—cut corners on efficiency because the renter pays the bills).
- Codes protect the buyer.
- Codes are a substitute for lack of knowledge on the part of designers, builders and buyers.

DISADVANTAGES

- More overhead, public and private.
- The minimum code becomes the design norm.
- Codes and standards lag behind the market when not updated.
- Meeting a code does not automatically ensure performance.

OPTIONS

☀ Do Nothing

- ☞ Letter of explanation to DOE.

☀ Apply for an Extension

- ☞ Allowed by EAct, with justification.

☀ Conduct a Rigorous Evaluation of the Impact and Benefit of Energy Codes

- ☞ Evaluate the energy performance features of building being built today.
- ☞ Determine the energy savings value and incremental construction costs resulting from compliance with EAct required standards.

☀ Adopt ASHRAE 90.1 and MEC

- ☞ Legislative action.
- ☞ KCC modification of existing Rules and Regulations.

IMPLEMENTATION STRATEGIES

✱ Existing Program

- Requires building designer (architect, engineer, or builder) certify compliance prior to utility service connection.
- Utility must collect and retain certification forms.
- No technical review, no field inspections, compliance unknown. Generally regarded as a failure and "just another hoop."
- Could be modified to be much more effective.

✱ Local Code Agencies (where they exist)

- Many units of local government adopt and enforce building codes that could be modified to incorporate energy standards.
- Coverage not statewide, but would probably capture a large portion.
- Creates uneven field for designers working in non-covered areas.
- Local implementation would require additional training and expertise—achievable in larger cities, but a burden if not an impossibility in many smaller communities.

IMPLEMENTATION STRATEGIES

★ Utility Enforcement

- ➞ Require utilities to review and certify compliance prior to service.
- ➞ Would provide near statewide implementation.
- ➞ Would provide potential for integrating standards compliance and demand-side management.
- ➞ Would permit development of project specific energy performance requirements sensitive to energy prices, mortgage terms, and construction costs.
- ➞ Major new responsibility for utilities with significant start-up problems and costs.
- ➞ Could create conflict of interest.

★ Independent Evaluation

- ➞ Require building owners to employ independent A-E to evaluate and certify compliance.
- ➞ Require inspection during construction.
- ➞ Monitoring difficult.

RECOMMENDATIONS

- ➔ Remove existing thermal and lighting rules. They are far out of date and represent only a paper work burden.
- ➔ Address the issue of achieving cost effective building energy efficiency, not just regulation.
- ➔ Learn how well the buildings being built today actually perform.
- ➔ Do not adopt standards and rules without some reasonable method of compliance.
- ➔ Recognize that many people would be affected by building energy standards, and consult with them.

RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES ***SEC. 102***

VOLUNTARY RATING GUIDELINES (HERS)

- ★ Within 18 months DOE shall issue rules establishing voluntary guidelines on Home Energy Rating Systems.
 - Uniform rating of annual energy efficiency for residential buildings.
 - Certification of building energy analysis tools.
 - Training of personnel conducting energy efficiency ratings.
 - Provide for data collection, quality control, monitoring and evaluation.
 - Support energy efficient mortgage program.
- ★ Within 2 years DOE shall provide technical assistance to State and local organizations to encourage adoption and use of rating systems.

ENERGY EFFICIENT LIGHTING AND BUILDING CENTERS

SEC. 103

- ☀ Within 18 months DOE shall make grants to nonprofits or consortiums to establish regional building energy centers.
 - ➞ Provide information, training, and technical assistance to building professionals on building energy efficiency methods and technologies.
 - ➞ Operate and outreach program targeted at building professionals and coordinate activities with existing institutions and programs.
 - ➞ Provide displays demonstrating building energy efficiency methods and technologies.
 - ➞ Make available region specific information to facilitate the adoption of cost effective energy efficiency improvements.
- ☀ Federal share no more than 50% for establishing center and 25% of operating costs.

MANUFACTURED HOUSING ENERGY EFFICIENCY

SEC. 104

- ★ Within 12 months HUD shall make recommendations to the National Commission on Manufactured Housing.
 - ➞ Technically and economically feasible thermal insulation and energy efficiency improvements to manufactured housing.
 - ➞ Test performance and determine cost effectiveness.
- ★ If HUD has not issued rules setting energy standards for manufactured housing within 12 months, States may establish standards for manufactured housing.
 - ➞ Such standards must be at least as stringent as ASHRAE 90.2.

ENERGY EFFICIENT MORTGAGES

SEC. 105

- ✱ Defines "energy efficient mortgage" as:

... a mortgage that provides financing incentives for the purchase of energy efficient homes, or that provides financing incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

- ✱ Requires a Task Force established by the National Affordable Housing Act to:

... determine whether notifying potential home purchasers of the availability of energy efficient mortgages would promote energy efficiency in residential buildings and if so, recommend appropriate notification guidelines...

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ENERGY EFFICIENT MORTGAGES PILOT PROGRAM

SEC. 106

- ★ Within 6 months HUD shall establish energy efficient mortgage programs in 5 States to promote the purchase of existing energy efficient residential buildings and the installation of cost-effective improvements in existing residential building.
- ➞ The cost of cost-effective energy efficiency measures shall not exceed the greater of \$4,000. or 5% of the property value (not to exceed \$8,000).
- ➞ HUD shall allow mortgages to exceed loan limits of the National Housing Act by 100% of the cost of energy efficiency improvements.
- ➞ Require information on program be provided to all applicants for mortgages insured under the National Housing Act.
- ★ Within 2 years HUD shall expand the pilot program nationwide, unless determined not to be practical.



Kansas Energy Policy Committee Report

*J. Paul Jennings, Chairman
submitted to*

Governor Joan Finney

February 1993

*House E & NR
Sept. 14-15, 1993
Attachment # 27*

Fossil Energy
Strategy for Kansas

Non-fossil Energy
Strategy for Kansas

■ Policy

-federal action
restraints on production
coal transport

■ Environmental

-state/federal regulations
clean coal

■ Education and Research-

consumer education
environmental protection
technology assistance
economic analysis

- Energy efficiency in buildings
 - Adopt standards for new and existing buildings
 - Expand training opportunities
 - Improve performance of state buildings
- Alternative energy
 - Biofuels
 - Photovoltaics

- Governor's conference
- Development of action plan
- Legislative support

Mission Statement

We recognize in Kansas that the economy, energy and our environment are inextricably intertwined, and that none of these factors can be considered separately from the others. We want to ensure that any recommended public policy is, first of all, beneficial to all of our citizens, and provides for a stable and reliable supply of energy, with special acknowledgement of our responsibility to future generations of Kansans.

To meet this goal, we shall welcome and explore ideas, from whatever source, that address energy policy on a practical basis. We will pursue those suggestions that will work, the ones that keep our role as stewards of our natural resources in focus. To this end, we shall organize along functional lines that will encourage development of an honest strategy to use our natural resources wisely, including specific alternative fuels and energy conservation programs.

*- Kansas Energy Policy Committee
February 1993*



Governor's Conference Kansas Energy Policy

*October 6th & 7th, 1993
Kansas Expocentre
Topeka, Kansas*

Gcior's Conference Kansas Energy Policy

October 6th & 7th, 1993

Kansas Expocentre
Topeka, Kansas

Background

In 1991, Governor Joan Finney appointed a Select Committee for Kansas Energy Policy to develop recommendations for a comprehensive energy policy for Kansas. In February of 1993, the Committee presented its report to the Governor and members of the Kansas Legislature.

Federal Mandates

The passage of the Energy Policy Act of 1992 (EPACT), signed by the President in December, 1992, is the most comprehensive piece of energy legislation ever acted upon by Congress. It affects states in many ways.

In addition to EPACT, other federal legislation affecting states include the Clean Air Act of 1990, Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Recovery and Clean-up Liability Act (Super Fund Act), and others.

Goal

To increase public awareness and solicit public input to key energy issues to assist governmental agencies, universities, the legislature and Governor's office in making informed decisions toward implementing a comprehensive energy policy.

Organized and Sponsored by

Kansas Corporation Commission, Energy Programs,
Topeka. Contact: Jim Ploger (913) 271-3349 (Conference Coordinator)

Energy Research Center, University of Kansas, Lawrence.
Contact: Lynn Watney (913) 864-3965

Engineering Extension Programs, Kansas State University, Manhattan. Contact: Richard G. Nelson (913) 532-6026

Who Should be Involved?

Energy Policy Committee members
Legislators and legislative staff
Regulatory agencies
Institutes of higher education
Business and industry leaders
Agricultural leaders
Public interest groups
Environmental organizations
Municipal and county governments
General public

Registration Information

There will be a registration fee of \$40 for participants to help cover conference expenses, meals, and refreshment breaks (\$25 for one-day registration). Conference registration should be sent by October 1 (payable to KCC) to:

Kansas Energy Conference
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
FAX: (913) 271-3354

For information or registration form(s), please contact Sheryl Sparks at (913) 271-3170 or at the above address.

Conference dates and times

The two-day conference will be held on Wednesday, October 6, and Thursday, October 7, in the Sunflower Room of the Maner Conference Centre at the Kansas Expocentre, 17th and Topeka Boulevard, Topeka. Registration will begin at 7:30 a.m. each morning and adjourn at approximately 5:30 each afternoon. A lunch will be served each day; along with morning and afternoon refreshment breaks.

Day One Fossil Energy Sessions

Wednesday, October 6, 1993

- | | |
|------------------|--|
| 7:30 am | Registration |
| 8:00 - 8:10 am | Welcome - Jim Robinson, Chairman,
Kansas Corporation Commission, Topeka |
| 8:10 - 8:30 am | Remarks - The Honorable Joan Finney,
Governor of Kansas |
| 8:30 - 9:00 am | Keynote Address - William H. White, Deputy Secretary,
U.S. Department of Energy, Washington, D.C. (invited) |
| 9:00 - 9:15 am | Break |
| 9:15 - 10:15 am | Overview: <i>Stability/reliability of Kansas' Conventional Fuels Resource Base</i> <ul style="list-style-type: none">• Current resource base in Kansas• Future exploration and production• Consumption pattern• Conservation and efficiency <p>Moderator: J. Paul Jennings, Vanguard Petroleum Corporation, Wichita</p> <p>Panel: Dave Collins, Kansas Geological Survey, Lawrence
Tim Carr, Kansas Geological Survey, Lawrence
Lynn Watney, KU Energy Research Center, Lawrence
Larry Brady, Kansas Geological Survey, Lawrence
Jim Daniels, Murfin Drilling Company, Wichita</p> |
| 10:15 - 11:15 am | Session: <i>Marketing and Policy Issues</i> <ul style="list-style-type: none">• Economics for stable & reliable supply• Fiscal policy initiatives• Natural gas and coal policy issues• Marketing issues <p>Moderator: Rep. Robert Krebiel, Pretty Prairie</p> <p>Panel: Russ Bishop, Panhandle Eastern Pipe Line, Houston
Dave Collins, Kansas Geological Survey, Lawrence
Dave Williams, Kansas Corporation Commission, Wichita</p> |
| 11:15 - 12:15 pm | Session: <i>Innovative Uses of Fossil Fuels</i> <ul style="list-style-type: none">• Natural gas for utility power generation• Fluidized bed combustion for Kansas coal• Compressed natural gas vehicles• Clean coal technology <p>Moderators: Jim Ploger, Kansas Corporation Commission, Topeka
Dennis Woolman, Mackie-Clemens Fuel Co., Ottawa</p> <p>Panel: Jim Martin, Ahlstrom Development Corp., Manassas, VA
Jim Ingram, Western Resources, Topeka
Todd Hall, FuelMaker, Lenexa</p> |
| 12:15 - 1:30 pm | Lunch |

1:30 - 2:30 pm

Session: *Environment*

- Resource/environmental compatibility
- Baseline data acquisition
- Financial liabilities

Moderator: David Pope, Division of Water Resources, Topeka

Panel: Lynn Mangels, AMOCO Production Company, Ulysses
Bill Bryson, Kansas Corporation Commission, Topeka
Larry Richardson, Pickrell Drilling Company, Wichita
Marsha Marshall, Kansas Natural Resources Council & Kansas Land Trust, DeSoto

2:30 - 3:30 pm

Session: *Education, Research and Development*

- Technology development
- Improved petroleum recovery
- Environmental remediation
- Education and information dissemination

Moderator: Lee Gerhard, KU Energy Research Center, Lawrence

Panel: Lanny Schoeling, Tertiary Oil Recovery Project, Lawrence
Tim Carr, Kansas Geological Survey, Lawrence
Bradford Rine, C.H. Todd, Inc., Wichita
John Callen, Edmiston Oil Company, Wichita

3:30 - 3:45 pm

Break

3:45 - 5:00 pm

Session: *Strategies for the Future*

- Future developments in production
- Future developments in consumption

Moderator: Charles Warren, Kansas, Inc., Topeka

Panel: Lee Gerhard, KU Energy Research Center, Lawrence
(others to be announced)

5:00 - 5:30 pm

Summary and Wrap-up

Day Two

Non Fossil Energy Sessions

Thursday, October 7, 1993

7:30 am

Registration

8:00 - 9:00 am

Keynote Address - Donald Aitken, Senior Energy Analyst, Union of Concerned Scientists, & Chair of the American Solar Energy Society, Boston

9:00 - 9:45 am

Session: *Transportation*

- Transportation energy use in Kansas
- Improving transportation energy efficiency
- Alternative fuels
- Rail transportation

Moderator: Tom Mulinazzi, University of Kansas, Lawrence

Panel: Jim Stuck, Western Resources, Topeka
Wade Graves, Western Resources, Topeka
Deb Miller, Kansas Department of Transportation, Topeka

9:45 - 10:00 am

Break

10:00 - 11:00 am

Session: *Buildings*

- Building energy use in Kansas
- Quality of today's buildings
- Energy performance standards
- Weatherization programs

Moderator: Richard Hayter, Kansas State University, Manhattan

Panel: Joe King, Dyn-Corp Meridian, Overland Park
Bob Fincham, Ekdahl, Davis, Depew, Persson/Architects, Topeka
Norma Phillips, Department of Commerce & Housing, Topeka
Bill Latimer, Latimer Sommers & Associates, Topeka

11:00 - 12:15 pm

Session: *Electric and Natural Gas Utilities*

- Major issues for electric utilities in the 90's
- Major issues for gas utilities in the 90's
- Integrated Resource Planning

Moderator: John Hayes, Western Resources, Topeka

Panel: Drue Jennings, Kansas City Power & Light, Kansas City
Charles Terrill, Kansas Electric Power Cooperative, Inc., Topeka
Don Low, Kansas Corporation Commission, Topeka

12:15 - 1:30 pm

Lunch

1:30 - 2:30 pm

Session: *Agriculture and Industry*

- Agricultural energy use in Kansas
- Bio-based fuels
- Industrial energy efficiency
- Energy management systems

Moderator: Stan Clark, Kansas State University, Manhattan

Panel: (to be announced)

2:30 - 3:30 pm

Session: *State Government*

- Energy use in Kansas government
- Successful energy efficiency programs
- Strategies for improving energy efficiency
- Opportunities for Federal-State partnerships

Moderator: Rep. Carl Holmes, Chair, House Energy & Natural Resources Committee, Liberal

