

Approved: \_\_\_\_\_

Date \_\_\_\_\_

## MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Eugene Shore at 9:00 a.m. on March 9, 1994 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Kay Johnson, Committee Secretary

Conferees appearing before the committee: Robert C. Harder, Kansas Department of Health & Environment  
Charles Jones, Kansas Department of Health & Environment  
John Metzler, Environmental Resources Committee of the  
Kansas Engineering Society  
Mel Gray, Environmental Resources Committee of the Kansas  
Engineering Society  
Jim Bishop, Opponents Of Polluting Streams  
Joe Cooper, Cheney, KS  
Susan Vaughan, Council Grove, KS  
Glenn Ringler, Jr., Sylvan Grove, KS  
Duane Muetting, Seneca, KS  
Phyllis Twietmeyer, Cheney, KS

Chairman Shore called the meeting to order and opened the hearing on **SB 800**: confined feeding operation defined for water pollution purposes.

### OPPONENTS:

Robert C. Harder, Secretary, Kansas Department of Health & Environment (KDHE), attachment #1, said **SB 800** would change the current jurisdiction that KDHE has over herds between 300 and 1,000 head. Dr. Harder discussed fee regulations adopted in the mid 70's, the funding proposal in the Senate Ways & Means Committee, current number of KDHE field technicians and engineers in relation to active federal and state confined feeding permits that has led to an on-going backlog, proposed amendments to the federal Clean Water Act that will impact Kansas confined feeding operations and KDHE's growing knowledge of the impact of confined feeding operations on water quality. Dr. Harder urged the committee to delay action on **SB 800** until 1995 when the result of current studies and federal legislation can be taken into account.

Responding to Representative Alldritt, Charles Jones, Division of Environment, KDHE, said the 10% fee increase included in the funding proposal would be an annual cap.

Representative McClure asked how this bill would affect the public notice provision that currently applies to new feedlots. Dr. Harder said the public notice provision would be eliminated and explained that the waste of one animal equals ten people.

Representative Rezac clarified that KDHE can still inspect upon complaint, even with this bill, and asked if this bill doesn't conform to federal guidelines. Mr. Jones said there are instances where federal guidelines drop down to 300; it is a complex decision process. There is a chart that illustrates this and it will be provided to the committee.

Chairman Shore asked if Dr. Harder would agree that this bill is an over-reaction by both the agency and industry. Dr. Harder agreed and said the legislative process should set policy and not referee disputes.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on March 9, 1994.

John Metzler, Environmental Resources Committee (ERC) of the Kansas Engineering Society, attachment #2, clarified that he is representing the Environmental Resources Committee and not the Kansas Engineering Society at large. Mr. Metzler said there are two provisions of **SB 800** that cause concern. First, it can be interpreted to establish a minimum of 1,000 head and second, the bill freezes permit fees for agricultural pollution control facilities while all other types of water pollution permits are not set by statute. Mr. Metzler then elaborated on the reasons for opposition to these provisions.

Mel Gray, Environmental Resources Committee of the Kansas Engineering Society, stressed the ERC's concern to provide a safe and desirable environment in Kansas and urged legislators to establish a clear policy on this issue.

Jim Bishop, Opponents Of Polluting Streams (OOPS), attachment #3, said Kansas is nearing the title of being the most polluted in the nation and he currently lives with pollution as the water well on his farm is unsafe. Mr. Bishop gave an example of a landowner that applied for a waste permit 50 feet from a stream (which is outside of KDHE guidelines) and a fish kill that occurred later. Mr. Bishop referred to **HB 2803**, from the 1992 Session, that the OOPS group authored and stressed the need to prevent pollution before the fact.

Joe Cooper, farmer, Cheney, KS, attachment #4, said he comes from an agricultural background and there is a need for regulation for those that do not have the discipline to operate at a high standard. Mr. Cooper gave an example of a feedlot that operated without a permit or approved plan for waste disposal and how continued complaints produced no action from KDHE, but resulted in retaliatory actions by the owner/operator. Mr. Bishop said there is a gap in the level of enforcement by KDHE and the permitting mechanism is inadequate. Hopefully, the cattle industry would want to be regulated to avoid black marks on their industry.

Susan Vaughan, farmer, Council Grove, KS, attachment #5, gave the example of a feedlot that operated without a permit or required pollution controls, which at one time had over 6,000 head. In 1993 KDHE issued an order for the operator to empty the feedlot, but as of today, the feedlot is still full. This feedlot devalues her property and raises questions about coliform bacteria found in her well water.

Glenn Ringler, Jr., farmer, Sylvan Grove, KS, attachment #6, explained his concerns with the provision to allow more than 300 cattle in one location without a permit or pollution control plan. Mr. Ringler described the two and one-half year legal action he has been involved in regarding this issue.

Duane Muetting, Seneca, KS, attachment #7, said as a licensed professional engineer and former employee of KDHE, he feels current laws are effective if administered correctly. The cattle industry should not be deregulated to the level **SB 800** sets forth.

Phyllis Twietmeyer, farmer, Cheney, KS, attachment #8, related her personal experience with an unpermitted feedlot operator over the past five years. Her water is contaminated, her property has been devalued, the landscape has unsafe levels of nitrates and bacterial waste and the air is no longer clean.

Written testimony was submitted by Bob Eye, attachment #9, and Edward Becker, attachment #10. Chairman Shore said the hearing on **SB 800** would continue on Friday, March 11, 1994. Representative Gatlin requested a copy of the "Hall Report" which contains the recommendations made to KDHE by Gary Hall.

The meeting adjourned at 10:00am. The next meeting is scheduled for March 10, 1994.

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

Testimony presented to

House Agriculture Committee

by

The Kansas Department of Health and Environment

Senate Bill 800

KDHE's technical regulations for confined feeding operations became effective on 1 July 1967. In short, facilities over 1000 head were required to obtain a permit for water pollution control; facilities greater than 300 head were required to register with the state and install controls only if they have a pollution potential; and facilities less than 300 head required a permit only if they had the potential to pollute or utilize some sort of wastewater control system, such as a lagoon. These technical requirements, adopted in 1967, have never been amended. They remain in effect today.

KDHE's fee regulations were adopted in the mid-70's. In 1984, fees were adjusted, actually decreased, so that only National Pollution Discharge Elimination System (NPDES)-permitted (facilities above 1000 head) were required to pay permit fees. No other facilities were required to pay fees. Fees for confined feeding operations are:

<u>cattle, swine or sheep</u>	<u>poultry</u>	<u>annual fee</u>
1,000 - 5,000 head	10,000-50,000	\$ 30
5,000 - 10,000 head	50,000-100,000	\$ 75
10,000 or more	100,000 or more	\$150

What is the current situation? KDHE offers the following analysis:

- KDHE's confined feeding program has 6 field technicians and 2 engineers. Currently, active confined feeding program includes 260 federal (NPDES) permits and 1466 state permits. An additional 1760 facilities have been reviewed and certified as not needing pollution controls. Each week, the program receives five sets of plans and specifications for new or expanded facilities. Common technical problems in the submittals are inadequacies in waste holding capacity,

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Attachment #1

inadequacies in land disposal or irrigation systems, groundwater protection concerns, and site related disputes. The steady influx of new plans and delays incurred in resolving problems has led to an on-going backlog and permit processing.