Panel: Bill Hartman, Emporia State University, Emporia
Dick Tilley, Division of Architectural Services, State of Kansas, Topeka
Carl Walter, Environmental Protection Agency, Region VII, Kansas City

3:30 - 3:45 pm

Break

3:45 - 5:00 pm

Session: *Renewable Energy*

- Renewable energy resources in Kansas
- Renewable energy technologies
- Renewable energy development strategies

Moderator: Bruce Snead, Kansas State University, Manhattan

Panel: Richard Nelson, Kansas State University, Manhattan
Joe King, Dyn-Corp Meridian, Overland Park
Donald Aitken, Union of Concerned Scientists, Boston

5:00 - 5:30 pm

Summary and Wrap-up

5:30 pm

Adjournment

Governor's Conference Kansas Energy Policy

October 6th-7th, 1993

Kansas Expocentre

Topeka, Kansas



Printed on recycled paper

Registration Form

Governor's Conference on Kansas Energy Policy

October 6th & 7th, 1993, Topeka, Kansas

Last Name First Name

Affiliation/Business/Organization

Address

City State Zip+4

Daytime Phone Number FAX Number

Registration Fees:

- ☐ \$40 Full Conference Registration Fee (2 days)
☐ \$25 Partial Conference Registration Fee (1 day only)

To assist in planning, please check all that apply:

- ☐ I will attend the conference Wednesday, October 6th
☐ I will attend the conference Thursday, October 7th

Method of Payment:

☐ A check or money order is enclosed (Make checks payable to Kansas Corporation Commission or KCC)

☐ Please invoice my business/organization

Assistance for Participants with Disabilities/Dietary Requirements:

The State of Kansas is committed to making conference activities accessible to all participants. In order to assist you, please indicate by October 1, 1993, any special requirements and assistance needed:

Method of Registration (Please register by Friday, October 1, 1993):

1. Call the KCC Conference Registration Office at (913) 271-3170
2. FAX your registration to (913) 271-3354
3. Mail this form to:

Energy Policy Conference
KCC
1500 SW Arrowhead Road
Topeka, KS 66604-4027



SIERRA CLUB

Kansas Chapter

Mandates of the Federal Energy Act

Testimony of William Craven
Legislative Coordinator, Kansas Sierra Club

House Energy and Natural Resources Committee
Interim Meeting
September 15, 1993

The Sierra Club is pleased to appear today to discuss this important topic. As you no doubt already know, the 1992 federal energy act is not a simple bill. It covers dozens of topics which will affect all Americans, and it will impose on states the responsibility to explore the energy use and energy conservation potential within their boundaries. Kansas will no doubt benefit from that exercise. Our per capita energy usage ranks us 43rd in the nation, according to a recent study from the Institute for Southern Studies.

Two of those topics are energy ratings systems for homes, which the act does not mandate, but only encourages, and integrated resource planning for utilities, which is mandated, but Kansas is already working on that issue, and was working on that issue prior to this federal mandate. I have taken the liberty of attaching recent newspaper reports I did on these two topics, as well as some reports on the more general issue of energy efficiency.

Another mandate, which doesn't affect state government per se, but which is long overdue, establishes new appliance efficiency standards for lights, electric motors, showerheads, and heating and cooling equipment for commercial buildings.

One of the requirements of the bill is that federal buildings install energy conservation measures with a payback period of less than 10 years. I would urge this committee to consider legislation encompassing this same goal for Kansas' public buildings. A revolving fund, which you are all quite familiar with, is established in the federal act to help federal agencies achieve this goal.

Another mandate in the act that affects only the federal government requires the purchase of alternative-fueled vehicles for the federal fleet, and again, this innovation should be considered by Kansas state government.

One mandate which does affect Kansas is the requirement that the Department of Energy establish a technical assistance program to help states and local governments upgrade, implement, and enforce the energy portions of their building codes. It also requires states to certify that state building codes are in compliance with the Council of American Building Officials Model Energy Code of 1989, and that states have updated their commercial building codes to meet industry standards for heating, refrigeration, and air conditioning. These requirements present an interesting problem for states

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Attachment # 28

like Kansas that don't have a state building code. Nevertheless, this goal is important to Kansas, and I would ask you to consider incorporating this goal into state law as well.

Other conferees, notably Don Low and Joe King, are far more competent to deal with the technical issues presented by these mandates, especially the issue of how much money will be saved in energy bills as a result of an investment in energy efficiency technology.

Mr. Chairman, I have reviewed the Energy Act and the 600 pages of legislative history, but I may have missed a mandate or two. I appreciate the opportunity to testify here today.

BY BILL CRAVEN

Metro News Staff

Energy 1-27

Somehow, there has to be a way to get the public aware of the consequences of its use of energy and ways to improve upon it. That is one of the passions of Paul Johnson, a Jefferson County-based advocate for energy efficiency and statewide energy planning who is not all that convinced that utility regulators in Kansas—specifically the Kansas Corporation Commission—are in tune with the modern demands of utility regulation or the techniques which will force utility companies to explore alternatives to electricity production other than massive generation units such as Wolf Creek and Jeffrey Energy Center.

Kansas ranks seventh in the nation in its per capita energy bill (\$2,000 in 1989) and statewide, spent more than \$5 billion in that year. Electric bills consumed \$1.65 billion, petroleum products consumed \$2.6 billion, and \$829 million went to natural gas purveyors.

Johnson is so absorbed in this issue that his solutions may well sound Utopian to some. But to Johnson, what he speaks reverberates with common sense, economic pragmatism, and long-term sustainability.

Whether energy policy is viewed from the perspective of one household or one state, Johnson sees ways to improve energy efficiency.

In the near term, Johnson believes the greatest savings can come in lighting, new motors, weatherized buildings, and high efficiency furnaces, air conditioners, and refrigerators.

Individuals who want to save money should explore energy-efficient light bulbs, for openers. Lighting consumes about 20 percent of all electricity used in the U.S., and an additional five percent is used to cool (via air conditioning) the heat generated by light bulbs.

Johnson said a study by the Department of Energy, conducted by Lawrence Berkley Laboratory, pointed to an 80 percent savings in the consumption of electricity by switching from incandescent bulbs to the newer fluorescent ones, and by retrofitting hardware to use today's newer technology.

Commercial buildings can retrofit their lighting and expect a payback within 2.75

years, according to the Missouri Energy Plan.

Another benefit is that jobs will be created and environmental benefits will multiply as buildings become more efficient.

Again, according to the Missouri Energy Plan, with each \$1 million invested in retrofitting lights, 44 jobs will be created, and more than 5,000 tons of carbon dioxide emissions will be eliminated (from coal-burning power plants.)

In an energy whitepaper which Johnson released last fall, he said Kansas businesses spend roughly \$155 million for lighting out of a total electric bill of \$600 million.

Even the research arm of the electric utilities has estimated that efficient technologies can reduce electricity consumption by 30 percent, and independent thinktanks like the Rocky Mountain Institute place the figure at 75 percent.

Affluent Americans are more able to afford energy efficient appliances and construction techniques, Johnson admitted.

Marty Schottenheimer, the coach of the Kansas City Chiefs, hawks energy efficient furnaces to affluent Johnson Countians on television commercials. Johnson, however, is worried about "the rest of us," as he put it.

With a third of the housing stock going to renters, there is no incentive for landlords to upgrade houses. Even though energy efficient construction or rehab work may cost 10 percent more, Johnson said the energy savings will pay for that investment in between 3-5 years.

And with personal incomes remaining constant over the past several years, Johnson thinks the burden of leading Kansas into the next century of energy conservation should be shouldered by utility companies and their regulators, particularly the Kansas Corporation Commission.

The fact that low-income people, renters, and many other groups of people are paying so much of their disposable income for energy (the state's per capita average energy bill is 15 percent of income) means that there is no money for weatherization, and it also creates the likelihood that other social costs

(inadequate diets and health care, for example) are aggravated.

There must be a way, Johnson believes, for individuals to adapt their energy consumption, and at the same time, to make their energy use more efficient. Whatever that costs, the money should be spent at local hardware and building supply stores, not to underwrite the purchase of Wyoming coal to burn in fossil fuel electric generation plants.

If Kansas would adopt a sensible energy plan, individuals would benefit through lower energy bills, would have more disposable income, and the quality of the housing stock would improve. The state's exposure to future oil shortages would be minimized, and the environment would be improved through less burning of fossil fuels.

COMPETITIVENESS CONCERNS

If not convinced about energy efficiency at a personal level, how about looking at the issue from a global perspective? Johnson contends that U.S. energy consumption is a ball and chain around the U.S. economy.

"Our main competitors use one-third to one-half less per dollar of manufactured products than we do," Johnson said. Japan's manufacturing base was built during an energy crisis, and Germany's productivity is largely a post-W.W.II phenomenon, much newer than that in the U.S.

If this country had the political will, achieving an energy balance with these two countries is achievable, Johnson said.

"We think energy is unlimited and cheap," Johnson said. "But it isn't and it seems like it takes a crisis to prove it."

On another front altogether, Johnson pointed out that 40 percent of the nation's trade deficit is tied to our dependence on foreign oil. He predicted that a \$.50 cent per gallon gasoline tax may be the only way to get Americans to understand the full price of foreign oil and its relationship to this country's international economic standing.

INTEGRATED RESOURCE PLANNING

Considerable attention has been directed at the issue of integrated resource planning (IRP). The Kansas Corporation Commission, last year, began looking at the issue, and this year, formal hearings will be held.

IRP is a planning tool by which both the supply side of energy production and the demand side (how consumers use energy) is evaluated.

IRP will require utilities to provide energy at the least cost, which portends an end to huge generation facilities. Instead, utilities will be forced to look at alternative sources of energy, including smaller scale, and on-site generators, as well as sources of energy such as solar, wind, co-generation sites, and others.

Johnson welcomes the KCC's look at IRP, but he believes the commission had preexisting authority to consider the matter. It simply lacked the will to proceed, he argued. Twenty states are already further along this path than Kansas, Johnson said.

The Citizens Utility Ratepayers Board (CURB) presented a comprehensive IRP strategy to the KCC during the informal hearings, and Johnson said CURB presented a proposal which took the best from many other states and applied other states' experience to Kansas' situation.

The KCC has recently circulated its draft IRP regulations and will hold the first in a series of hearings on them on Jan. 28 at the KCC headquarters, 1500 SW Arrowhead Road.

BY BILL CRAVEN

Metro News Staff

Energy II 1-27

How One Town Saved Energy

Osage, Iowa, is one of Paul Johnson's examples of what can be done to conserve energy and become more energy efficient.

This small town of 3,500 in the northeast corner of that state began becoming energy efficient in 1974. Houses were weatherized, the municipal gas and water utility distributed free low-flow showerheads, offered rebates on fluorescent light bulbs, promoted energy audits for commercial buildings, and used infrared cameras to show customers where heat was escaping from their houses.

As a result, 85 percent of the houses are adequately insulated, which in itself reduced gas usage 36 percent. Electric consumption has been reduced so that residents of Osage save \$147 each year.

The savings to local businesses has meant that more workers could be hired.

The hospital's new insulated roof saves it \$17,000 each year. The school's new showerheads save the district \$4,000 each year because hot water consumption has decreased by 500,000 gallons.

The grocery store captured the heat from its compressors and its heating bill dropped from \$600 to \$100 which helped lower food costs five percent.

The municipal utility lowered its electric rates by 19 percent and is now debt-free.

All told, the investment made by Osage amounted to \$350,000. It now saves \$1 million a year.

BY BILL CRAVEN

Metro News Staff

Energy III

Needed Policy Initiatives In Kansas

Paul Johnson, the energy efficiency advocate from Jefferson County, has a wish list. Three items top the list, which Johnson sees as ways to position Kansas to take advantage of the economics of energy efficiency.

1. Kansas should take some of the \$6 million now paid by ratepayers to utilities for research, and establish a public, first-class, energy institute.

Such an enterprise could provide state-of-the-art information to businesses and individuals on lowering energy costs. The institute would help the Kansas Corporation Commission analyze ratemaking cases and ways to lower energy costs. It could also provide continuing education to architects, builders, developers, and manufacturers.

Johnson said Wisconsin, Iowa, and California already have such institutes.

2. Kansas needs to have an energy plan. Missouri, Michigan, and California have completed efforts which included utilities, consumers, government, and others, which laid out concrete recommendations for their respective legislatures.

In Missouri, 100 energy efficiency options which will reduce that state's annual \$10 billion energy bill, increase employment, and improve the environment was formulated.

Ninety organizations participated in the Michigan plan, which concluded that conservation and efficiency was the best way to lower the costs of electricity. These options can reduce rates by 20 percent over the next 20 years, that study concluded.

California began this process earlier, and from 1973-85, it saved an estimated \$23 billion in energy costs. The California blueprint was adopted by all the major utilities in that state.

3. The energy efficiency of rental housing in Kansas needs to be improved.

Johnson has determined that 36 percent of the housing in Kansas is rental units. One-third of the renters spend more than 30 percent of their income on rent, which causes other budget problems. The renter usually pays the utility bills, but has little or no control over the selection of appliances, furnaces, or the weatherization of the building.

Johnson advocates minimum energy standards for rental units, which would operate in tandem with building codes, electric wiring codes, and plumbing codes.

BY BILL CRAVEN

Metro News Staff

Home Energy Rating Systems 4-28-93

Is your home energy efficient? Is it shaded properly? Are the appliances and heating systems efficient? Does your house leak? Is it insulated and weather tight? How much does it cost to heat and cool your home? Did you know any of these things before you moved in?

Sooner or later, a way around this problem will be an ordinary part of the real estate scene, many predict. Just as appliances now have energy ratings, Kansans who move into new homes—and maybe even into older homes—will know how energy efficient those homes are, and how much it will cost to operate their home each year.

For some, it won't be too soon. Kansas is noted nationally as the state with the 43th highest per capita energy usage in the nation, according to the 1991 Green Index, published by the Institute for Southern Studies.

The technique to provide this information to homebuyers is called a home energy rating system. Such systems are already in place in about a dozen states, and many, like Kansas, are beginning the first steps. But Arkansas, Oregon, Vermont, California, Rhode Island, Alaska, and several other states and even cities like Austin, Texas, have adopted home energy rating systems.

Here, a \$20,000 grant from the Kansas Corporation Commission to the engineering extension office at Kansas State University is the first step in figuring out a home energy rating system that makes sense for Kansas, according to Dennis Shockley, the undersecretary of housing for the Kansas Department of Commerce and Housing (KDCH). The report should be done in July, Shockley said.

After the report is evaluated, Shockley said further action would be up to the legislature.

Several forces are behind home energy rating systems, according to KDCH program coordinator Russ Rudy, who is clearly an advocate for such systems. Rudy says that home energy rating systems are a "win-win" proposition not only for buyers and lenders and utilities, but for realtors and homebuilders as well.

Many of Rudy's reasons are industry-specific, but what they all have in

common is the concern that each of the industries in the housing sector of the economy has an obligation to help curtail national energy consumption.

From a consumer perspective, homeowners have a right to know what the energy usage of their houses will be and how that compares to other houses on the market.

Second, utilities are increasingly under an obligation to control the demand for electricity, which means that the more energy efficient a house is, the less demand it will create. Many utilities are now retailing energy efficiency appliances. They will also benefit from fewer disconnects and arrearages. Since utility bills are the second-largest monthly bill involved in buying a home, such energy efficiencies should be part of the mortgage equation, many experts argue.

Third, federal secondary lenders (VA, FHA, Fannie Mae, and Freddy Mac) are increasing the availability of what are called energy efficient mortgages (EEM's) which have lower interest rates and enable buyers to afford a larger house and enable lenders to stretch the debt to income ratio by about two percent for energy efficient houses. EEM's are only available where houses are energy rated, and have lower interest rates and longer payback times than conventional bank loans.

Private banks and savings and loans are able, at the same time, to meet their obligation under the Community Reinvestment Act when making loans to energy efficient homes, Rudy stated.

As an example, Rudy said that a lender would be able to lend an additional \$5,800 to someone with a \$30,000 income and an EEM, or an additional \$9,600 to someone making \$50,000 who qualified for an EEM.

EEM's have been available through this secondary market since 1980, but they have not been publicized much and therefore have not been used extensively. It often takes a tenacious buyer to educate lenders about EEM's.

Fourth, homebuilders and related contractors should be encouraged to exceed their current practices and standards, so as to make energy efficiency a real goal of their construction techniques. There may be some grumbling from this sector, based on the

mistaken notion that builders won't be paid for the additional costs of making a house more energy efficient.

Rudy said, however, that buyers who use an EEM can relieve the builder of carrying these costs.

In other states, the pool of households that qualifies for home loans increases by as much as 10 percent if their reduced energy bills are considered part of their debt ratio.

Homeowners can save several hundred dollars a year by living in an energy efficient house. Rudy said that retrofitting old houses is also cost-efficient. There, homeowners with average bills of about \$1500 per year, can save as much as \$600.

These home energy rating systems are designed to be market-oriented, which means that they can be a valuable sales tool. Sellers of homes, in particular, will know the advantages of energy efficient homes, Rudy said.

Builders will not only extend their knowledge about what is and is not energy efficient construction, but they will find there are more consumers qualified for loans which means more home sales, which in turn, spurs demand for new construction.

Shockley sees home energy rating systems as part of the department's work with affordable housing concerns. The technology that can build houses for low and middle income that minimizes utility bills should be further explored, Shockley said.

Rudy, with the assistance of Habitat for Humanity, has already figured out that different insulating techniques on two identical houses in east Topeka has meant a 37 percent savings in heating and cooling bills.

BY BILL CRAVEN

Metro News Staff

Integrated Resource Planning 7-16-93

Kansas could have the nation's best framework for encouraging the efficiency of electric utilities if a proposed new rule of the Kansas Corporation Commission (KCC) becomes effective. That is the conclusion of Cynthia Mitchell, a Nevada-based economist and consultant for the Citizens Utility Rate Board (CURB), a watchdog of utilities here.

What is being developed is a process called "integrated resource planning" (IRP), which would require utility companies to plan in such a way as to provide power at the least cost—as well as factoring in the environmental costs of power production and discouraging electricity demand. At stake are ways not only to limit the demand for electric power, but also ways to limit expenditures for additional supply of electricity by avoiding construction of expensive electric generating plants.

This new planning requirement appears headed to eventual implementation in Kansas. The far-reaching and complicated new process will also require utilities to consider less-expensive power sources developed by private businesses and will thus provide a window of opportunity for alternative fuel sources of electricity like solar and wind power. Drafts of the rule have been circulated by the KCC to the companies it regulates.

The planning process has been unfolding for several months, and is now to the stage that the KCC has issued a draft policy which is now open to public comment. Several more formal steps, including a hearing, are necessary before the IRP rule becomes effective, however.

"Optimistically, we're looking at September or October" before the rule becomes effective, said Don Low, KCC's utilities division head. Low's division and CURB—and the consultants hired by each—were instrumental in drafting the proposal. CURB actually presented the first draft of the IRP rule. Alan Decker, CURB's consumer counselor, said major components of the CURB proposal remain largely intact in what is now being considered.

Across the nation, Decker said that IRP has led to greater use of energy efficient appliances and lighting systems and less reliance on polluting fossil fuels to

generate electricity. Conservation and efficiency aren't the only hallmarks of IRP. The planning process will also create the possibility that companies interested in the production of electricity from alternative sources of fuels—like wind power and solar energy—will finally have an opportunity to market their goods, if they can prove the economic viability of these sources.

Under IRP, utilities that rely only on large-scale coal and nuclear plants will have to consider alternative fuel sources if they are economically competitive.

There has been considerable interest in a recent report by the Union of Concerned Scientists which pointed out that in 15 hours, the sun delivers as much energy to the midwest as its residents consume in a year. The report, "Powering the Midwest," also indicated that Kansas, Nebraska, and North and South Dakota could, in theory, become the "Saudi Arabia of wind power," and supply all of the country's energy from wind alone.

But Paul Johnson, long an advocate of alternative fuel sources and conservation, cautioned that it can be arduous translating these statistics into "real world" solutions for electric power demand. One economic consideration, he said, is that the size and distribution network of alternatively fueled power has to be large enough to be competitive.

IRP, when implemented, "will benefit ratepayers by holding down the supply of power," Decker said. And while all Kansas electric utilities are now over-capacity, the new rule will require "utilities to analyze all available options to provide power, and they must choose the most efficient and least expensive ways of providing it."

Existing over-capacity provides, in Decker's mind, a retrospective rationale for the IRP approach. "If IRP had been in effect when Jeffrey Energy Center or Wolf Creek was being planned, we wouldn't have today's overcapacity," he stated.

The main change in this approach is that the previous—and still existing—system "is biased in favor of certain options which are controlled by the utilities," Decker said. Under IRP, the KCC and the public will have a chance to look at the utilities' planning processes.

The IRP planning process will strike several new balances in the regulatory

process, Decker said. One such balance will be for the KCC to require more investigation of future power needs by utilities, while at the same time avoiding "micro-managing" these companies, which he said is a major interest of the companies.

Another new balance will be the consideration of "externalities," often defined as the social or environmental costs of power production. For example, in the case of coal-fired plants, the environmental costs of air pollution is one factor that will enter the equation and help determine the real cost of electric production from that type of plant.

Johnson said that the conservation and energy efficiency components of IRP would stand the test of rigorous analysis, even if externalities were more difficult to quantify. Still, he said that it is important to "start compiling the real costs of the tons of sulfur and carbon dioxide that are emitted, [from coal-fired plants], and get the data on paper of what we are doing to the environment."

Utilities aren't necessarily opposed to this new approach, Decker said, but at the same time they want to retain as much flexibility as possible. One economic key to IRP is that utilities could conceivably make the same revenue by selling less power. At the same time, advocates like Johnson said he hopes utilities branch out into the businesses of selling information about energy efficiency, as well as the technologies and appliances which reduce energy use.

IRP may mean that the cost per unit of electricity increases while the total revenues obtained by the utility remain constant or even decrease. However, Johnson said that ratepayers should be able to pay less as appliances become more efficient, while at the same time noting that customers will have to make an effort to reduce their share of Kansas' \$5 billion annual energy bill.

On a per capita basis, Kansans spend about \$2,300 a year for energy. Other indices say that Kansas ranks 43rd (or lower) in the nation in terms of per capita energy use.

Michel' Quakenbush, a spokesperson for Western Resources, said the utility was keeping abreast of the IRP discussion.

"In general, we support the process and have been working with other interested parties like CURB and the Sierra Club to help us become as efficient as possible," she said. "We are concerned that IRP not be used to impose extra costs on our customers, and that the rule fully describe what is expected of us."

Decker, Low, and Johnson all agreed that the real test for IRP in Kansas will be in how the KCC administers the rule.

"If it is put on the shelf, it won't do much good," Johnson said. "IRP should be taken as seriously as the promotion of power usage used to be. The rule may be very acceptable, but its enforcement and administration will be the real key."

Low, as well as Decker and Johnson, said that the IRP planning process was very complex, and was causing KCC staffers to explore areas never considered before. They all agreed that additional resources would need to be allocated for KCC staff and training before IRP documents could be adequately analyzed by the commission's staff.

Int Res Planning sidebar

The real benefit from integrated resource planning (IRP), said Cynthia Mitchell, the consultant for the Citizens Utility Rate Board, is that utilities and utility regulators "will make better decisions, and enjoy better operation of existing resources." She added that IRP will create a framework in which utilities in this area (Missouri also has an IRP rule), will work with each other to use existing electricity generation capacity instead of building new, and very expensive, plants.

"IRP applies to resources utilities already have, and to resources they are considering purchasing," she said.

One reason Mitchell said the proposed Kansas rule could become the "best in the nation," is in the reasonable way "externalities" are treated. Externalities are the social and environmental costs associated with power production.

Too harsh a rule could, by definition, make electricity generated by coal and nuclear power too expensive. That won't happen here, she predicted. The magic words in the IRP proposed rule are that externalities are considered when they "are likely to occur within the planning horizon," the exact phrase also used in the Missouri rule. She said that phrase is the best yet devised in striking a middle ground on what should be considered as valid external costs.

The proposed Kansas IRP rule also contains options by which utilities can opt to reduce the demand for electricity combined with incentives to the utilities to do so. One option, called "shared savings," is calculated by subtracting the difference between the dollars saved by reduced electricity demand from the dollars spent to achieve those savings. The money spent is then shared by ratepayers and the shareholders in the utility.

The Kansas proposed rule has benefitted by the trial and error of IRP rules tested in other jurisdictions, she said. Extreme positions in which regulatory commissions consider only rate applications, on one hand, or where commissions don't consider the future planning of utilities—will be avoided here, if the rule is adopted as written.



SOLID WASTE UPDATE

September 1993

Bureau of Waste Management

Planning Grant Process Underway

KDHE announced the availability of solid waste planning grants with a letter to all counties on July 9, 1993. The letter included a grant application form and a guidance document. The Department's grant program establishes grant amounts based upon the population of the county. Grants are available for evaluating the feasibility of continuing to operate existing landfills under the new Subtitle D solid waste regulations and for preparing comprehensive solid waste management plans. The deadline for submitting the first round of grant applications was August 13. KDHE received 14 applications requesting a total of \$2,162,516. KDHE expects to fund the regional requests this fiscal year. More requests are anticipated, however, prior to the next application deadline of October 1, 1993. The table below lists the applicants and the number of counties addressed by the grant applications.

Grant Requests

<u>Applicant</u>	<u>No. of Counties</u>
MN/DK Co. Region	2
Lake Region	6
Gyp Hills Region	7
NE KS Region	2
NW KS Region	18
SC KS Region	4
SE KS Region	9
SW KS Region	13
Hodgeman Co.	1
Morton Co.	1

Transfer Station

Due to the number of anticipated landfill closings attributed to Subtitle D, KDHE anticipates a large number of transfer stations will be constructed. Therefore, the Department has completed a guidance document to assist counties who are planning to close landfills and use a transfer station to collect solid waste for shipment to a landfill. The document is available by calling 913/296-1600. KDHE intends to adopt the majority of this guidance as regulation at a later date. The goal date for the draft regulation is late spring 1994.

KDHE Waiting for EPA Approval

*Kansas submits first fully approvable
application to Region VII*



On July 26, 1993, the Department submitted to EPA an application for approval of the Kansas solid waste program. EPA will review the application, and, if acceptable, issue approval to the state to implement a solid waste program that is equivalent to the federal Subtitle D regulations. Prior to issuance of approval, EPA will have to issue a notice in the Federal Register that they intend to approve KDHE's program and may choose to hold a public hearing in conjunction with that notice. EPA has stated that the notice should be published no later than August 27, 1993.

The application includes the proposed state regulations which adopt the federal regulations by reference (*see later article*), a review of the department's resources to administer the program, guidance material to interpret areas where Subtitle D is not specific, and a certification by the attorney general that the state has legal authority to carry out the program. The application was submitted to EPA by the deadline established by the EPA Region VII office in order to receive approval of the program by October 9, 1993.

KDHE to Adopt Subtitle D by Reference

On August 16, 1993 KDHE held a public hearing on proposed permanent and temporary regulations K.A.R. 28-29-98 and 99. The hearing went smoothly as only one party submitted comments during the hearing. One additional comment letter was received during the written comment period. The regulations should be formally in place by the end of September. Additionally, KDHE has developed K.A.R. 28-29-6a which provides for public input into the solid waste permitting process. This regulation is making its way through Department of Administration and the Attorney General's Office. That regulation should become effective prior to October 9, 1993.

House E+NR
Sept. 14-15, 1993
Attachment # 29

KDHE Supports EPA's Proposed Extension of Subtitle D Landfill Regulations

On August 23, 1993 KDHE submitted written comments to the US. EPA in support of their July 28th proposal to extend the effective dates of the federal municipal solid waste landfill regulations. The EPA proposal would grant a six month extension from October 9, 1993 to April 9, 1994 for all landfills which can demonstrate that they received less than 100 tons of waste per day during the period October 9, 1991 to October 9, 1992. A two year extension to October 9, 1995 was also proposed for all small landfills (less than 20 tons per day) located in arid areas (less than 25 inches of precipitation per year) which have no evidence of groundwater contamination. KDHE emphasized to EPA that the delays would offer many small communities and counties much needed time to complete the complex solid waste planning process including regionalized planning activities.

KDHE also provided comments to EPA which suggested modifications of the proposed rule to allow for state flexibility in the following areas:

1. To grant the 6 month extension to landfills which exceed the 100 tons per day limit provided the reason for the exceedance is related to a natural disaster such as a tornado, flood, ice storm, earthquake, etc. This flexibility should apply to both historical waste generation as well as generation after October 9, 1993.
2. To determine appropriate groundwater standards at small landfills which qualify for the arid land exemption. It is KDHE's understanding that this flexibility is allowed under the recent Court of Appeals

decision which stated that small landfills cannot be totally exempt from groundwater monitoring under Subtitle D.

3. To grant up to a 6 month extension on a case-by-case basis to large landfills which have received more than 100 tons per day if the landfills have been impacted by the Midwest flood of July and August 1993. This flexibility is needed because several large landfills have devoted much time and effort to address wet conditions and large quantities of waste generated by flood cleanup activities rather than work on facility upgrades as planned.

KDHE hopes to see these suggestions incorporated into the final rule before the October 9th deadline.

Advisory Committee Provides Assistance

The Solid Waste Advisory Committee formed by KDHE has offered, and continues to offer valuable input on several important issues. The committee consists of volunteers with an interest and expertise in many facets of solid waste management. The Committee first convened on May 7, 1993 to provide input into KDHE's originally proposed draft regulations dealing with municipal solid waste landfills. Much valuable information was transferred between KDHE staff and the Committee. Based on that input, the regulations are being revised to reflect changes the majority of the Committee deemed applicable (see later article).

Select Committee members with expertise in solid waste planning also provided input on the Department's solid waste grant program. The Advisors helped fine tune the grant application packet including input on establishing *reasonable* allowable limits for planning. This should help maximize grant assistance provided by KDHE.

The entire Committee is currently reviewing an Operating Plan Guidance Document developed by Dr. Carl Burkhead. Dr. Burkhead is a professor of Civil Engineering at KU who was on loan to the Department this past summer. The Committee will meet in early September to discuss the guidance document.