- Concerned about liability for contamination at agricultural properties, lending institutions increasingly insist upon proper permitting and compliance as a precondition to lending start-up or expansion monies. This has put increasing pressure on facility operators and KDHE to process permit applications -- including plan and specification reviews -- at a rapid pace.
- With its current fees of \$22,000 -- as set in the mid-70's -- the confined feeding industry offsets only 5% of the total program costs of \$400,000. KDHE has been encouraged to use fees, when appropriate, to cover program costs. The Division, as a whole, is 70% fee funded; approximately 20% of funding needs are met by federal grants; leaving less than 10% to be covered by State General Funds. Appropriations and Ways and Means have consistently urged the Division to adopt fees where possible and appropriate, freeing much-needed State General Funds for other uses. Fees adopted to implement the Clean Air and the Solid Waste Planning Acts best exemplify the Division's commitment to fee funding and underscore the need for equity in fee setting throughout the Division.
- Proposed amendments to the federal Clean Water Act will inevitably have profound impacts on Kansas confined feeding operations: whether they be large or small, permitted or not. Confined feeding related elements in the proposed CWA revision package speak to watershed management, control of nonpoint source contamination, and fees.
- Most importantly from KDHE's vantage point is growing knowledge of and concern about the impact of confined feeding operations on water quality throughout the state.

What has KDHE done to best address these challenges to the confined feeding program?

We better defined program goals. We secured the services of two temporary employees, dedicated more staff resources to plan and specification review, and established a system for prioritizing plan review. We brought in Gary Hall, former Acting Secretary of

Agriculture, to critique the program and frame elements where the confined feeding program might be strengthened. Finally, we began the process which brings us here today: generating fees which are appropriate to program needs.

These remarks hardly tell the full story of KDHE confined feeding program, but they are hopefully a compressed means to get the ball rolling. KDHE is willing to discuss the program and SB 800, and hope the committee notes:

- KDHE's funding proposal, which included \$400,000 in fees on the NPDES-permitted facilities (facilities smaller than 1000 head would continue to be exempt from fees) and \$200,000 in State General Funds;
- The Ways and Means funding proposal which includes \$200,000 in fees and \$200,000 in State General Funds, and would establish an interim committee to review the confined feed program;
- KDHE, on March 4, 1994 conveyed a meeting with representatives from swine, poultry, dairy and livestock to discuss possible options before the industry and KDHE. The group agreed to meet again May 10, 1994 and plans to meet on a continuous basis to do problem-solving.
- The Steering Committee for Reinventing Government has agreed to take water permitting as one of its next study topics. That study will include both the private sector and KDHE. The study will be concluded by August 1, 1994.
- Our ongoing commitment to program improvement.

Most importantly, we hope that Senate Bill 800, and the related review of the confined feeding programs will acquaint this Committee, the Legislature, the confined feeding industry and Kansas citizens with the possible impact feedlots and confined feeding operations are having on water quality across the State.

I believe that the confined feeding industry is deeply committed to environmental wellbeing. I also believe that KDHE and its staff are deeply committed to regulatory programs which make sense and work effectively and protect the environment. Hopefully, by drawing upon the best from both industry and the agency, we can turn our attention to the formidable challenges which lie ahead.

Testimony - SB 800  
Page Four

With all of the proposed study activities and the prospect of significant changes at the federal level, we strongly urge that action on SB 800 be deferred. We strongly suggest action be taken in the 1995 Legislative Session when the result of the studies and federal legislation can be taken into account.

Thank you for allowing KDHE to testify on SB 800.

Testimony presented by: Robert C. Harder, Secretary  
Secretary  
March 9, 1994

TESTIMONY PRESENTED TO THE  
HOUSE AGRICULTURAL COMMITTEE  
ON SENATE BILL 800

By John Metzler, P. E., Chief Engineer  
Johnson County Unified Wastewater Districts  
March 9, 1994

On behalf of the Environmental Resources Committee of the Kansas Engineering Society, I thank the committee for this opportunity to present testimony on Senate Bill 800. There are two provisions of Senate Bill 800 that are cause for concern. First, under current statute and regulation, KDHE requires registration and/or prior approval of facilities down to 300 head. The proposed statute can be interpreted to establish a minimum of 1,000 head. Secondly, the bill freezes permit fees for agricultural pollution control facilities, while fees for all other types of water pollution permits, such as municipal and industrial, are not set by statute.

The following reasons are provided for opposition to these provisions.

1. The bill could be interpreted to allow up to 999 head to essentially be unregulated unless the operation causes a problem, at which time it is often too cumbersome and expensive to install pollution controls. The 999 head confined feeding operation without pollution controls would be equal to the raw, untreated sewage discharged by the city of Chanute. Consequently, this change could have significant negative impacts on the quality of water, which is a precious resource in the state of Kansas.
2. KDHE has one of the most comprehensive water pollution monitoring networks in the Midwest. Their testing of streams and rivers indicates feed lots and animal holding operations adversely impact 36% of the streams not meeting pollution standards across the state, which is twice the percentage of any other single cause of pollution and four times the percentage for industrial and municipal wastewater discharges combined. If this bill is approved, it is likely an even greater percentage of streams will not meet pollution standards, and the percentage related to confined feeding operations will increase.
3. With the possible greater levels of pollution allowed from confined feeding operations in this bill, municipalities and industries must provide even more stringent levels of treatment because Kansas streams will already be adversely affected by the increased levels of pollution from confined feeding operations. As a consequence, municipalities and industries discharging to Kansas streams can expect to spend millions of dollars for pollution controls that they would not otherwise have to provide.

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4. At the request of the Kansas Department of Health and Environment, Johnson County conducted a study of Hillsdale Reservoir in 1990. Significant portions of southwestern Johnson County are in the watershed of Hillsdale Reservoir. This study found that confined feeding operations there were a significant source of phosphorous in the reservoir. The report projects that unless these and other non-point sources of pollution are controlled, the reservoir will be polluted by phosphorous at unacceptable levels. All of the confined feeding operations in this watershed operate at less than 1,000 head.
5. This proposed bill freezes agricultural state water pollution permit fees. The only other significant source of water pollution permit fees are from municipal and industrial water pollution control facilities, and these fees are not set by statute. The proposed federal water pollution law requires states to fund 60% of their water pollution regulatory program from fees (see attached excerpt). These revisions have been approved by the Senate Environment Committee, and action by the full Senate is expected this June. It is expected this provision will be retained in the final federal law. Currently, water pollution programs at KDHE are only funded by fees at the 30% level. Consequently, if this bill is approved, the only other fees available, municipal and industrial, must be increased substantially to compensate for the low fees collected for agricultural programs to meet the 60% requirement.
6. I was a member of a state-wide panel which reviewed KDHE's Bureau of Water programs. I have attached excerpts from the panel's conclusions, including a listing of the membership. That panel recommended that KDHE increase its fees to cover 50% of its costs. It should be noted members of the agricultural community were part of this panel. If the agricultural operation fees are set by statute, it will make it that much more difficult to achieve the 50% goal.