New Staff on Board

The Department continues to add Topeka and District Office Staff to fill approved vacancies in Topeka and the District Offices. We are pleased with the quality of staff hired and expect an immediate positive impact from each of them. New staff include:

Phil Rosewicz
Mark Duncan
Jim Gerlaugh

Environmental Engineer
Environmental Geologist
Office Specialist

Kansas Proposed Municipal Solid Waste Regulations

KDHE is moving forward to develop a regulatory package designed to enhance the Federal Subtitle D regulations by filling in the *gray areas* in the federal regulations, and tailoring the Federal Regulations to Kansas needs. The package will clearly delineate the requirements for designing and operating a Subtitle D-compliant landfill in Kansas. The regulations are being developed with the assistance of the

Solid Waste Technical Advisory Committee. The new regulatory package will maximize KDHE's flexibility in dealing with municipal landfills and address areas where EPA is silent. The new package will also incorporate certain existing landfill regulations resulting in a more comprehensive document for the regulated community. In accordance with the provisions of HB 2428, KDHE will propose the regulations but not consider adoption of them until at least 45 days after the start of the 1994 legislative session. Some of the areas to be addressed include:

- + clarify qualification requirements for the small landfill exemption
- + adequate final cover requirements
- + flexibility in design criteria
- + flexibility in groundwater monitoring requirements for large landfills
- + vertical expansions

The proposed timing of the new regulations as well as the schedule for the current regulation package is presented below. Please note that the current regulation package which adopts Subtitle D is referred to as the *EPA Pkg*, while KDHE's proposed regulation package is referred to as the *KDHE Pkg*.

Landfill Closures

Due to the large numbers of landfill closures associated with the promulgation of Subtitle D, KDHE has assigned staff from the Bureau of Environmental Remediation (BER) to oversee landfill closures. BER staff has been assisting a number of landfill operators in their landfill closure planning. Questions pertaining to landfill closures can be directed to Marv Glotzbach at 913/296-2783.

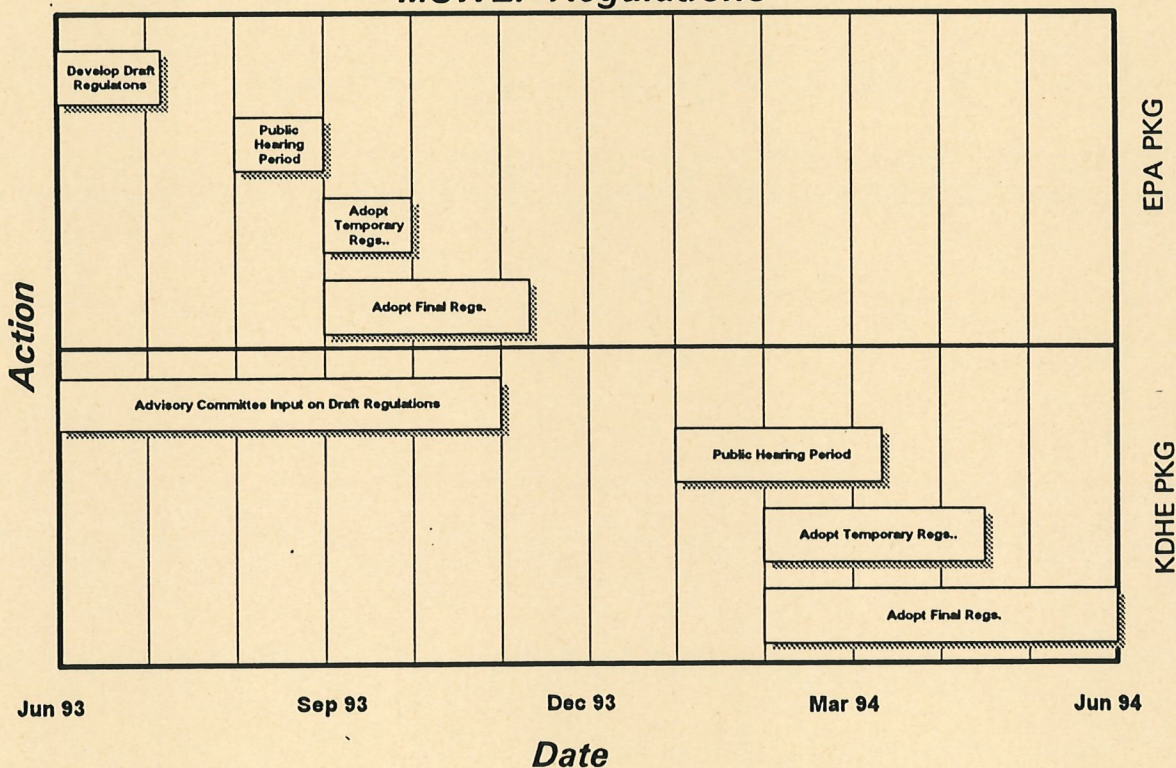
Regional Planning Update

See page 4 for a map delineating regions and counties who submitted grant applications on or before the deadline for the first round of grants. The map indicates regionalization is beginning to take place. Congratulations to those counties, commissioners, and planning committees for their hard work in establishing the regions!

Bureau of Waste Management Key Staff

Bill Bider, Bureau Director	913/296-1612
Tom Gross, Solid Waste Section Chief	913/296-1603
Joe Cronin, Solid Waste Permits	913/296-1667
Sam Sunderraj, Solid Waste Grants	913/296-1595

Solid Waste Action Dates MSWLF Regulations



State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

July 9, 1993

TO: County Commissions, County Solid Waste Management Committees

RE: Solid Waste Planning Grant Application Forms and Guidance

The Kansas Department of Health and Environment, Bureau of Waste Management is now accepting applications for solid waste management planning grants. Individual counties will be eligible for up to 50% funding, while regional efforts will be eligible for up to 90% funding. Applicants will have to certify on the application that the county or region has a legally formed solid waste planning committee according to K.S.A. 65-3405.

Regional solid waste planning grant proposals that had interlocal agreements in place by July 1, 1993 and submit applications by August 13, 1993 will receive first priority. Second priority will be for regions that have interlocal agreements in place and submit applications by August 13, 1993. All grant applications beyond that time will be prioritized and funded quarterly starting October 1, 1993. Funding of applications will be based upon established grant selection criteria and available funds. Each application will be placed on a priority list and funded based upon its ranking on the priority list. Applications that arrive after the quarterly deadline will be prioritized the following quarter. Grant applications can be improved and resubmitted for the next quarter if the applicant desires to move up the list to gain earlier funding. A copy of the application review criteria can be found in the enclosed Solid Waste Planning Grant Guidance document.

The solid waste grant application deadlines for the next 12 months will be:

4:30 pm, August 13, 1993

4:30 pm, October 1, 1993

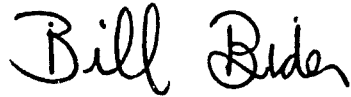
4:30 pm, January 7, 1994

4:30 pm, April 1, 1994

We anticipate the prioritization of applications and selection of projects to be funded will take approximately two weeks. The applicants to be funded will be notified and provided a grant contract to start the funding process. When the contract has been signed by both KDHE and the grant recipient, funds will be made available. The entire process from selection of recipients to completion of the contract should take from four to five weeks.

If you have questions about the application forms or the guidance document,
contact the Planning and Grants Unit at (913) 296-1540 or 296-1595.

Sincerely,

A handwritten signature in cursive script that reads "Bill Bider".

Bill Bider, Director
Bureau of Waste Management

xc: Charles F. Jones
Solid Waste staff
Technical advisors
Ron Fox
Ron Smith
District Offices

SOLID WASTE PLANNING GRANTS

June 1993

GUIDELINES AND APPLICATION FORMS



Kansas Department of Health and Environment
Bureau of Waste Management
Building 740 Forbes Field
Topeka, Kansas 66620-0001

Introduction and Background

The Kansas Legislature passed House Bill 2801 (K.S.A. 65-3401 et seq) in 1992 which set the stage for substantial changes in the way solid waste will be managed in the State. These changes were necessary due to the revision of Subtitle D of the federal Resource Conservation and Recovery Act which governs solid waste management nationally. House Bill 2801 directed KDHE to seek approval from EPA to administer the solid waste landfill regulations.

According to Kansas statute, each region, county or designated city, individually or jointly, must develop and adopt a solid waste management plan. The plan must address the solid waste management needs of all the communities and persons within the county or within all the counties forming the region. This does not preclude a plan from designating the use of facilities outside the planning region for waste management services.

The Kansas statute also provides for a program of grants to counties for developing and revising these official solid waste management plans. It is funded by a statewide \$1.50 per ton tipping fee. The grants can cover the costs of planning and carrying out related studies, surveys, investigations, inquiries, research and analysis.

Rules and regulations are being developed for the grant program. Until they are promulgated, this guidance document describes what may be funded with a solid waste planning grant, and the process to be followed in applying for a grant.

Grant funding levels

Regions with more than one county that are formed by an Interlocal Agreement under K.S.A. 12-2901 may receive up to 90% of the planning cost. To be eligible for up to 90% reimbursement, the regional plan has to be prepared by a regional solid waste management committee constituted per K.S.A. 65-3405(b).

Single counties or cities designated to plan on behalf of a county pursuant to K.S.A. 65-3405(b) can receive up to 50% of the cost of developing a plan. An individual county plan has to be prepared by a statutorily constituted County Solid Waste Management Committee.

Who may apply for a grant?

- * An eligible (as noted above) Regional Entity which is a legal fiscal agent for receiving both the state planning grant and member county matching funds. This entity must also be able to expend monies for the purpose of the grant.
- * A Regional Solid Waste Management Planning Committee, provided it has designated a legal entity (e.g. a member county, regional planning commission, etc.) to be the fiscal agent for receiving and expending grant monies.
- * In the case of individual county plans, the County, or designated city, may apply and shall be the fiscal agent.

What costs and tasks are eligible?

The costs of preparing and revising official solid waste management plans are eligible for funding. This includes the cost of carrying out related studies, surveys, investigations, inquiries, research and analyses to prepare all elements of Plans as outlined in K.S.A. 65-3405(e). Any of these activities that were performed after January 1, 1993 are eligible for grant funding.

In order to extend the available grant dollars to as many regions and counties as possible, the Department has established caps for total project costs that will be eligible for grant purposes. The caps are listed in the application form. An individual county may receive up to 50% of the cap amount and a region may receive up to 90% of the cap amount. The caps are not the amount of money a county or region can expect to receive for any given activity. Any county or region may choose to spend more than the cap for a planning activity, however, the amount above the specified cap will not be eligible for state grant funding.

Examples of eligible tasks are listed below.

- Feasibility study of an existing landfill.
- Development of a comprehensive solid waste management plan.
- Related studies, surveys, investigations, inquiries, research and analyses.

Costs associated with the development of a landfill at a new site or expansion of an existing site and costs incurred before January 1, 1993 are not eligible for funding under the planning grants.

Criteria to be used in awarding grants

Prior to evaluating proposals for their content, each application will be reviewed for compliance with state solid waste statutes. Any county operating a landfill that is not submitting the \$1.50 per ton tipping fee contained in K.S.A. 65-3415(b) will be considered ineligible for receipt of grant funds. In addition, all applicants must certify, as part of the application, that their planning committees have been formed in accordance with the requirements of K.S.A. 65-3405.

After passing the legal review described above, all grant applications will be evaluated and placed on a priority list. The first prioritization of applicants will be on applications from regions which had interlocal agreements in place by July 1, 1993 and submit applications by August 13, 1993. Regions who complete interlocal agreements and submit applications prior to August 13, 1993 will be considered next. After this initial focus on regions, prioritization and funding decisions will occur on a quarterly basis if sufficient funds are available. Those applications at the top of the list will receive available funds. As new grant applications are received they will be prioritized and placed on the list. Any eligible planning activity performed by an individual county which joins a region before October 1, 1993 may be considered eligible for up to 90% reimbursement, if that planning work product is incorporated into that regional plan. In the initial year of the solid waste management planning grant program the funding priorities will focus on regional approaches and on the short term activities necessary to meet the Subtitle D landfill criteria.

Solid waste planning grant applications will be evaluated and prioritized based upon the following factors in the noted percentages:

1. Potential Environmental Impact (25%)
 - ☐ Minimization of impacts to air, water and soil resources
 - ☐ Identification of groundwater or other environmental problems
 - ☐ Conformance to solid waste hierarchy (reduce, recycle, dispose)
2. Regionalization (20%)
 - ☐ Regional versus individual county
 - ☐ Number of counties participating in region
3. Quality of Application (20%)
 - ☐ Completeness
 - ☐ Clarity
 - ☐ Technical merit
 - ☐ Comprehensiveness of the proposal

Kansas Solid Waste Management Planning Grant Guidelines

- 4. Applicant Need (20%)**
 - ☐ Relation of proposed activity to Subtitle D deadlines
 - ☐ Readiness to proceed with planning activities
 - ☐ Other sources of funding available for planning activities
- 5. Cost Effectiveness (15%)**
 - ☐ Phased approach to project
 - ☐ Repetitious of previous efforts
 - ☐ Commitment of recipient demonstrated through active participation in the planning process
 - ☐ Justification for the funds requested

For more information please contact:

**Planning and Grants Unit
Solid Waste Section
Bureau of Waste Management
Kansas Department of Health and Environment
Building 740, Forbes Field
Topeka, Kansas 66620
(913) 296-1540 or 296-1595**

Solid Waste Management Planning Grant

APPLICATION FORM

Date of Application

Contact Person (responsible for day to day project management)

Name of Applicant Organization

Address

City

State

Zip Code

Telephone Number

FAX Number

FEIN (IRS) Tax Number

State Funding Requested

\$ _____

Local Match (Monetary or In Kind)

\$ _____

Total Cost of Proposed Project

\$ _____

Proposed Project is for:

- ☐ Individual County at up to 50% state funding
☐ Regional at up to 90% state funding

If Regional, please list all the participating counties:

Proposed starting date of project:

Proposed completion date of project:

Solid Waste Management Planning Grant

ELIGIBLE TASKS:

Check the appropriate boxes for the tasks to be funded with this grant:

The caps indicated are for the total eligible project costs. Individual counties may receive up to 50% of the cap in grants. Regions may receive up to 90% of the cap in grants.

EXISTING LANDFILL FEASIBILITY STUDY

The tasks below may be conducted for evaluating an existing landfill for planning purposes. In order to be eligible for reimbursement, the work products resulting from these tasks must be used to revise an existing solid waste management plan or to develop a new comprehensive plan.

- ☐ Installation of ground water monitoring wells and groundwater sampling and analyses. The eligible work does not constitute a hydrogeological characterization and assessment of the site, a step that is essential for proper design of landfill cells and for locating and designing monitoring wells for landfills subject to the Subtitle D criteria. This task may be conducted in conjunction with a comprehensive solid waste management plan.

\$10,000 cap for each individual site per county or region.

- ☐ Determination of a landfill's remaining capacity, which may include a topographical survey of the site and the calculation of available airspace based on proposed soil use and availability. This task may be conducted in conjunction with a comprehensive solid waste management plan.

\$8,000 cap for each individual site per county or region.

- ☐ Conduct a study to evaluate the feasibility of continuing to operate an existing landfill versus closure of the site and direct haul to a neighboring landfill or construction of a transfer station. The study may include evaluating the existing landfill to determine if it meets the Subtitle D siting requirements. The evaluation shall include review of the technical and economic implications of the options and may include preparation of conceptual engineering plans. This task may not be performed in conjunction with a comprehensive solid waste management plan.

\$7,000 cap for single counties.

Solid Waste Management Planning Grant

ELIGIBLE TASKS (cont)

COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN

The following tasks may be conducted in preparing a comprehensive solid waste management plan:

- ☐ The plan must include a description and evaluation of the planning area's demographics, geography and geology; transportation network; waste stream characterization; solid waste collection, transportation and disposal. The plan is to address all special wastes and identify existing problems and future needs in the planning area. The plan should investigate all options for waste reduction, processing, storage, collection, transportation and disposal with the related cost/benefit analyses and lead times needed for implementation of the various options. The plan shall identify elements of the plan that will require public education and include a plan for delivering such education. From this information, a workable solid waste management plan with implementation and financing schedules will be created.

\$40,000 cap for individual counties of pop. < 20,000

\$60,000 cap for individual counties of pop. > 20,000 and < 60,000

\$80,000 cap for individual counties of pop. > 60,000 and < 100,000

\$100,000 cap for individual counties of pop. > 100,000 and < 150,000

\$120,000 cap for individual counties of pop. > 150,000

The base grant for regions is the individual cap for the largest county of the region, plus an additional \$20,000 for each of the other counties in the region.

OTHER TASKS

This section is for any other eligible task not covered elsewhere on this application form.

- ☐ Carry out related studies, surveys, investigations, inquiries, research and analyses in the preparation and revision of official solid waste management system plans as authorized by K.S.A. 65-3415.

Solid Waste Management Planning Grant

Organization: _____

Address: _____

Phone: _____ Fax: _____

BUDGET BREAKDOWN BY TASK:

	State Requested <u>Funding</u>	In Kind/Monetary <u>Match</u>
EXISTING LANDFILL FEASIBILITY STUDY		
ground water evaluation	\$ _____	\$ _____
landfill capacity evaluation	\$ _____	\$ _____
alternative evaluation	\$ _____	\$ _____
COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN	\$ _____	\$ _____
OTHER TASKS	\$ _____	\$ _____
SUBTOTAL	\$ _____	\$ _____
TOTAL (COLUMN 1 + COLUMN 2)		\$ _____
PERCENTAGE OF TOTAL	_____ %	_____ %

Solid Waste Management Planning Grant

BUDGET BREAKDOWN BY COST CATEGORIES:

	State Requested <u>Funding</u>	In Kind/Monetary <u>Match</u>
PERSONNEL SERVICES	\$ _____	\$ _____
TRAVEL	\$ _____	\$ _____
PROFESSIONAL SERVICES	\$ _____	\$ _____
SUPPLIES	\$ _____	\$ _____
EQUIPMENT	\$ _____	\$ _____
ALL OTHER COSTS	\$ _____	\$ _____
 SUBTOTAL	 \$ _____	 \$ _____
TOTAL (COLUMN 1 + COLUMN 2)		\$ _____
PERCENTAGE OF TOTAL	_____ %	_____ %

Solid Waste Management Planning Grant

Please attach a detailed description of the project to be funded. The description should include the components of the project, a timetable for completion of the elements that comprise the project and a detailed cost estimates of each element of the project. The description should also include documentation on how the estimates were made, and a list of other sources of grants and funds used for solid waste management planning in the past three years.

Remember that the caps indicated are for the total eligible project costs. Individual counties may receive up to 50% of the cap. Regions may receive up to 90% of the cap.

CERTIFICATION:

The undersigned is an official authorized to represent the agency. The applicant certifies that all proposed activities will be carried out; that all grant money received will be utilized solely for the purposes for which it is intended; that records documenting the planning process and implementation will be maintained and submitted when requested, and that KDHE is hereby granted access to inspect project sites and/or records.

The applicant hereby certifies that the membership of it's Solid Waste Management Planning Committee is legally constituted pursuant to K.S.A. 65-3405.

Authorized representative (Please Print)

Title

Signature of authorized representative



Department of Health and Environment

Robert C. Harder, Secretary

To: County Commissioners

From: William L. Bider, Director - Bureau of Waste Management *Bill Bider*

Date: September 14, 1993

Re: Subtitle D Clarification - Small Landfill Exemption and Deadline Extension

Dear County Commissions:

In response to a recent KDHE survey, many counties which operate small landfills reported their wishes to remain open under Subtitle D anticipating that they would qualify for a "small landfill exemption." Since that survey was completed, there have been a number of events that have taken place at the federal level related to the regulations dealing with municipal solid waste landfills (MSWLFs), which are commonly referred to as Subtitle D. Most of these events have been related to the compliance deadlines specified in Subtitle D and the small landfill exemption. Because the effective date of Subtitle D will be upon us in less than one month, this letter was prepared to explain these recent developments as they relate to small landfills which intend to qualify for the extension. Although this information is primarily applicable to the small landfills operating in western Kansas, this letter is being distributed to all Kansas counties and other interested parties for informational purposes.

Initially, we need to summarize what was included in EPA's proposed rule published in the Federal Register on July 28, 1993. The proposal deals with two main issues which often are confused -- extensions versus exemptions. It is very important to understand the difference to know what Subtitle D standards are applicable to your county and when the compliance dates take effect. In general, extensions have been proposed for various compliance deadlines. This simply means that more time will be available to upgrade facilities and operating practices. Extensions do not eliminate or modify those requirements. On the other hand, exemptions are permanent releases from certain requirements as long as specified conditions are satisfied.

One of the least controversial aspects of EPA's proposal was to extend the compliance date for financial assurance to April 9, 1995 for landfills which do not meet the small landfill exemption criteria, and October 9, 1995 for landfills which do meet the small landfill exemption criteria. These criteria are explained later in this letter.

For landfills which received greater than 100 tons per day of solid waste during the period October 1991 through October 1992, all criteria except financial assurance are applicable after October 9, 1993. For landfills that received less than 100 tons per day of solid waste during this period, the Subtitle D compliance date for all criteria except financial assurance is April 9, 1994. For landfills meeting the small landfill exemption criteria, the proposed Subtitle D compliance date for all applicable criteria is October 9, 1995. Let us again stress that these dates are proposed. EPA will make a decision some time after August 28, 1993, likely in early October, whether to adopt these dates in a final regulation. Please note that KDHE submitted comments to EPA which requested state flexibility to provide the six month extension to any landfill which exceeded the 100 tons per day limit due to natural disasters such as floods, tornados, ice storms, etc.

The main reason that EPA proposed the two year extension for qualifying small landfills is that the Subtitle D rules now require "one-size-fits-all" groundwater monitoring at all landfills, regardless of size. This requirement resulted when a U.S. Court of Appeals ruled in May 1993 that EPA does not have the authority to exempt small landfills from groundwater monitoring. The Subtitle D regulations originally promulgated by EPA did not require groundwater monitoring at landfills which qualify for the small landfill exemption. EPA recognized that many small landfill owners/operators may have made decisions to stay open based upon the assumption that groundwater monitoring was not required. The economic impacts associated with groundwater monitoring may cause some counties to arrive at different conclusions.

What does all of this mean to your county? If you chooses to operate your landfill under the small landfill exemption and if you anticipate receiving the two year extension until October 9, 1995, the owner/operator must make the following four demonstrations:

- (1) The MSWLF receives and disposes less than 20 tons of municipal solid waste daily, based on an annual average;
- (2) The county has no practicable waste management alternative.
- (3) The MSWLF is in an area that annually receives less than or equal to 25 inches of precipitation, and
- (4) There is no evidence of groundwater contamination from the MSWLF;

The date the demonstrations must be made depends on whether the proposed extensions are finalized by EPA. If the extensions are promulgated, the demonstrations must be made by **April 9, 1994**. If the extensions are not promulgated, the demonstrations must be made is **October 9, 1993**.

It is very important for every landfill owner/operator who wishes to qualify for the small landfill exemption to understand that the exemption is lost if the facility no longer meets any of the exemption criteria. If the exemption is lost, all Subtitle D requirements are immediately applicable including design standards, groundwater monitoring, and the corrective action process for any statistically significant groundwater contamination. Even if a landfill owner/operator chooses to close a facility which has lost an exemption prior to October 9, 1995, closure and corrective action must be carried out under the Subtitle D requirements. Please note that this loss of exempt status can occur at any time during the probable extension period which runs from April 9, 1994 to October 9, 1995 if the facility no longer meets the four exemption criteria.

It is now nearly certain that all landfills, large and small, will perform some groundwater monitoring under the provisions of Subtitle D. The current federal regulations would apply the same groundwater monitoring standards at all facilities. KDHE hopes that states may be granted the flexibility to apply alternate standards to small landfills. Later in this letter we explain how counties should make their demonstrations that all exemption criteria are satisfied, including the demonstration that there is no evidence of groundwater contamination. Although that demonstration does not require the installation and

sampling of monitoring wells, such monitoring will be required after October 9, 1995. If a county waits until just prior to this date to install wells for monitoring under Subtitle D, there is some risk that contamination will be discovered and the exemption will be lost. The landfill would then be subject to all Subtitle D requirements. The only way that a small landfill with groundwater contamination could avoid the full-blown Subtitle D corrective action requirements would be to stop receiving waste before the applicable compliance date which will probably be April 9, 1994.

To avoid operating and closing under Subtitle D, KDHE has been advising small landfills to assess groundwater quality prior to the applicable compliance date. This had been October 9, 1993 until EPA proposed the six month extension. KDHE still believes it is in the counties' best interests to obtain actual groundwater sampling results prior to the deadline and close by that date if contamination is present. This would avoid the Subtitle D corrective action requirements. KDHE recognizes that if a county generates groundwater results which indicate the presence of contamination prior to the October 9, 1995, some of the extension could be lost. Please recognize that the only landfills which would lose the extension are those with contamination present. Those landfills would ultimately learn that contamination exists after October 9, 1995 when groundwater monitoring is required. They would then be subject to greater cleanup standards. Also, please note that closure prior to the applicability of the Subtitle D requirements does not eliminate all responsibilities related to groundwater monitoring or corrective action. Under current state requirements, facilities which close with groundwater contamination must work with the Bureau of Environmental Remediation to develop appropriate monitoring systems and corrective action plans. State closure requirements are much more flexible than those specified under Subtitle D.

The decision to implement groundwater monitoring to satisfy the groundwater demonstration must be made by the county recognizing that there are risks associated with waiting. KDHE staff will continue to be available to work with counties to answer questions related to this important decision and to implement appropriate groundwater monitoring programs at landfills considering operating under the small landfill exemption.

In order to assist counties in making the demonstrations required for the small landfill exemption, KDHE provides the following guidance:

1. To demonstrate that the landfill receives less than 20 tons per day (TPD) of solid waste, review the past year's operating records at the facility to determine the total tons of waste disposed. If records are not available, you should estimate the amount of waste using an appropriate estimation method such as per capita generation rates, or numbers of truck loads. To determine the average tons of waste disposed on a daily basis, divide the total amount of waste disposed by 365 days. This will give you the daily amount of waste disposed in TPD.

The records or estimates should include a certification from the owner/operator that the records are accurate to the best of the owner/operator's knowledge.

2. In order to demonstrate that no practicable disposal alternative exists, the county must:
 - A. Certify there is no other operating MSWLF that is in compliance with all parts

of Subtitle D located within 75 miles of the center of the area served by your landfill; or

- B. If another MSWLF that is compliant with all parts of Subtitle D is located within the 75 mile radius described above, the county commissioners must certify, in writing, that the other landfill is not a practicable alternative. Some of the reasons the other landfill might not be a practicable alternative include: 1) there is known groundwater contamination at the other MSWLF; 2) addition of waste from your county would cause the other landfill to lose the small landfill exemption based on the 20 TPD cap; or 3) the cost of hauling to the other MSWLF is prohibitive.
- 3. In order to demonstrate that the landfill is in an area that annually receives less than 25 inches of precipitation, the county must review any available precipitation data for the area where the landfill is located. The data should be reviewed for a period of time from 1973 (or before) to the present. A check with the closest local airport, the Agricultural Stabilization and Conservation Service, or a county extension agent is recommended.
 - 4. To demonstrate that there is no existing groundwater contamination attributable to the landfill, we recommend you obtain groundwater quality data from one of the two sources listed below if available, or certify that no groundwater sampling results have been identified for the groundwater below the landfill or in close proximity to the landfill. KDHE will consider this certification that no groundwater data is available to be an adequate demonstration that that is "no evidence of groundwater contamination."
 - A. Existing wells at or very close to the landfill
 - B. New wells installed at the landfill specifically for the purposes of performing the groundwater demonstration

Many counties have already embarked on groundwater sampling programs and have been working with KDHE to determine appropriate sampling programs. Any county which has not yet implemented a groundwater monitoring program but wishes to do so may contact KDHE for assistance. KDHE continues to use flexibility in determining what constitutes groundwater contamination with respect to the demonstration required for the small landfill exemption. As previously stated KDHE will evaluate groundwater sampling results against background concentrations for inorganic parameters and Maximum Contaminant Levels (MCLs) for organic parameters. It is very important to emphasize, however, that once the applicable Subtitle D deadline is reached (probably October 9, 1995 for small exempt landfills), the groundwater may be evaluated by comparing all contaminant concentrations to background levels. This likely federal requirement will be a more stringent way to assess whether groundwater contamination exists. Thus landfill sites with low levels of contamination (i.e., below MCLs) may be considered contaminated at a later date when the Subtitle D requirements apply.

The above information is complex. You may not be sure that you fully understand all of the implications of the decisions you may be considering. First, please feel free to contact KDHE to discuss your own individual situation to be sure you understand the risks and benefits associated with each option before you. Second, consider hiring an independent consultant to confirm your conclusions.

There are clearly some advantages for small landfills to seek the exemption including the extra 18 months of extension and the release from the landfill design standards. However, please recognize that there are risks associated with the decision to move forward in this way unless you have first demonstrated that you have no groundwater contamination by actual groundwater sampling. If you wait to test your groundwater until required by Subtitle D in 1995, you have missed the opportunity to close and remediate your landfill under KDHE's flexibility. All Subtitle D requirements would apply. If you do not currently have wells in place or have not sampled existing wells, you must make the decision as to whether to answer this key question at this time or wait.

Lastly, in order to make KDHE aware that you have made the demonstrations to qualify for the small landfill exemption, we request that you complete the enclosed *Notice of Intent for Small Landfill Exemption*, and submit it to us at your earliest convenience. We also suggest that you keep a copy of this form as well as the demonstrations on file at the landfill or designated nearby facility.

If you have any questions concerning any of the information delineated above, please contact the Bureau of Waste Management at (913) 296-1600.

c- Charles Jones
Tom Gross
Joe Cronin
Sam Sunderraj
Mike Tate
Ron Fox
Larry Knoche
Marv Glotzbach
District Environmental Administrators
Solid Waste Advisory Committee



Notice of Intent Form (NOI) for Small Landfill Exemption

I. Facility Owner Information

Zip Code: |_|_|_|_|_|-|_|_|_|_|

29.23

responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in § 258.74(a). The term *face amount* means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the

equivalent coupon-issue yield announced by the U.S. Treasury for 28-week Treasury securities.