Thank you for your time. I would be happy to answer any questions at the appropriate time.

ksm/7394P905



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1       **TITLE V—PERMIT PROGRAM**  
2               **AND ENFORCEMENT**

3   **SEC. 501. PERMIT FEES.**

4       (a) IN GENERAL.—Section 402 (33 U.S.C. 1342), as  
5 amended by section 401, is further amended by adding  
6 at the end the following new subsection:

7       “(r) PERMIT FEES.—

8           “(1) IN GENERAL.—

9               “(A) MODIFICATION.—

10                   “(i) IN GENERAL.—Not later than 2  
11 years after the date of enactment of this  
12 subsection, or the applicable date specified  
13 in clause (ii), the Governor of each State  
14 that administers a permit program under  
15 subsection (b) shall submit to the Adminis-  
16 trator, for approval, a modification of the  
17 permit program of the State that includes  
18 a requirement under State law that—

19                   “(I) the owner or operator of cer-  
20 tain point sources subject to the re-  
21 quirement to obtain a permit under  
22 this section or a permit for the use or  
23 disposal of sewage sludge under sec-  
24 tion 405; and

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1                   “(II) an industrial user of any  
2                   publicly owned treatment works sub-  
3                   ject to a State permit or equivalent  
4                   individual control mechanism issued  
5                   pursuant to subsection (b)(9),  
6                   pay an annual fee (or the equivalent, over  
7                   another specified period of time). The  
8                   State may exempt certain categories of  
9                   permittees and industrial users of publicly  
10                  owned treatment works on the basis of fac-  
11                  tors including the flow of discharge and  
12                  small business status.

13               “(ii) EXTENSION.—If a State has a  
14               legislature that is not scheduled to meet in  
15               a legislative session in which legislation to  
16               carry out this subparagraph may be en-  
17               acted by the date specified in clause (i),  
18               the State shall carry out the requirements  
19               of clause (i) not later than 1 year after the  
20               date of adjournment of the first regular  
21               legislative session of a State in which legis-  
22               lation to carry out this subsection may be  
23               considered.

24               “(B) ACCUMULATED AMOUNT OF FEES.—

25               The total amount collected as fees for any year

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1 in a State shall be a sufficient amount to cover  
2 not less than 60 percent of the costs of ade-  
3 quately developing and administering point  
4 source elements of the water quality program,  
5 and the costs of adequately developing and ad-  
6 ministering sewage sludge use and disposal and  
7 pretreatment programs, of the State, including  
8 the costs of—

9 “(i) reviewing and acting on applica-  
10 tions for permits;

11 “(ii) implementing and enforcing the  
12 terms and conditions of permits or equiva-  
13 lent individual control mechanisms (exclud-  
14 ing any court costs);

15 “(iii) monitoring effluent and ambient  
16 water quality;

17 “(iv) preparing generally applicable  
18 regulations or guidance, including water  
19 quality standards;

20 “(v) modeling, planning, analyses, and  
21 demonstrations;

22 “(vi) preparing and maintaining pub-  
23 lic information systems concerning effluent  
24 limitations, discharges, compliance, and  
25 water quality; and

# **Water Program Review Panel**

## **Final Report**

### **Sept. 1, 1993**

The Water Program Review Panel met on July 19, 1993 to finalize its evaluation of and recommendations for improving KDHE's Bureau of Water programs. Previous meetings were held on April 13, May 5, May 27, and June 9. Panel members are:

Wayne Bossert	Groundwater Management District 4
John Cramer	City of Parsons
Mike Everhart	Boeing - Wichita
Bill Fuller	Kansas Farm Bureau
Jerry Hazlett	Kansas Wildlife Federation
Charles Jones	KDHE - Division of Environment
John Metzler	Johnson County Wastewater Districts
Karl Mueldeener	KDHE - Bureau of Water
Paul Studebaker	FMC
Jim Triplett	Pittsburg State University
Joyce Wolf	Kansas Audubon Council

The Kansas Rural Water Association was also included in panel membership, but did not participate. KDHE appreciates all panel members who contributed their time and efforts toward improving the effectiveness and efficiency of the Bureau of Water and its programs.

#### Brief Summary of Meetings

April 13, 1993	The panel convened for the first time to get a better understanding of which programs are a part of the Bureau of Water (see attached handouts and meeting notes). They identified initial goals and items for future discussion.
May 5, 1993	This meeting was an open forum for individuals and groups to offer comments and ask questions regarding the water programs (see attached meeting notes). Information was gathered at this meeting to help develop recommendations for program improvements.
May 27, 1993	Led by Charles Jones, the panel began defining a mission, goals, and tasks for the Bureau of Water. A working draft summary report was created based on the day's discussion.
June 9, 1993	Presentations were given by staff from each of the Division of Environment's other bureaus regarding how they relate to the

- C) Develop other incentive mechanisms
- 3) Balance support and enforcement efforts
- 4) Improve the permitting process
  - A) Improve the scientific rationale for decision making
  - B) Process applications in a timely fashion

**Goal 5      Develop the program's infrastructure**

- Tasks:**
- 1) Secure adequate resources
    - A) Consider sources
      - 1) Charge fees
      - 2) Acquire monies from grants
      - 3) Acquire monies from the state general fund
      - 4) Obtain more positions
    - B) Develop model funding mix
      - 1) Cover permit and inspection costs by permit fees
      - 2) Collect fee on emissions for 50 percent of incidental costs
      - 3) Utilize state general funds for 50 percent of incidental costs
      - 4) Establish dedicated fee funds
  - 2) Build professionalism
    - A) Insure technical competence
    - B) Be effective and efficient
    - C) Provide better customer service
    - D) Respond promptly to all inquiries and requests for service
  - 3) Develop ongoing performance indicators
    - A) Shift from process-based to outcome-based programs
    - B) Develop specific mechanisms to evaluate success using outcomes

**Goal 6      Expand usage and responsibilities of KDHE's district offices**

- Tasks:**
- 1) Improve outreach and education
    - A) Offer more outreach activities
    - B) Provide more and better technical assistance
  - 2) Consider realignment of the district offices along watersheds
    - A) Implement a watershed-based management approach
    - B) Urge other agencies to adopt similar configurations
  - 3) Improve interagency coordination
    - A) Balance between point and nonpoint sources of pollution



**O. O. P. S.**  
**OPPONENTS OF POLLUTING STREAMS**

HOUSE AGRICULTURE  
3-9-94  
Attachment #3

9 March, 1994

1994 Kansas Legislative Session

Committee Meeting

Senate Bill NO. 800

My name is Jim Bishop and I am a resident of the state of Kansas which is nearing the title of being the most polluted in the nation. I currently must live with pollution because my water well on my farm has been tested and it is so badly polluted the laboratory stop counting at 200. My neighbor to the north drilled a new well for his new home and it was polluted and the neighbor north of him has a polluted well and still wants to be able to build a new home but is afraid due to available drinking water.

I want to take this opportunity to introduce the group that I represent which is the Opponents of Polluting Streams "OOPS" Group that was organized here in Kansas due to a proposed feedlot site that would have been some 50 feet from a live stream.

The package that I am providing you contains a top cover which is our logo, (A) the Feedlot Story, (B) a quick date summary of mile stones, (C) 1981 EPA study map reflecting the region, (D) animal waste characteristics, and finally (E) the House Bill NO. 2803 that was killed in committee in the 1992 Session.

Attachment (A)  
The Kansas 1990 Feedlot Story

This story is one of an attempt to prevent an impact to the environment before the fact rather than after the fact results impacting lives now lost forever coupled with the struggle facing us in the future.

I am a land owner in south central Kansas that has a live stream flowing through the property on its two mile journey to the Walnut river which in 1981 was classified by the EPA as a Value Class I Highest-Valued Fishery Resource river. Currently Kansas has only about 14 of these type of waters most of which are located in the eastern half of the state. ( Attachment (C), I have the large map with me today for review if you wish.)

A new land owner across the road north of me with out any announcement to any one applied for a waste permit from the state authority to build a feedlot for 750 head of cattle and would be placed within 50 feet from the stream and 900 feet from my home that had been built almost 20 years ago. I found out about this plan only by word of mouth and not from any agency or a published notice. ( After our review, the waste would actually be the equivalent of moving 7,500 people onto the site with out a sewage treatment facility and simply allow the waste to flow onto a 6 acre grassy meadow in the 100 Year flood plain.)



It must be pointed out that an adult human generates some 3.5 pounds daily waste which one can see is about 1/10th that of 500 pound beef cattle as identified in Attachment D.

When I called the authorizing state agency and ask for more details on this feedlot application, their comment was that every thing looked ok on their (2) two field site reviews and that all that remained was the engineers minor drawing changes and it would be sent to the head of the agency for final approval and the issuance of the waste discharge permit. ( a done deal, rubber stamped approved)!

Needless to say, my engineering neighbor and myself had to become instant experts on several things and both of us had no prior experience on these issues. State Statues were copied and guidelines from the agencies were aquired and studied plus establishing contact with the Walnut Basin Advisory board and the Kansas Natural Resource Council (environmental group) to explain what was about to take place.

We organized a group called the "OOPS Group" and through that move were able to get a meeting set up about thirty days out with the under secretary of the state agency.

We had a geologist friend do a site analysis including a vertical profile of the proposed site and our home properties. Contacted the Federal and State Wildlife authority for the area and received data on the stream and river classification by the EPA.

The day for the meeting arrived and we were in possession of a complete hand out package of our facts and reasons that the application should be denied plus support from the KNRC lobbyist and attorney to help guide us through their many questions. We were advised that this meeting of fact finding would be studied by them and they would be in touch. We came out of this meeting feeling that they were unsure how many persons were in the "OOPS Group" and if we planned civil action plus the creditable we projected including the issue of a definite fishkill and the KNRC support group gave us a slight advantage.

In the weeks that followed the "OOPS Group" made presentations at various meetings about the feedlot story and more support was gained from various county agencies ( health, soil, water ). Universities were contacted for information and support along with some local and state newspaper articles.

After approximately six months, the agency finally issued their letter of rejection to the proposed feedlot operator. The following month he placed 150 head of calves in a holding fenced area that had been built abutting the live stream that we were trying to protect. These calves were under veterinarian care and unknown to us were medicated with heart worm injections which is highly toxic to aquatic life forms.

One month later this area had a one and one-half inch rain event in a rather short period of time which three days later provided us with a major fishkill just as we had projected would happen. The state agency came out and reviewed the site and took water samples but felt that the reason for the kill would be unknown, and two months later they were right, the final report stated "unknown". (fish kill on 10 min. VCR tape)

We maintained a written log through this entire task and nearly 150 contacts were made in the form of letters, telephone calls or meetings and all of this had failed to prevent what had been forecasted earlier.

As indicated in Attachment A, House Bill NO. 2803 was assigned and introduced to the floor making the necessary changes that gave voice to all people impacted and would protect recourse/environment/wildlife. The committee became afraid of that bill and chose not to understand only to defeat it by killing it in committee, thus again letting the people of Kansas be the loser. (the draft is still a valid plan today)

From this point forward, the required effort will be to keep gathering support for these changes and an education of the public and state representatives plus alliance with select environmental groups.

My closing thought is that "Government will tell us where government wants us to go, unless we, quite clearly, tell government where we want to go". Sons and Daughters of Kansas look to you to keep our heritage in focus and not the almighty dollar.

Thank You,

Jim Bishop OOPS Group (TEL.(316)747-2889)  
Rt 1 Box 142  
Douglass, KS 67039  
Legal Description Lot2,S.6,TWP30S,R.4E

9 March, 1994

1994 Kansas Legislative Session

Committee Meeting

Senate Bill NO. 800

Attachment B

A quick summary review of what the "OOPS Group" has been doing will allow a more clear understanding:

January 24, 1990 - a 750 head cattle feedlot was proposed some 50 feet from a live stream and 900 feet from my home in Cowley county.

April 11, 1990 - my partner and myself presented our opposition to the Kansas Department of Health and Environment under secretary and all his staff ( 6 people) for over one hour.

May 8, 1990 - attended one of the first KDHE meetings on a feedlot waste renewal permit at Pratt, KS.

May 10, 1990 - organized the "OOPS Group" and adopted a logo and a mission statement which is to oppose feedlot site locations that impact the environment relative to water quality and the manner in which the violation, penalty and remedial actions are disposed of by the KDHE.

May 19, 1990 - presented the half-day program on the feedlot story to the Conservation Form meeting in Lawrence, KS.

May 20, 1990 - Associated Press carried the Pratt feedlot story in some 40 newspapers here in the Kansas area.

June 13, 1990 - presented feedlot story to the Kansas Walnut Basin Advisory Board meeting.

June 18, 1990 Wichita Eagle newspaper published a feedlot story.

June 24, 1990 - Wichita Eagle carried a good editorial on "Filthy Rivers".

June 24, 1990 - the KDHE started a task force of two elements one for statutes and the other for regulations review.

July 12, 1990 - KDHE rejection letter to proposed feedlot operator.

August 14, 1990 - the proposed feedlot operator next to me placed 150 head of calves into a pen that abutts the live stream.

September 10, 1990 - we had a one and one-half inch rain event in this area over a rather short period of time.

September 15, 1990 - my partner and neighbor one quarter mile down stream found that we had our first fishkill (approx. 100) in recent times. (60 years)

September 19, 1990 - KDHE took water samples and performed a site review.

October 4, 1990 - received a copy of the fishkill report stating cause as "unknown".

November, 1990 - KDHE task force discontinued holding bimonthly meetings due to inability to focus on any problems.

February 4, 1991 - presented our revisions of the state statutes for our district representative to handcarry to the chairperson that could present it to the floor of the Kansas House.

February 11, 1991 - received a telephone call from this chairperson and he flat refused to take it anywhere nor would read it. We pulled the package back from him.

February 24, 1991 - state statute revision group telephoned and was preparing our statute changes to the normal changes format per our district representative instructions. Only possible route that can be followed is through the senate and that was a very slim chance at that late hour.

August 30, 1991 - prepared the corrections and final changes to the above output from the state bill writer group.

January 29, 1992 - House Bill No. 2803 was assigned to our proposed changes.

February 27, 1992 - H.B. 2803 was killed in committee for this legislative session.

# 1981 STREAM AND RIVER EVALUATION MAP STATE OF KANSAS

## INTRODUCTION

Increasing demands for water throughout the West due to predicted development of energy and agricultural resources and attendant municipal/industrial growth may significantly impact existing fishery resources of western streams. Additionally, already stressed fisheries may be further jeopardized by reduced or altered flows and changed water quality.