(8) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this section or if the owner or operator, is no longer required to demonstrate financial responsibility in accordance with the requirements of § 258.71(b), 258.72(b) or 258.73(b).

(e) *Corporate Financial Test.*

[Reserved]

(f) *Local Government Financial Test.*

[Reserved]

(g) *Corporate Guarantee.* [Reserved]

(h) *Local Government Guarantee.*

[Reserved]

(i) *State-Approved Mechanism.* An owner or operator may satisfy the requirements of this section by obtaining any other mechanism that meets the criteria specified in § 258.74(1), and that is approved by the Director of an approved State.

(j) *State Assumption of Responsibility.* If the State Director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care and/or corrective action requirements of this part, or assures that the funds will be available from State sources to cover the requirements, the owner or operator will be in compliance with the requirements of this section. Any State assumption of responsibility must meet the criteria specified in § 258.74(1).

(k) *Use of Multiple Financial Mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms must be as specified in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the two firms are consolidated.

(l) The language of the mechanisms listed in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58, until the owner or operator is released from the financial assurance requirements under §§ 258.71, 258.72 and 258.73.

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

Appendix I to this Part 258— Constituents for Detection Monitoring¹

Common name ²	CAS RN ³
Inorganic Constituents:	
(1) Antimony.....	(Total)
(2) Arsenic.....	(Total)
(3) Barium.....	(Total)
(4) Beryllium.....	(Total)
(5) Cadmium.....	(Total)
(6) Chromium.....	(Total)
(7) Cobalt.....	(Total)
(8) Copper.....	(Total)
(9) Lead.....	(Total)
(10) Nickel.....	(Total)
(11) Selenium.....	(Total)
(12) Silver.....	(Total)
(13) Thallium.....	(Total)
(14) Vanadium.....	(Total)
(15) Zinc.....	(Total)
Organic Constituents:	
(16) Acetone.....	67-64-1
(17) Acrylonitrile.....	107-10-4
(18) Benzene.....	71-43-2
(19) Bromochloromethane.....	74-07-5
(20) Bromodichloromethane.....	75-27-4
(21) Bromoform; Tribromomethane.....	75-25-2
(22) Carbon disulfide.....	75-15-0
(23) Carbon tetrachloride.....	56-23-5
(24) Chlorobenzene.....	108-90-7
(25) Chloroethane; Ethyl chloride.....	75-00-3
(26) Chloroform; Trichloromethane.....	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane.....	124-48-1
(28) 1,2-Dibromo-2-chloropropane; DBCP.....	96-12-8
(29) 1,2-Dibromomethane; Ethylene dibromide; EDB.....	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene.....	95-50-9
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene.....	106-46-7
(32) trans-1,4-Dichloro-2-butene.....	140-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride.....	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride.....	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride.....	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene.....	156-50-3

Note: eliminated compounds will be replaced
by geochemical parameter (see attached list)
29-24

June 28, 1993

Kansas Department of Health and Environment
Proposed New Permanent Regulation

28-29-98. Criteria for municipal solid waste landfills. (a) 40 CFR Part 258, as in effect June 1, 1993, exclusive of appendix I of that part, is adopted by reference.

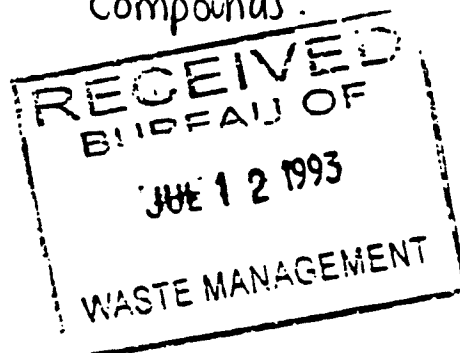
(b) Wherever "appendix I" is referenced in 40 CFR part 258, the table titled "Appendix I to this Part 258 - constituents for detection monitoring" shall be replaced with the following table:

Appendix I - constituents for detection monitoring

Geochemicals:

Alkalinity
Calcium
Chemical Oxygen Demand (COD)
Chloride
Nitrogen (Ammonia)
Potassium, dissolved
Sodium, dissolved
Sulfate
Total dissolved solids (TDS)

← New Chemical parameters
to replace metals and
many semi-volatile organic
Compounds.



Organics:

Acetone
Benzene

APPROVED
ATTORNEY GENERAL
by Lis 7-1-93 Amt.

DEPT OF ADMINISTRATION

JUN 30 1993

APPROVED BY FDL



Department of Health and Environment

Robert C. Harder, Secretary

July 29, 1993

TO: County Public Works Directors, Landfill Operators, Emergency Preparedness

RE: Flood response and clean up issues

The recent flooding in portions of Kansas has resulted in the Department receiving several questions about flood clean up. In order to answer these and other potential flood-related questions in a timely manner, the following information has been prepared.

The primary issue associated with flood clean up will be the proper disposal of special or large quantity wastes generated by flood clean up activities. The following is a list of the types of flood related wastes to be expected and appropriate disposal methods for each.

Tree and brush debris (open burning with KDHE approval, burial at temporary or permitted sites)

Furnishing debris--carpet, furniture, etc. (burial at temporary or permitted landfill)

White goods (recycling of white goods without CFCs, white goods with CFCs to permitted site for CFC removal and recycling or burial at permitted landfill)

Building demolition waste (open burning of clean lumber, burial at temporary or permitted sites)

Carcasses of dead animals (rendering, burial at permitted sites with special precautions)

Contaminated soils---USTs, process tank spills, etc. (on site treatment with KDHE approval or disposal at permitted sanitary landfill)

Tires (burial at temporary or permitted sites when mixed with other flood debris, processing by permitted facilities when not mixed with other flood debris)

Used sandbags (reuse for fill material or burial at temporary or permitted landfill)

Damaged consumer merchandise (screening for hazardous materials first burial at permitted sanitary landfill)

Industrial wastes (screen first, than burial at permitted sanitary landfill if appropriate)

Spoiled grain (use for alcohol production or burial at permitted sanitary landfill)

Farm chemical wastes--pesticides (screen first for hazardous materials, than burial at permitted sanitary landfill)

Will the Department allow disposal of flood clean up waste in unpermitted landfills?

Yes, with certain restrictions. The Department will allow cities, counties or townships to establish temporary solid waste disposal facilities for flood generated wastes. All such sites should receive prior approval of the Department. Chuck Linn will be the Department contact for getting such sites approved. His phone number is (913) 296-8025. You may also contact the District office nearest you, who will coordinate the approval with Chuck. If Department staff are familiar with the site, approvals will be granted on the same day requested. If a field visit is needed, the approvals should take one to two days. These temporary sites will be limited to receiving tree and brush waste, demolition waste, used sandbags, tires, and furnishing debris.

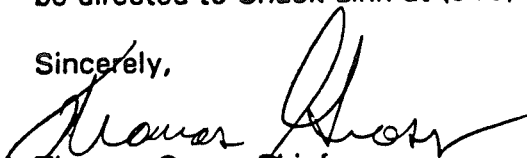
Is waste generated from flood clean up subject to the \$1.50 per ton tipping fee?

Construction and demolition wastes from public sources are exempt from the tipping fee. Much of the waste from flood clean up would fall into this category and be exempt. Temporary sites established by a county to receive flood clean up wastes would also be exempted from the fee.

Landfill operators should step up screening activities for flood clean up waste from industrial, commercial and agricultural sources to ensure that hazardous materials commingled with other flood clean up wastes are not received. Those counties with household hazardous waste programs in place should consider extending the operating hours for the programs to provide a place for such wastes resulting from flood clean up.

Some of the flood clean up wastes described above are special wastes requiring different handling when received at a sanitary landfill. Examples include animal carcasses, white goods containing freon, contaminated soils, spoiled grain, industrial wastes and some types of consumer merchandise. Industrial wastes and large quantities of other special wastes will also require a disposal authorization. We will try to process request for solid waste disposal authorizations as quickly as possible. If you have any questions about special handling procedures for any of these wastes or need a disposal authorization, please contact the Solid Waste Section in Topeka. Our phone number is (913) 296-1600. Once again, questions about establishing temporary disposal sites for flood waste should be directed to Chuck Linn at (913) 296-8025.

Sincerely,


**Thomas Gross, Chief
Solid Waste Section
Bureau of Waste Management**

xc: Sec. Harder, C.F. Jones, Bill Bider, Ron Fox, District Offices & SWM Staff.

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

TO: KDHE Solid Waste Advisory Group
FROM: Charles Jones, Director *CJ*
RE: EPA Announcement on Extending Subtitle D Deadline
DATE: 25 June 1993

Please find attached two factsheets which announce EPA's intention to promulgate rules to extend the Subtitle D deadline. In brief, the EPA proposal has several elements:

All Landfills would be granted a one-year extension of the financial assurance requirement, during which EPA will promulgate a financial test for local government

Mid-Sized and Small Landfills would be granted a six-month extension (until 9 April 1993) of the Subtitle D deadline if the landfill

- a. accepts less than 100 tons per day,
- b. is in a state which has submitted its application for approval by October 9, 1993, and
- c. is not on the Superfund National Priorities List.

Small Landfills in Arid or Remote Areas would be granted a two-year delay (until 9 October 1995) of the Subtitle D deadline if that landfill

- a. accepts less than 20 tons per day,
- b. exhibits no groundwater contamination, and either
 - serves communities that experience annual interruption of surface transportation, or
 - is located in an area that receives less than 25 inches of precipitation per year.

Consistent with the recent ruling by the Washington D.C. Court of Appeals, these small landfills will be required to do groundwater monitoring.

ANALYSIS

1. The majority of Kansas landfills would benefit from the 6-month extension in the Subtitle D deadline. KDHE recently submitted its draft approval application to EPA, with the final application to follow within two weeks. There are currently no Kansas landfills on the Superfund National Priorities List.

2. EPA's proposal would have a profound impact on those small landfills (less than 20 tpd) located in arid regions of the state.
 - The 2-year extension of the Subtitle D deadline is extremely helpful. We hope and anticipate that solid waste planning efforts and the development of regional solid waste solutions will advance. We must all take full advantage of the extension, if enacted, to be prepared to come into full compliance in 1995.
 - The requirement for groundwater monitoring could spark reconsideration of some decisions about extending or not extending the life of area landfills. Under Subtitle D, discovery of groundwater contamination -- defined as a "statistically significant increase over background conditions" -- triggers the loss of the small landfill exemption. While EPA proposes a delay until 1995-96 in requiring landfill monitoring, KDHE encourages the early installation of monitoring systems at landfills which may continue operation so that accommodations can be made if contamination is found.
3. It must be noted that EPA has announced a proposed rule. EPA will establish a comment period and possibly a public hearing on this proposal. As more information becomes available, we will pass it along. We strongly recommend that landfill operators and representatives of local government submit comments on the proposed rule. We also recommend sending a copy of comments to Representative Slattery and other members of the Kansas Congressional delegation.
4. The proposed rule adds yet another twist to KDHE's complicated task of promulgating rules and regulations for Subtitle D. Without rules and regulations, KDHE will not be approved to operate the program and would not be able to provide flexibilities which EPA grants approved states. In order to best manage this situation, KDHE will promulgate its regulations in the following fashion:
 - KDHE will hold to an aggressive time schedule for promulgating regulations.
 - KDHE will submit Subtitle D regulations which contain the existing Small Landfill Exemption. Although the exemption has been vacated by the Washington D.C. Court of Appeals, KDHE will keep the exemption in the proposed regulations, then replace it as soon as EPA promulgates a final Small Landfill Exemption regulation.

- KDHE will promulgate a regulation to address the 6 month extension for landfills of less than 100 tpd. Th's regulation will be modified when EPA's rules are finalized.

CONCLUSION

We are greatly appreciative of EPA's responsiveness to concerns raised by Kansas and other states.

As reported in earlier correspondence, Representative Slattery's office arranged for Representative Carl Holmes, John Torbert of the Kansas Association of Counties, and Charles Jones of KDHE to meet with EPA on May 10 in Washington, D.C. In that meeting, Kansas advocated for an across-the-board extension of 6 months, and an additional extension for units which qualified for the Small Landfill Exemption. EPA has proposed a rule which is in alignment with Kansas requests.

Our joint efforts have been effective in drawing attention to much-needed relief from the federal government. We must now support the EPA proposed rule and, more importantly, bring that same cooperative spirit and focus to Kansas solid waste planning and management efforts.

cc: Representative Jim Slattery
Representative Carl Holmes
John Torbert, Kansas Association of Counties

JIM SLATTERY

U.S. Representative

Second District, Kansas

8/18

Bill -

Thanks for your help
in constructing this letter.

As you can see, we got
12 members (during the
budget debate!) to co-
sign. Not bad.

Shawn

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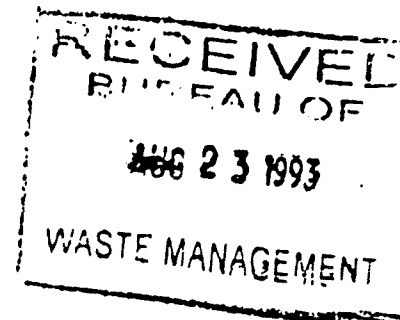
Congress of the United States

House of Representatives

Washington, DC 20515

August 9, 1993

The Honorable Carol Browner
Administrator
U.S. Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460



Dear Administrator Browner:

In response to the EPA's proposed rule modifying groundwater monitoring requirements in the Municipal Solid Waste Landfill (MSWLF) Criteria affecting landfills in arid and remote locations, we submit this letter to be included in the public comment record on the proposed rule.

We recognize that the proposed rule comes in response to the May 7, 1993, U.S. Court of Appeals for the District of Columbia decision, Natural Resources Defense Council v. EPA, which found that the EPA did not have the authority to exempt arid and remote landfills from groundwater monitoring. However, we believe that the EPA's attempt to comply with the court order through the proposed rule would place an inordinate burden on the operators of these landfills. By requiring arid and remote landfills to meet the same groundwater monitoring specifications as those for large landfills in areas of high rainfall, the EPA will be requiring excessive monitoring standards which may not be necessary to adequately protect human health and the environment.

We, therefore, strongly urge the EPA to amend the proposed rule by granting states the authority to approve alternative groundwater monitoring techniques -- which would satisfy the federal statutory groundwater monitoring requirements -- for small quantity landfills in arid regions based upon local geological conditions, waste types, and waste quantities.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Rubenstein", written over a horizontal line.

A large, stylized handwritten signature in dark ink, appearing to read "Jim Kallert", written over a horizontal line.

Barbara F. Vucanovich

Ron Cole

Sam Valenti

Amy Montzmay

Mike Crape

Joe Sker

Mike Sygar

Pat Roberts

Sam W.

Jan Huker

MEMBER:
COMMITTEE ON
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Congress of the United States

House of Representatives

JIM SLATTERY
SECOND DISTRICT, KANSAS

SPARE SMALL COMMUNITIES FROM EXPENSIVE, UNNECESSARY LANDFILL COSTS!

July 30, 1993

Dear Colleague:

Municipal solid waste landfills which receive less than 20 tons of waste per day in areas where precipitation is less than 25 inches per year will now be required to conduct groundwater monitoring. Whether or not you believe these landfills should be exempt from groundwater monitoring, there is good reason for co-signing the attached letter to EPA Administrator Carol Browner.