This stream evaluation map is provided to assist Federal and State agencies and water users in assessing the impact of proposed water development projects on existing fishery resources. The map displays an appraisal of the relative value of stream fishery resources within the State and is based on information and professional opinion available as of 1981. It is emphasized that fishery resources will be reevaluated as new information is acquired. Information depicted on the map is essential to identifying highly valued fishery resources, establishing priorities to fill data gaps, and establishing instream flow requirements to maintain existing fisheries or other stream water uses.

This map is one of several similar products of a cooperative effort whose participants included the U.S. Department of the Interior, Office of Biological Services and Division of Ecological Services, Fish and Wildlife Service; State Fish and Wildlife Departments of Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming; and the U.S. Environmental Protection Agency. Funds for preparation and production of these maps were provided by the Federal Interagency Energy/Environment Research and Development program, Office of Energy, Minerals, and Industry, U.S. Environmental Protection Agency.

## METHOD

A rating system was used by the Kansas Fish and Game Commission to evaluate fishery habitat for nearly all the larger streams of Kansas. Most of the streams not surveyed are intermittent or ephemeral. Some smaller streams were included because of the occurrence of Kansas threatened or endangered species. Fishery habitat was assigned one of four values.

VALUE CLASS	MAP CODE	CLASS DEFINITION
I		Highest-Valued Fishery Resource
II		High-Priority Fishery Resource
III		Moderate Fishery Resource
IV		Limited Fishery Resource

To determine the appropriate value class, each stream reach was judged on criteria provided below using a point system (Value Class I = 10 points, Value Class II = 7, Value Class III = 4, Value Class IV = 1). The range of possible total scores was 6 to 60 for the six classification criteria. The final classification assigned to the habitat was the higher value class when two value classes rated equally.

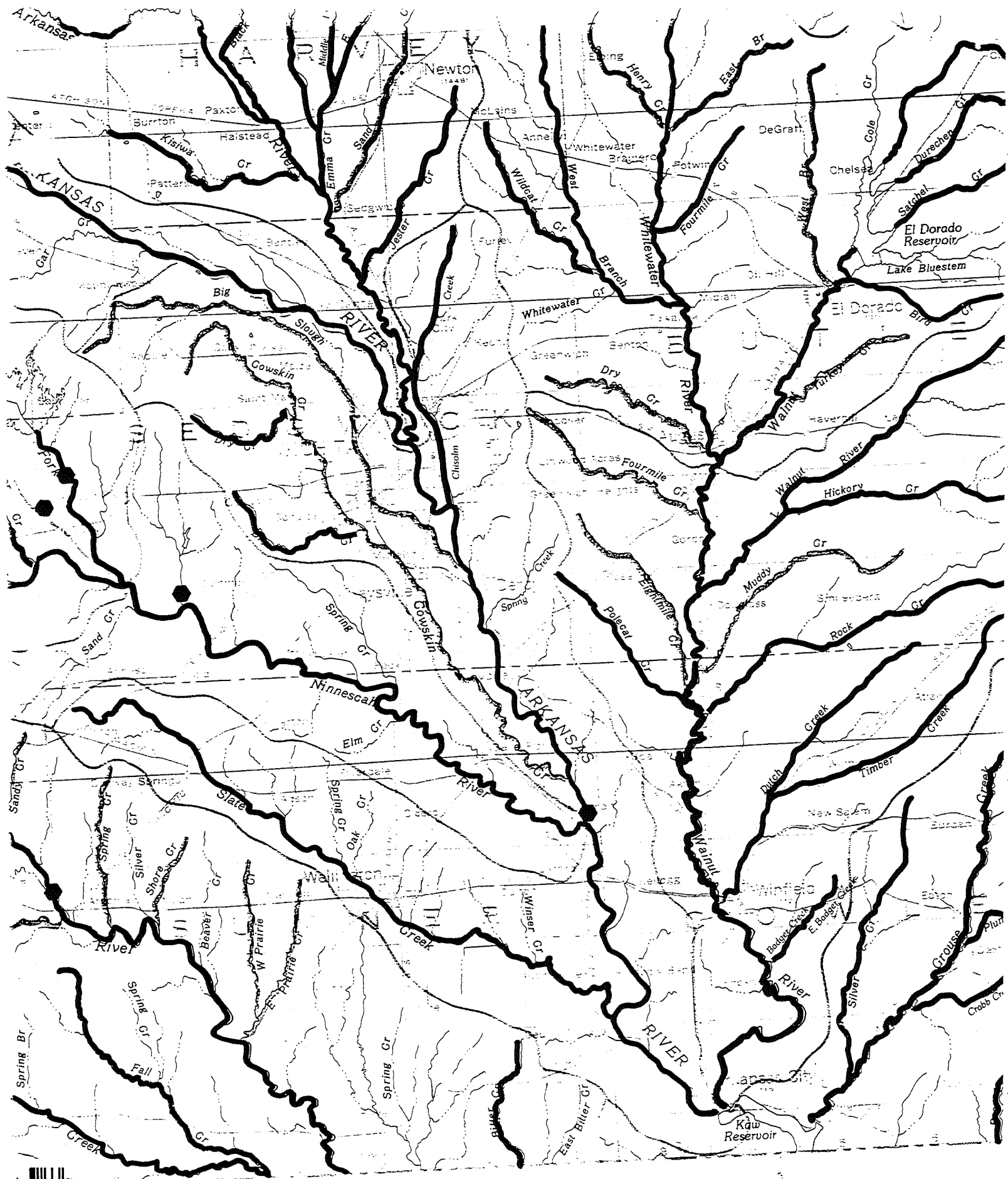
ATTACHMENT C

CRITERIA

CRITERIA

3-7





ATTACHMENT C

## 2. ANIMAL WASTE CHARACTERISTICS

The quantity and composition of wastes produced influence livestock waste facility design. The properties of manure depend on several factors: animal species; ration digestibility, protein, and fiber content; and animal age, environment, and productivity. The waste system also handles added bedding, soil, water, hair, etc.

Waste with 20%-25% solids content (75%-80% moisture content) can usually be handled as a solid, i.e. it can be stacked and can be picked up with a fork loader. Liquids need to be drained and the waste dried or bedding added to get solid waste. In the 10%-20% solids content range, handling characteristics vary depending on the type of solids present. In this range,

the percent solids content does not necessarily define handling characteristics.

Waste with 4%-10% solids content can usually be handled as a liquid, but may need special pumps. Waste with 0%-4% solids content is handled as a liquid with irrigation or flushing consistency. Liquids which have had the larger solids settled or filtered out or wastes with dilution water added may have 4% or less solids.

### Manure

Table 2-1 lists manure properties. Because of the variations in animal manure properties, the values

**Table 2-1. Manure production and characteristics as produced.**

Values are approximate. The actual characteristics of a manure can easily have values 20% or more above or below the table values. The volume of waste that a waste handling system has to handle can be much larger than the table values due to the addition of water, bedding, etc. For example, liquid waste systems for swine farrowing and gestation units may have to handle twice as much waste volume as indicated; swine nurseries 3 to 4 times as much, because of large amounts of wash and wasted water.

Animal	Size lb	Total manure production			Water %	Density lb/ft <sup>3</sup>	TS lb/day	VS lb/day	BOD <sub>5</sub> lb/day	Nutrient content, lb/day		
		lb/day	ft <sup>3</sup> /day	gal/day						N	P <sub>2</sub> O <sub>5</sub>	K <sub>2</sub> O
Dairy cattle	150	12	0.19	1.5	87.3	62	1.6	1.3	0.26	0.06	0.023	0.048
	250	20	0.32	2.4	"	"	2.6	2.1	0.43	0.10	0.045	0.084
	500	41	0.66	5.0	"	"	5.2	4.3	0.86	0.20	0.082	0.169
	1,000	82	1.32	9.9	"	"	10.4	8.6	1.70	0.41	0.166	0.325
	1,400	115	1.85	13.9	"	"	14.6	12.0	2.38	0.57	0.232	0.458
Beef cattle	500	30	0.50	3.8	88.4	60	3.5	3.0	0.8	0.17	0.127	0.145
	750	45	0.75	5.6	"	"	5.2	4.4	1.2	0.26	0.191	0.229
	1,000	60	1.00	7.5	"	"	6.9	6.0	1.6	0.34	0.250	0.289
	1,250	75	1.20	9.4	"	"	8.7	7.4	2.0	0.43	0.318	0.373
Cow*		63	1.05	7.9	"	"	7.3	6.2	1.7	0.36	0.273	0.313
Swine												
Nursery pig	35	2.3	0.038	0.27	90.8	60	0.20	0.17	0.07	0.016	0.0118	0.012
Growing pig	65	4.2	0.070	0.48	"	"	0.39	0.31	0.13	0.029	0.0223	0.024
Finishing pig	150	9.8	0.16	1.13	"	"	0.90	0.72	0.30	0.068	0.050	0.054
	200	13.0	0.22	1.5	"	"	1.20	0.96	0.39	0.090	0.068	0.071
Gestating sow*	275	8.9	0.15	1.1	"	"	0.82	0.66	0.27	0.062	0.048	0.048
Sow and litter*	375	33.0	0.54	4.0	"	"	3.00	2.40	1.00	0.230	0.173	0.181
Boar*	350	11.0	0.19	1.4	"	"	1.00	0.84	0.35	0.078	0.059	0.061
Sheep	100	4.0	0.062	0.46	75.0	65	1.00	0.85	0.09	0.045	0.015	0.039
Poultry												
Layers	4	0.21	0.0035	0.027	74.8	60	0.053	0.037	0.014	0.0029	0.0025	0.0014
Broilers	2	0.14	0.0024	0.018	"	"	0.036	0.025	0.0023	0.0024	0.00123	0.0009
Horse	1,000	45	0.75	5.63	79.5	60	9.4	7.5	—	0.27	0.105	0.205

Source: American Society of Agricultural Engineers, data adapted from Committee S&E-412 report AW-D-1. Revised 6-14-73.

Revised 6-14-73

ATTACHMENT D

## HOUSE BILL No. 2803

By Committee on Energy and Natural Resources

1-29

8 AN ACT concerning water quality; relating to feedlots and other  
9 facilities discharging sewage; providing for certain grants; prohib-  
10 iting certain acts and providing penalties for violations; amending  
11 K.S.A. 47-1502, 47-1505, 65-159, 65-161, 65-166, 65-166a, 65-  
12 170b, 65-171u, 74-2614, 82a-325 and 82a-327 and K.S.A. 1991  
13 Supp. 47-1501, 47-1503, 47-1511, 65-164, 65-165, 65-170f and 82a-  
14 326 and repealing the existing sections.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 1991 Supp. 47-1501 is hereby amended to read  
18 as follows: 47-1501. (a) "Feedlot" means: (1) A livestock feedlot, or  
19 feed yard, having more than ~~1,000 head of livestock~~ 100 livestock  
20 units at one time during the licensed year; or (2) any other livestock  
21 feedlot whose operator elects to come under this act.

22 (b) "Feed yard feeding" means the feeding of livestock in lots or  
23 pens which are not used normally for raising crops and in which no  
24 vegetation, intended for livestock feed, is growing.

25 (c) "Livestock" means cattle, swine, sheep ~~and horses~~, horses  
26 or any other animal used for human consumption, profit or pleasure.

27 (d) "Operator" means the owner, or the person having charge or  
28 control, of a feedlot.

29 (e) "Person" means an individual, a corporation, a group of in-  
30 dividuals, joint venturers, a partnership or any other business entity.

31 (f) "Commissioner" means the state livestock commissioner.

32 (g) "Board" means the Kansas animal health board.

33 (h) "Livestock unit" means the number of livestock, as established  
34 by rules and regulations of the commissioner, which produce waste  
35 equivalent to that produced by a 500-pound head of beef cattle.

36 Sec. 2. K.S.A. 47-1502 is hereby amended to read as follows:  
37 47-1502. Feeding of livestock, and animal husbandry, for the purpose  
38 of this act shall be considered to be, and shall be construed to be,  
39 an agricultural pursuit: ~~Provided~~. Such agricultural pursuit may be  
40 subject to any city zoning provisions created under the laws of Kansas  
41 or any subdivision thereof.

42 Sec. 3. K.S.A. 1991 Supp. 47-1503 is hereby amended to read  
43 as follows: 47-1503. (a) It shall be unlawful for any person to operate



1 a feedlot within the state of Kansas without having first obtained a  
 2 license from the livestock commissioner authorizing and permitting  
 3 such operation.

4 (b) An operator of any feedlot in the state of Kansas, or a person  
 5 desiring to operate a feedlot in the state of Kansas, shall obtain,  
 6 from the livestock commissioner, a license to operate a feedlot, unless  
 7 exempted therefrom. The owner or operator of any livestock feedlot,  
 8 with a capacity of less than ~~1,000 head of livestock~~ *100 livestock*  
 9 *units*, may apply for and obtain a license for feedlot operations, if  
 10 such owner or operator chooses and elects to come under the terms  
 11 and provisions of this act, but the licensing for operations at a capacity  
 12 of less than ~~1,000 head~~ *100 livestock units* shall not be required.

13 (c) Application for a livestock feedlot license shall be filed with  
 14 the livestock commissioner, on a form prescribed and furnished by  
 15 the commissioner. Upon the filing of such an application and payment  
 16 of the required fees, the commissioner shall ~~issue a livestock feed-~~  
 17 ~~lot license to such applicant, provided the application discloses~~  
 18 ~~information assuring the commissioner that the operation of~~  
 19 ~~such feedlot will be conducted in accordance with the stan-~~  
 20 ~~dards set forth elsewhere in this act, and with rules and reg-~~  
 21 ~~ulations adopted by the commissioner forward a copy of the form~~  
 22 ~~to the environmental coordinator of the Kansas water office for~~  
 23 ~~distribution to the environmental review agency. The commissioner~~  
 24 ~~will then issue a three-month temporary license pending response~~  
 25 ~~from such coordinator that the pollution abatement provisions are~~  
 26 ~~adequate to protect the waters of the state of Kansas. A negative~~  
 27 ~~response by such coordinator will prompt the commissioner to issue~~  
 28 ~~a three months' extension to allow the operator time to correct the~~  
 29 ~~offending attributes. Noncompliance will cause the commissioner to~~  
 30 ~~permanently deny the license.~~

31 (d) Feedlot licenses shall be issued for the term of one year, to  
 32 expire on June 30 following the date of issuance. Feedlot licenses  
 33 may be continued in force by annual renewal or extension of such  
 34 license with the payment of an annual license fee, and with continued  
 35 compliance by the operator with the provisions of this act, and acts  
 36 amendatory of the provisions thereof and supplemental thereto, and  
 37 rules and regulations adopted hereunder.