After the May 7, 1993, U.S. Court of Appeals decision, Natural Resources Defense Council v. EPA, in which the court ruled that the EPA did not have the authority to exempt small quantity landfills from groundwater monitoring, the EPA was forced to begin requiring such monitoring at these landfills. The proposed rule was posted on July 28, 1993.

As the rule now reads, small quantity landfills in remote regions will have to conduct groundwater monitoring which meets the same standards as those for very large landfills in areas of high rainfall.

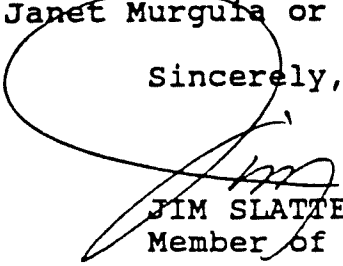
Alternative groundwater monitoring techniques based on the specific conditions of these landfills could adequately protect human health and the environment, and could save local governments from unnecessary, costly monitoring.

I realize some members have proposed exempting these landfills from groundwater monitoring legislatively. But, until this legislation passes - if indeed it can be passed -- the current requirement is for groundwater monitoring which may be excessive.

I urge you to join me in sending the attached letter to Administrator Browner, asking that the proposed rule be changed so that states have the authority to approve alternative groundwater monitoring techniques for small quantity landfills.

If you need additional information, or if you would like to co-sign this letter, please contact Janet Murgula or Shaun McGrath at x56601.

Sincerely,


JIM SLATTERY
Member of Congress

29.34

Solid Waste Transfer Stations

April 1993

Guidelines for Design, Operation
and Permitting



Kansas Department of Health and Environment
Bureau of Waste Management
Building 740 Forbes Field
Topeka, Kansas 66620 - 0001

Guidelines for the Design, Operation and Permitting of Solid Waste Transfer Stations

Introduction

The following guidelines have been prepared to assist persons interested in constructing and operating a solid waste transfer station through the design, permitting and operating phases. It describes what information must be included in a permit application, design requirements that must be met and operational requirements and guidance for transfer stations built and operated in the state of Kansas.

Design Requirements

The following requirements should be taken into consideration when designing a transfer station:

General

1. All processing, tipping, sorting, storage and compaction areas should be located within an enclosed building or covered area whenever possible. Transfer stations receiving small quantities of waste may be constructed without a roof provided that the facility is designed and operated to minimize wind-blown litter. Such designs should take into consideration prevailing winds and utilize natural topographical features or man-made berms to shield the facility from winds.
2. Consideration should be given to constructing the transfer station with additional room so that activities such as storage of white goods, separation of materials for recycling or composting or other solid waste management activities could be conducted at the facility.
3. The design must provide for the collection, storage and disposal of washdown water and stormwater that has come into contact with solid waste.
4. Water must be provided in sufficient quantity and pressure to wash down the tipping floor.
5. Sanitary facilities, drinking water and handwashing water should be provided for facility workers.

Unloading and Loading Areas

1. The unloading area must be adequate in size and design to allow efficient unloading from collection vehicles and the unobstructed movement of vehicles. The unloading and storage areas should have sufficient capacity to store two days worth of solid waste in the event of an interruption in transportation or disposal service.
2. The unloading and loading areas must be constructed of concrete or asphalt paving material and equipped with drainage structures for washdown water and stormwater that has come into contact with solid waste.

harmful vapors or dusts, or contain toxic, ignitable, or reactive constituents shall not be accepted unless handling plans have been specifically approved by the department and a special waste authorization has been issued. Regulated quantities of hazardous wastes may not be accepted at transfer stations. The operator should attempt to screen wastes as they are received and handled to identify inappropriate materials.

2. All solid waste passing through the transfer station must be ultimately treated or disposed at a facility authorized by the department if in this State, or by the appropriate governmental agency or agencies if in other states.
3. All entrances to the transfer station should have a sign with the operator name and telephone number, the hours of operation, and the types of solid waste accepted and prohibited at the transfer station.
4. A transfer station with permanent operating mechanical equipment must have an attendant on duty at all times the facility is open.
5. Facilities which cannot be secured should provide suitable fencing and gates to prevent unauthorized persons from access to the facility when the transfer station is closed. Fences are recommended for all transfer stations to prevent blowing litter problems.
6. The transfer station should be operated and maintained to present a neat and orderly appearance. Blowing papers, insects, and other nuisances must be controlled. The transfer station and transfer vehicles must be cleaned by wash-down or other appropriate methods to minimize odors, disease vectors, and accumulations of trash.
7. All floors should be kept free from standing water. All drainage from cleaning areas must be discharged to sanitary sewers or other facilities approved by the department.
8. Maintain on-site roads in a dust free condition.
9. Solid wastes must be loaded into the transfer vehicle on the same day it arrives at the transfer station. Solid waste must be removed from the transfer station facility whenever transfer containers are full, or weekly, whichever comes first.
10. Fire protection equipment must be available at all times to respond to fires resulting from incoming waste containing hot ashes, oxidizers or other fire sources. Transfer station personnel should be trained in use of the equipment.
11. Operational records must be maintained at transfer stations including a daily log of the quantity of solid waste received and transported, including the origin and the destination of the solid waste received.

7. The applicant must provide liability insurance coverage with a minimum liability limit of \$500,000 for bodily injury and \$200,000 for property damage. The policy shall have not more than \$5,000 deductible for each occurrence. The coverage shall include premises and operations, including operations of independent contractors.
8. There is a permit application fee of \$1,000 for a transfer station. Governmental entities are exempt from this fee.

Permit Application Contents:

The permit application must include the following:

1. A local or regional map outlining the service area of the proposed transfer station.
2. A site location map showing section, township, range, site boundaries and latitude and longitude expressed in degrees, minutes and seconds.
3. A site layout drawing, showing size and location of all pertinent man-made and natural features of the site including access roads, structures, surface impoundments, storage areas, ditches, surface water discharge points, surface water bodies, and the location of the 100 year flood plain boundaries.
4. A USGS topographic map using a scale of no less than one inch equals 2,000 feet, with 10 foot intervals on 7.5 minute series showing site boundaries.
5. A description of site conditions and projected site utilization including all site structures (such as buildings, fences, gates, entrances and exits, parking areas, on-site roadways, and signs) and the location of all water supplies.
6. Drawings showing all proposed structures and areas designated for unloading, sorting, storage, and loading; including dimensions, elevations, and floor plans of these structures and areas, and the general process flow.
7. A description of adjacent properties including land use and the names and addresses of property owners. If the proposed site is adjacent to a public road or street, include property across the street or road.
8. A proposed transfer plan specifying the transfer route, the number and type of transfer vehicles to be used, and how often solid waste will be transferred to the disposal site;
9. A description of all machinery and equipment to be used, including the design capacity.

**Testimony of
Stephen A. Hurst, Director
Kansas Water Office**

**Before the
House Energy and Natural Resources Committee
September 15, 1993**

**Re: House Bill for the Acquisition of Water Storage Supply Capacity
in Federal Reservoirs**

Thank you, Mr. Chairman, members of the Committee:

I am Stephen A. Hurst, Director of the Kansas Water Office.

I appreciate the opportunity to appear before you today to review the current status of the state's effort to acquire additional water supply storage capacity under the terms of the 1985 Memorandum of Understanding between the state and the U.S. Army Corps of Engineers.

I realize that we had several meetings last session exploring this issue in detail but since that was several months ago, I would like to briefly review the importance to the state of acquiring control over the water resources that reside within our borders. In fact, the responsibility for state control is set out twice in the State Water Resource Planning Act (K.S.A. 82a-928) which states: "The state of Kansas hereby recognizes its responsibility and jurisdiction to protect, conserve, and control all waters affecting the people of the state, including those waters impounded in projects constructed pursuant to programs of the federal government." The Kansas Water Office is also required to consider in formulating the State Water Plan, "...the maintenance, preservation and protection of the sovereignty of the state over all the waters within the state."

The State of Kansas currently holds contracts for water supply storage space in ten major

federal reservoirs in the eastern one-third of the state. These contracts were negotiated between the years 1974 and 1991. This long-time span has resulted in contracts with requirements and conditions which vary from contract to contract.

The first nine contracts were negotiated specifically under the provisions of the 1958 Federal Water Supply Act. Under this Act, the State of Kansas could add up to an additional 30 percent to the storage space of a proposed federal flood control structure, at state cost, for "future" municipal and industrial water supply needs. The federal government would allow the state to repay the costs for constructing the add-on water supply over 50 years with interest (at time of contracting ranging from two to four percent). If the state requested water supply storage space be added which exceeded the 30 percent allowed under the 1958 Act, the state was required to begin making payment on this "immediate use" portion immediately upon completion of the dam. At the end of the ten-year interest-free period, the state could either begin making payment on that 30 percent or allow interest to accrue on construction costs.

The tenth contract, negotiated in 1991, was negotiated under the provisions of the 1985 Memorandum of Understanding (MOU) with the Corps of Engineers and contains some of the provisions of the 1958 Water Supply Act. The major difference is that the state is not given the option to pay the capital construction costs off over 50 years. The capital costs must be paid in one lump sum within 30 days of conclusion of contract negotiations. However, the capital costs charged to the state are calculated at original construction costs and original interest rates, rather than the federal policy of updating costs and interest rates.

The real importance of the 1985 MOU, however, lies in the fact that it provides for reallocation of water quality storage to water supply storage in certain reservoirs which heretofore

were unavailable to the state to use for water supply purposes. Such reallocated storage can be purchased by the state at original construction costs and interest rates, in one lump sum payment.

The Memorandum of Understanding will expire in June of 1996 leaving the state a "window of opportunity" to take advantage of this offer from the federal government prior to that date.

An additional issue of immediate importance relates to the ability of the state to control releases from water supply storage space which the state has not yet "called into service" in some of the major federal reservoirs. Releases of water supply from the Kansas River reservoirs to support navigation on the Missouri River two summers ago brought the need for state control to the forefront.

It should be noted that the Kansas City District Corps of Engineers has completed reallocation studies on reservoirs in the northern half of the state, and we, therefore, know how much water quality storage space can be converted to water supply. The Tulsa District has yet to complete the reallocation process for reservoirs in the southern one-half of the state. I recently made a trip to Washington, D.C., and visited with the Assistant Secretary of the Army in charge of Civil Works, at the Pentagon. He is the individual that is in charge of the Corps of Engineers. The Assistant Secretary assured me that he would have Tulsa expedite their reallocation studies and that they should be completed within the next few months.

The Kansas Water Authority has completed the analysis and public input process regarding the purchase and calling into service of available storage space as part of the State Water Planning Process and background information was presented this past spring at public meetings across the state. In July, the Kansas Water Authority approved the inclusion of the Acquisition of Federal Reservoir Storage Sub-section of the *Kansas Water Plan*.

As you are well aware, this committee passed two bills last session related to this issue, H.B. 2443 and H.B. 2444, requiring the Kansas Water Office and Kansas Water Authority to move as expeditiously as possible to acquire this storage and to develop funding recommendations for the Legislature. Both the Kansas Water Office and Kansas Water Authority have diligently worked on this issue since the conclusion of the session.

The Chairman of the Kansas Water Authority, Bob Best, formed an Ad Hoc Committee to develop funding options for the Governor and Legislature to consider. This committee met several times and dedicated a great deal of time and effort in developing viable funding options for you to consider. This was not an easy task and the committee struggled, looked at several options including the State General Fund, fee increases for water users, a one-year sunsetted sales tax, bonding and use of the State Water Plan Fund by possibly deferring or delaying a few of the programs or projects funded by the State Water Plan Fund for a period of one to two years.

The final recommendations of the Ad Hoc Committee were distributed to the full membership of the Kansas Water Authority and sent out to the basin advisory committees and a series of special meetings of the basin advisory committees were held to receive their public input. The results of the Kansas Water Authority study and their recommendations will be formally contained in their annual report to the Governor and Legislature this fall.

At this point, Mr. Chairman, I would like to have Bob Best, Chairman of the Kansas Water Authority fill the committee in on the deliberations of the Ad Hoc Committee, the public input of the basin advisory committees and the Kansas Water Authority's recommendations to this committee resulting from their special meeting held this past Monday. I would be pleased to stand for questions now or at the conclusion of Chairman Best's testimony.

TESTIMONY

BY JOHN R. BEST, CHAIRMAN, KANSAS WATER AUTHORITY
TO HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

SEPTEMBER 15, 1993

REGARDING ACQUISITION OF WATER SUPPLY STORAGE IN FEDERAL RESERVOIRS

Thank you, Mr. Chairman and members of the Committee. I am Bob Best, Chairman of the Kansas Water Authority. I appreciate the opportunity to report to the Committee on the work the Authority has done in regard to the directives handed down by the 1993 Legislature concerning the acquisition of storage in federal lakes.

In May of this year, the Authority formed an ad hoc committee comprising selected members of the Authority to study options for the purchase and acquisition of storage. This committee met numerous times over the summer and solicited input from the Division of Budget, the Kansas Water Office and the Corps of Engineers.

The ground rules the committee originally worked under were very direct: no use of the State General Fund, no fee increases, no tax increases. This effectively painted the ad hoc committee into the corner of using the State Water Plan Fund to purchase the storage. The committee decided to acquire an efficient package of storage. This was done by presuming that there would be some local use of the newly acquired storage by marketing contracts and water assurance districts. The ad hoc committee estimated the remaining storage to be acquired by the state. In its estimation, the committee did not presume to acquire storage in Marion or Elk City lakes in deference to reduced cost and because of no foreseen usage in the regions of the Cottonwood or Verdigris basins of additional storage.

The remaining package comprised calling Milford and Perry into service through existing contracts and acquiring through the 1985 Memorandum of Understanding the storage in Tuttle Creek, Melvern, Pomona, Council Grove and John Redmond. This package was anticipated to cost \$650,000 annually for Milford and Perry, \$12.2 million for acquiring the MOU storage and \$850,000 for annual operation and maintainence costs.

Because of the ground rules previously described, the ad hoc committee was left with two choices; buy all the storage at once prior to July 1996 or finance the purchase through bonds. The committee chose to buy all the storage within the next two fiscal years, setting aside \$8.8 million in FY 95 and \$6.2 million in FY 96 from the State Water Plan Fund. Expenditures would be about \$1.5 million in FY 97 and beyond to handle the Milford and Perry contracts and the annual operation and maintainance charges.

The Kansas Water Authority in July effectively tabled the ad hoc recommendation until it had heard from the state agencies on possible programs which may be deferred in FY 95 and 96, as well as receive input from the 12 Basin Advisory Committees across the state. The state agencies reported back in August. The funds which would be effectively freed by deferring programs in the next two fiscal years were substantially short of the ad hoc committee recommendations. The pressing needs for the existing programs in the State Water Plan were too great to allow substantial deferral.

In light of this news, the ad hoc committee met on September 1. At this point in time, the original ground rules were discarded and the committee set out to establish a strategy which made sense, albeit not necessarily political feasibility. In short, the ad hoc committee recommended a three prong strategy:

1. Use \$1.5 million of the State Water Plan Fund to cover the cost of calling Milford and Perry storage into service and to cover anticipated operation and maintainance costs associated with the storage to be acquired by the state.