38 (e) Each feedlot operator, who shall be granted a license, shall  
 39 pay a fee for such license and for annual renewal thereof, in accor-  
 40 dance with the following schedule:

<i>Feedlot capacity</i>	<i>Amount of fee</i>
42 Under 1,000 head.....	\$75
43 1,000 to 2,999 head.....	150

1	3,000 to 9,999 head.....	300
2	10,000 to 17,999 head.....	450
3	18,000 head and over.....	750
4	Under 100 units.....	\$35
5	100 to 999 units.....	100
6	1,000 to 2,999 units.....	150
7	3,000 to 9,999 units.....	300
8	10,000 to 17,999 units.....	450
9	18,000 units and over.....	750

10 (f) If an original feedlot license expires within six months after  
 11 date of issuance, only 50% of the applicable license fee shall be  
 12 required. An application for feedlot license shall not be approved,  
 13 nor shall a license be issued to any applicant unless the application  
 14 is accompanied by the applicable license fee under the schedule of  
 15 fees in this section. Each licensed feedlot operator shall pay an annual  
 16 license fee in accordance with the schedule of fees in this section  
 17 and, upon payment of such fee and a showing of compliance with  
 18 other requirements, shall be entitled to a renewal or extension of  
 19 such operator's license for the ensuing license year.

20 (g) The livestock commissioner shall remit all moneys received  
 21 by or for the commissioner under article 15 of chapter 47 of Kansas  
 22 Statutes Annotated and amendments thereto to the state treasurer  
 23 at least monthly. Upon receipt of any such remittance, the state  
 24 treasurer shall deposit the entire amount thereof in the state treasury  
 25 and the same shall be credited to the animal disease control fund.

26 Sec. 4. K.S.A. 47-1505 is hereby amended to read as follows:  
 27 47-1505. (a) Owners and operators who are granted a feedlot license  
 28 shall: (1) Provide ~~reasonable methods for the disposal of animal~~  
 29 ~~excrement~~ *pollution control facilities approved by the secretary of*  
 30 *health and environment*; (2) provide chemical and scientific control  
 31 procedure for prevention and eradication of pests; (3) provide ade-  
 32 quate drainage, from feedlot premises, and such drainage shall be  
 33 so constructed as to control pollution of *groundwater, wetlands,*  
 34 *streams and lakes*; (4) provide adequate veterinarian services for  
 35 detection, control and elimination of livestock diseases; (5) *provide*  
 36 *reasonable methods for disposal of animal excrement* and have avail-  
 37 able for use at all times, mechanical means for scraping, cleaning  
 38 and grading feedlot premises *in accordance with law*; (6) provide  
 39 weather resistant aprons adjacent to all permanently affixed feed  
 40 bunks, water tanks, and feeding devices; *and* (7) conduct feedlot  
 41 operations in conformity with established practices in the feedlot  
 42 industry as approved by ~~regulations made and promulgated rules~~  
 43 *and regulations adopted* by the commissioner, and in accordance

1 with the standards set forth in this act.

2 Any feedlot operated in compliance with such standards, and  
3 in compliance with the regulations made and promulgated

4 (b) If a feedlot is operated in compliance with the standards set  
5 forth in this act and in compliance with rules and regulations adopted  
6 by the commissioner, such compliance shall be deemed to be *prima*  
7 *facie* evidence that a nuisance does not exist.

8 Sec. 5. K.S.A. 1991 Supp. 47-1511 is hereby amended to read  
9 as follows: 47-1511. Upon request of the livestock commissioner, the  
10 secretary of health and environment *Kansas soil conservation*  
11 *service of the state conservation commission* shall make staff engi-  
12 neers available to assist (1) an operator of any feedlot in the state  
13 of Kansas, and (2) any person who has applied for a license to operate  
14 a feedlot in the state of Kansas, in the development of plans and in  
15 the design for the construction of facilities for a feedlot in order to  
16 control pollution of *groundwater, wetlands*, streams and lakes. Noth-  
17 ing in this act shall be construed as limiting the authority of the  
18 secretary of health and environment in matters of ~~stream and lake~~  
19 pollution as provided for in K.S.A. 65-161 to 65-171h, inclusive  
20 through 65-171h and amendments thereto.

21 Sec. 6. K.S.A. 65-159 is hereby amended to read as follows: 65-  
22 159. The secretary of health and environment and the county or  
23 joint boards of health shall have the power and authority to examine  
24 into all nuisances, sources of filth and causes of sickness that in their  
25 opinion may be injurious to the health of the inhabitants within any  
26 county or municipality in this state. Whenever any such nuisance,  
27 source of filth or cause of sickness shall be found to exist on any  
28 private property or upon any watercourse *or aquifer* in this state,  
29 the secretary of health and environment or county or joint boards  
30 of health shall have the power and authority to order, in writing,  
31 the owner or occupant thereof at ~~his or her~~ *the owner's or occupant's*  
32 own expense to remove the nuisance, source of filth or cause of  
33 sickness within ~~twenty-four (24)~~ 24 hours, or within such reasonable  
34 time thereafter as such secretary or such county or joint board may  
35 order; and if the owner or occupant shall fail to obey such order,  
36 such owner or occupant upon conviction shall be fined not less than  
37 ~~ten dollars (\$10) nor more than one hundred dollars (\$100),~~  
38 ~~and each day's continuance of such nuisance, source of filth~~  
39 ~~or cause of sickness, after the owner or occupant thereof shall~~  
40 ~~have been notified to remove the nuisance, source of filth or~~  
41 ~~cause of sickness, shall be a separate offense \$100 nor more~~  
42 ~~than \$500 per day for each of the first 10 days of continuous violation~~  
43 ~~and \$1,000 per day thereafter that the violation continues.~~

1 Sec. 7. K.S.A. 65-161 is hereby amended to read as follows: 65-  
2 161. As used in this act:

3 (a) "Waters of the state" means all streams and springs, and all  
4 bodies of surface and subsurface waters within the boundaries of the  
5 state;

6 (b) "Discharge" means, when used without qualification, the  
7 causing or permitting of sewage to enter, either directly or indirectly,  
8 into waters of the state;

9 (c) "Indirect discharge" means the introduction of pollutants into  
10 a publicly owned treatment works from any nondomestic source;  
11 and

12 (d) "Direct discharge" means the discharge of sewage into waters  
13 of the state.