2. Recommend a one year state-wide sales tax of 0.1 % to generate revenues of \$20-25 million to be used to acquire storage under the MOU. Revenues in excess of those needed to purchase the storage might be considered to seed a fund to cover the operation and maintainance costs.

3. If the sales tax initiative fails, utilize revenue bonds to acquire the storage under the MOU with revenues dedicated from the State Water Plan Fund and State General Fund to retire those bonds.

This strategy was presented to the 12 Basin Advisory Committees last week. In general, most of those committees supported the concept of acquiring the storage and using a sales tax as a funding mechanism. Use of bonds was also acceptable, albeit some committees viewed it as a preferred mechanism while others saw bonds as a last resort mechanism. Use of the State Water Plan Fund was generally acceptable within the parameters of the ad hoc committee September strategy, but not in the manner the ad hoc committee recommended in July. Overall, there was more support for the ad hoc strategy than opposition.

On Monday, the Authority met to review the ad hoc strategy, state agency comment and Basin Advisory Committee advice. After considerable debate, the Kansas Water Authority passed the following strategy unanimously:

1. To dedicate \$1.5 million in State Water Plan Funds to satisfy the costs for Milford and Perry and operation and maintainance charges.

2. To recommend a one-year state sales tax sufficient to purchase the storage recommended by the ad hoc committee for acquisition.

3. If such a sales tax fails to be enacted, to utilize revenue bonds to acquire the storage and to adopt the strategy espoused in the draft legislation in the House Energy and Natural Resources Committee regarding potential revenue sources to retire such bonds; with the following exception: strike the fourth revenue source (the State Water Plan Fund) from consideration.

Mr. Chairman, the Kansas Water Authority worked very diligently to meet the directives of House Bills 2443 and 2444. The recommendations presented to you here reflect the considerable consideration and debate over the question of how to acquire federal storage. The recommendations may not follow conventional political wisdom, but they do reflect the attitude of the Authority that this approach is the most logical and the most equitable means of securing state control over its surface water supplies.

Thank you for the opportunity to testify to the Committee on this paramount issue.

Testimony before the House Committee on Energy & Natural Resources
September 15, 1993
Re: Acquisition of Water Supply Storage in Federal Reservoirs
By David L. Pope, Chief Engineer-Director
Division of Water Resources
Kansas State Board of Agriculture

Chairman Holmes and members of the committee, thank you for this opportunity to appear hear today regarding acquisition of water supply storage in federal reservoirs.

My prepared testimony is brief, but I wanted to come before you to state that I strongly support the State of Kansas' acquisition of water storage supply in federal reservoirs in Kansas pursuant to the memorandum of understanding with the Corps of Engineers.

There are a number of reasons for this. First, in my opinion the State of Kansas will never have a better opportunity to acquire water storage space at these prices. This is a bargain that the State of Kansas cannot afford to pass up.

Secondly, back in the 1950's and 1960's, when the state of Kansas lobbied for the construction of federal reservoirs in Kansas and in 1974 when the State Water Plan Storage Act was passed, Kansas leaders, including the Water Resources Board, the legislature and many others, showed great foresight in acquiring reservoir storage space for supply storage purposes. These reservoirs have provided a dependable supply of water to a number of municipal and industrial users and helped ease us through the drought of the 1970's and the more recent one in 1988-91, along with providing a wide range of other benefits, including flood control, streamflow supplementation, water quality and recreation. Now the

House E + NR
Sept. 14-15, 1993
Attachment # 32

state of Kansas is faced with a similar opportunity to show foresight to acquire storage space in federal reservoirs, particularly in basins, such as the Neosho and Marais Des Cygne, where the natural baseflow is unreliable during drought and is fully appropriated. Water supply storage in these reservoirs may be the only feasible source of water supply for significant future municipal and industrial water needs.

The third reason the storage space should be acquired by the State of Kansas from the federal government is that in the future the State of Kansas, and not the federal government, will have control over deciding how the water stored in those reservoirs will be used. This will allow more comprehensive, consistent and holistic management of water by the State in the basins affected.

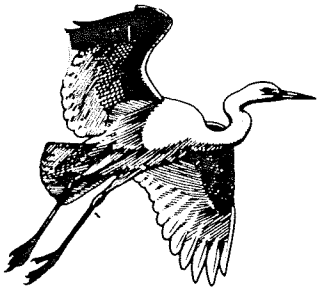
For example, if Reservoir X is currently owned and operated by the United States and the State has not acquired control of the available storage space in it, the water that is stored in that reservoir space may be held or released at the whim of the federal government for whatever Federal purposes are authorized for that reservoir. If the United States feels that the water is needed to support barge traffic on the Missouri or Mississippi Rivers, that decision belongs solely to the federal government not the State of Kansas, irrespective of other competing needs for the water in the State.

Now if the State of Kansas acquires water supply storage space in Reservoir X, and also acquires a water reservation right to store water in Reservoir X, the State of Kansas can then not only protect its right to store water in that reservoir, but also completely control decisions as to how the water stored in

that space will be used. By acquiring the storage space, it can be best used for the benefit of the citizens of the State of Kansas.

Finally, I would like to comment briefly on the financing of the proposed purchase. As I stated earlier, I think this is a tremendous opportunity that should not be passed up. Obviously how that should be funded is a policy choice the legislature will have to make. If the Legislature desires to use a significant portion of the State Water Plan fund for the purchase of this storage space in federal reservoirs, I would urge the legislature to look carefully at each project currently funded by State Water Plan funds and weigh the consequences of stopping, delaying or reducing the funding for each of those projects or programs on an individual basis. In some cases, delay of a year or two might have no significant impact on carrying out the project. In other cases, a delay of a year or two might completely destroy the project or program, adversely impact its timeliness or continuity, or substantially increase the total cost for completion of the project. I would certainly urge such a careful consideration of which State Water Plan projects should be impacted on a case by case basis. The Kansas Water Authority system of review and prioritization of budget requests each year should also be helpful in this regard.

Again I thank you for this opportunity to appear and would like to again tell you that I strongly support the States' acquisition of federal storage space in these reservoirs so that the State of Kansas can choose how to use the water and so that the water can be utilized for the benefits of the citizens of the State of Kansas. I would be happy to answer any questions that you might have.



Kansas Audubon Council

September 15, 1993

House Energy and Natural Resources Committee

Re: Acquisition of Storage in Federal Reservoirs

The Kansas Audubon Council appreciates this opportunity to comment on the proposal to acquire additional storage in the federal reservoirs in Kansas. Before the state moves ahead with full implementation of this proposal, the Council believes a few concerns must be answered, and some assurances must be in place to guarantee our money is wisely spent.

1 - Have the computer models been generated and tested that will assure that the water we think we are purchasing will actually be there, especially in times of prolonged drought? We are concerned that the communities that will be encouraged to expand and utilize this "extra" water may be left both literally and figuratively "high and dry" during or following long periods of drought. After the summer of 1993, it's difficult to think in those terms; however, we ask you to remember just two years ago in 1991 when Perry Reservoir was drawn down for navigation purposes even though the lake levels were below the conservation pool. This proposal calls for 110,000 Acre Feet of additional storage to be acquired from Perry Reservoir. Can we be assured that it will actually be there when most needed?

2 - Will this purchase of water negate any contract the US Corps of Engineers has with downstream users? In other words, can we be absolutely certain that the Corps, in an analogy like a person buying a house from someone else, has title to the water "free and clear" of other claims? What about the example mentioned above? What happens to navigation contracts or agreements with downstream users? Is this proposal to purchase additional water part of a larger plan linked to plans for water transfers out of the Kansas River basin into the Arkansas River basin? If so, again what will be the ramifications to downstream states?

The Kansas Audubon Council believes the citizens of Kansas deserve to be assured that the vast sums of money being proposed to be spent on this project will actually accomplish its goals. Furthermore, the Council would like to see the Kansas Water Office and other appropriate state agencies implement water conservation plans and practices with the same degree of vigor that this proposal has enjoyed.

If assurances can be made that Kansas citizens' dollars will be invested wisely and appropriately in this scheme to purchase water storage, we would like to add one additional comment regarding the proposed method of financing plan. Given the fact that each year the requests for funding for projects from the State Water Plan Fund far exceed the amount of revenue generated, the Council would prefer that this proposal be financed from a different source. We would be especially concerned about the pressures this would place on the Water Plan Fund in FY 1995 since that is the last year for farmers to be in compliance with certain requirements of the 1990 Farm Bill. The Council would support the Kansas Water Authority's recommendation to finance it through a one-year increase in the state sales tax. And we make the suggestion to consider making it a permanent part of state funding for natural resource projects -- similar to Missouri's program. One use, for example, could be to establish a state-level wetlands reserve program that would pay for the restoration and long-term protection of wetlands, since Kansas may not be included in funding for the federal level program.

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Attachment #33



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENERGY and NATURAL RESOURCES

RE: Acquisition of Water Storage Supply Capacity from Federal Reservoirs in Kansas

September 15, 1993
Topeka, Kansas

Presented by:
Bill Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Holmes and members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division at Kansas Farm Bureau.

Few issues are more important to the state of Kansas than an adequate supply of quality water. We commend this Committee and the entire Kansas Legislature for beginning the process for developing a funding source or a combination of funding sources to make it possible for Kansas to purchase water storage capacity in the state's federal reservoirs.

Today, Kansas Farm Bureau has no adopted policy on the issue of acquisition of this storage capacity. At this time, however, our farm and ranch members in the 105 County Farm Bureaus are studying the issue, expressing their opinions and beginning their process in developing policy.

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The 12-member Resolutions Committee for KFB developed and submitted to the membership the "1993 POLICY DEVELOPMENT QUESTIONNAIRE" which includes a section on acquisition of water storage in federal reservoirs:



1993 POLICY DEVELOPMENT QUESTIONNAIRE

Farmers shaping policy for farmers.

Acquisition of Water in Federal Reservoirs

Kansas has the opportunity to purchase water supply storage space now existing in the federal reservoirs located within the state. The contracts grant Kansas the right of first refusal on all storage eligible for reallocation. The memorandum of understanding (MOU) with the Corps of Engineers will expire in June of 1996. The \$25 million cost of storage space is now considered a bargain since it is based upon the original construction costs of the dams ... several were built in the 1950's.

1. The State of Kansas should acquire all available storage in the federal reservoirs before the MOU expires in June of 1996.
SA A U D SD
2. Purchase of the storage space should be deferred until such time that demands begin to demonstrate the need for additional storage even though the price may increase and the amount of water available may decrease.
SA A U D SD
3. The water storage should be funded with the existing, dedicated State Water Plan Fund which has annual revenues of about \$16 million.
SA A U D SD
4. The State General Fund (income and sales tax) is the most appropriate source of funding for any water storage acquired.
SA A U D SD
5. The state should use its bond authority to finance the acquisition of water storage.
SA A U D SD
6. New fees or taxes should be imposed on all water users to acquire water storage.
SA A U D SD
7. Any funding source must include a mechanism requiring water users receiving these new water supplies to reimburse the appropriate funding source.
SA A U D SD

Responses from members were submitted. Returns were reviewed and developed into proposed resolutions by the State Resolutions Committee just last week. Proposed policy statements are being distributed to membership at this time. The more than 400 Voting Delegates from the 105 County Farm Bureaus who will be attending the KFB Annual Meeting in November will debate and adopt the policy that we will bring to you during the 1994 Legislative Session.

We can share with you the messages that our membership seems to be expressing at this time as they return their Policy Development Questionnaires:

1. It is important to the future of Kansas citizens, agriculture, business, municipalities, recreation and wildlife that the state purchase the available storage space in federal reservoirs located in Kansas;
2. Acceptable sources of funding are the existing State Water Plan Fund, sale of bonds and/or State General Fund;
3. No new fees or taxes should be imposed; and
4. Water users receiving these new water supplies should reimburse the appropriate funding source(s).

We want to caution and ask the Legislature not to make a major raid on the State Water Plan Fund. We are concerned some ongoing projects that are extremely important in preventing water pollution and cleaning up contamination would be jeopardized. While some dollars from the State Water Plan can likely be used, supplementing that effort with bonding or the State General Fund will be desirable.

Thank you for this opportunity to testify on this important issue. We would respond to any questions you might have.

TESTIMONY FOR THE HOUSE ENERGY AND NATIONAL RESOURCES COMMITTEE

SEPTEMBER 15, 1993.

Chairman Holmes, Members of the committee, I am Bill Henry, Executive Vice President of the Kansas Engineering Society. I appear before you today in support of the state exercising its option to act on the 1985 Memorandum of Understanding to purchase a reallocation of water quality storage to water supply storage in certain federal reservoirs.

As the members of this committee already know the cost of this water is the lowest cost that can be obtained for such federal reservoir water in the United States.

As the committee also knows, the window of opportunity for the state to obtain control of these waters will expire in June of 1996.

Prior to the 1993 legislative session members in the Kansas chapter of the American Waterworks Association and the Kansas Engineering Society began meeting together and concurred that the water available under the Memorandum of Understanding of 1985 with the Corp of Engineers provides for cheap water because the cost is based upon original construction costs and interest rates. When other states attempted to negotiate similar contracts with the Corp of Engineers all of those states were turned down.

At one time, members of the Kansas Water Office attempted to seek an extension of this Memorandum of Understanding so that the state could have a larger "window" in which to obtain control of the water. The Corps of Engineers told the Kansas Water Office that this was the memorandum that was agreed upon and that the Corps did not feel it would be in the best interest of the Federal government to extend the window.

Members of the Kansas Engineering Society and the AWWA are grateful for the action that this committee took last year when it moved forward to see that the purchase of this water was accomplished in the window of time that remains. The direction that this committee provided to the Kansas Water Authority is the direction that future Kansas generations will look back in years ahead and congratulate you for your vision and foresight.

More than nine hundred members of the Kansas Engineering Society recognize the fact that the Legislature is now at a second critical juncture. Members of KES and the AWWA all agree that this water is too valuable of a commodity to not take control of for the State of Kansas. However, all the capital costs for this water must be paid for at the time of purchase.

The second policy question that must be answered by members of the

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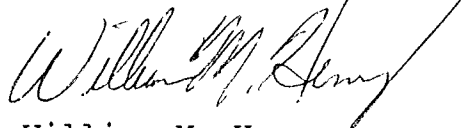
legislature is how to pay for the cost of these waters. We believe the state water plan fund is clearly one area that could be looked at for revenues. Although we have not dedicated often in the past portions of the state's sales tax for specific purposes we think the sales tax is another area of resource that should be considered because the availability of these waters will lead to benefits for all the citizens of Kansas.

Finally, even though the cheapest method of obtaining this water is by making the payments now, we believe that the use of the waters in the future will be of such benefit that we find no problem with looking at bonds to help make this purchase if necessary.

The Water Policy Committee of the Kansas Chapter of the AWWA and the Kansas Engineering Society is not so naive to not realize that there are fiscal limitations that the state faces today. However, if we do not act now to obtain as much of this federal reservoir water as possible we will not have another opportunity ever again.

Certain reservoirs are not included in the purchase recommendation of the Water Authority. The joint KES-AWWA committee believes the state should purchase all of the storage that was recommended in the May 1993 published water plan.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "William M. Henry", written over a diagonal line.

William M. Henry
Executive Vice President for
Kansas Engineering Society