14 (e) *"Critical water quality management area" means a watershed,*  
15 *or a portion of a watershed, in which application of minimum state*  
16 *or national wastewater and water quality management practices and*  
17 *procedures cannot be reasonably expected to result in attainment of*  
18 *water quality goals, attainment of water quality standards, protection*  
19 *of resources of the state, prevention of excessive sediment deposition*  
20 *in stream beds, lakes or reservoirs, or prevention of destruction of*  
21 *fishery habitat; or an area in which additional treatment and control*  
22 *of pollutants can result in additional cost effective benefits.*

23 Sec. 8. K.S.A. 1991 Supp. 65-164 is hereby amended to read as  
24 follows: 65-164. (a) No person, company, corporation, institution or  
25 municipality shall place or permit to be placed or discharge or permit  
26 to flow into any of the waters of the state any sewage, except as  
27 hereinafter provided. This act shall not prevent the discharge of  
28 sewage from any public sewer system owned and maintained by a  
29 municipality or sewerage company, if such sewer system was in  
30 operation and was discharging sewage into the waters of the state  
31 on March 20, 1907, but this exception shall not permit the discharge  
32 of sewage from any sewer system that has been extended subsequent  
33 to such date, nor shall it permit the discharge of any sewage which,  
34 upon investigation by the secretary of health and environment as  
35 hereinafter provided, is found to be polluting the waters of the state  
36 in a manner prejudicial to the health of the inhabitants thereof. *If*  
37 *the discharge has proven injurious to the beneficial use of water or*  
38 *health of inhabitants of the state, the attorney general shall assist*  
39 *any injured party to receive just compensation and maximum res-*  
40 *titution of lost assets.*

41 (b) For the purposes of this act, "sewage" means any substance  
42 that contains any of the waste products or excrementitious or other  
43 discharges from the bodies of human beings or animals; or; chemical

1 or other wastes from domestic, manufacturing or other forms of  
2 industry; *or municipal surface runoff.*

3 (c) Whenever a complaint is made to the secretary of health and  
4 environment by the mayor of any city of the state, by a local  
5 health officer or by a county or joint board of health, com-  
6 plaining of the pollution or, *appointed health officer, county com-*  
7 *missioner, joint board of health or Kansas water office complaining*  
8 *of the polluted condition of any of the waters of the state situated*  
9 *within the county within which the city, local health officer or*  
10 *county or joint board of health is located in an area under the*  
11 *complainant's jurisdiction, it shall be the duty of the secretary of*  
12 *health and environment to cause an investigation of the pollution*  
13 *or the polluted condition complained of. Also, whenever the sec-*  
14 *retary of health and environment otherwise has reason to believe*  
15 *that any of the waters of the state are being polluted in a manner*  
16 *prejudicial to the health of any of the inhabitants or wildlife of the*  
17 *state or causing loss of beneficial uses of the waters, the secretary*  
18 *may shall initiate an investigation of such pollution and, immediately*  
19 *upon receiving the complaint, shall notify the secretary of wildlife*  
20 *and parks of the details. The secretary of wildlife and parks upon*  
21 *such notice shall, in a timely manner, survey the site and, upon*  
22 *finding damage or potential damage to wildlife habitat or recreational*  
23 *environment, conduct a comprehensive investigation and report to*  
24 *the secretary of health and environment recommendations for nui-*  
25 *sance abatement and penalties.*

26 (d) Whenever an investigation is undertaken by the secretary of  
27 health and environment, under subsection (c), it shall be the duty  
28 of any person, company, corporation, institution or municipality con-  
29 cerned in such pollution to furnish, on demand, to the secretary of  
30 health and environment such information as required relative to the  
31 amount and character of the polluting material discharged into the  
32 waters by such person, company, corporation, institution or munic-  
33 ipality. If the secretary of health and environment finds that any of  
34 the waters of the state have been or are being polluted in a manner  
35 prejudicial to the health of any of the inhabitants or wildlife of the  
36 state or causing loss of beneficial uses of the waters, the secretary  
37 of health and environment shall have the authority to make an order  
38 requiring: (1) Such pollution to cease within a reasonable time; (2)  
39 requiring such manner of treatment or of disposition of the sewage  
40 or other polluting material as, in the secretary's judgment, is nec-  
41 essary to prevent the future pollution of such waters; or (3) both.  
42 It shall be the duty of the person, company, corporation, institution  
43 or municipality to whom such order is directed to fully comply with

1 years from the date of its issuance. The secretary of health and  
2 environment may issue permits pursuant to K.S.A. 65-165 and  
3 amendments thereto for terms of less than five years, if the secretary  
4 determines valid cause exists for issuance of the permit with a term  
5 of less than five years. The minimum fee assessed for any permit  
6 issued pursuant to K.S.A. 65-165 and amendments thereto shall be  
7 for not less than one year. Permit fees may be assessed and collected  
8 on an annual basis and failure to pay the assessed fee shall be cause  
9 for revocation of the permit. Any permit which has expired or has  
10 been revoked may be reissued upon payment of the appropriate fee  
11 and submission of a new application for a permit as provided in  
12 K.S.A. 65-165 and 65-166, and amendments to those statutes  
13 *thereto*.

14 (c) The secretary of health and environment shall remit all mon-  
15 eys received from the fees established pursuant to this act to the  
16 state treasurer at least monthly. Upon receipt of such remittance,  
17 the state treasurer shall deposit the entire amount thereof in the  
18 state treasury to the credit of the state ~~general fund~~ *water plan*  
19 *fund created by K.S.A. 82a-951 and amendments thereto*.

20 Sec. 12. K.S.A. 65-170b is hereby amended to read as follows:  
21 65-170b. In performing investigations or administrative functions re-  
22 lating to water pollution or a public water supply system as provided  
23 by K.S.A. 65-161 to ~~65-171j, inclusive, or any through 65-171j,~~  
24 *and* amendments thereto, the secretary of health and environment  
25 or the secretary's duly authorized representatives upon presenting  
26 appropriate credentials, may enter any property or facility which is  
27 subject to the provisions of K.S.A. 65-161 to ~~65-171j, inclusive, or~~  
28 *any through 65-171j, and* amendments thereto, for the purpose of  
29 observing, monitoring, collecting samples, examining records and  
30 facilities to determine compliance or noncompliance with state laws  
31 and rules and regulations relating to water pollution or public water  
32 supply.

33 The secretary of health and environment or the secretary's duly  
34 authorized representative shall make such requirements as they deem  
35 necessary relating to the inspection, monitoring, recording and re-  
36 porting by any holder of a sewage discharge permit issued under  
37 K.S.A. 65-165 *and amendments thereto*, or any holder of a public  
38 water supply system permit issued under K.S.A. 65-163 *and amend-*  
39 *ments thereto*.

40 *Any state official or appointed consultant visiting any property or*  
41 *facility subject to the provisions of K.S.A. 65-161 through 65-171j,*  
42 *and amendments thereto, to investigate any provision of this act*  
43 *shall prepare a standardized comprehensive report indicating date,*

1 *time of day and specific findings.*

2 Sec. 13. K.S.A. 1991 Supp. 65-170f is hereby amended to read  
3 as follows: 65-170f. ~~Except as otherwise provided by K.S.A. 82a-~~  
4 ~~952,~~ All penalties recovered pursuant to the provisions of this act  
5 *K.S.A. 65-161 through 65-171x or section 16 or 17, and amendments*  
6 *thereto*, shall be deposited in the state treasury and credited to the  
7 state ~~general fund~~ *water plan fund created by K.S.A. 82a-951 and*  
8 *amendments thereto.*

9 Sec. 14. K.S.A. 65-171u is hereby amended to read as follows:  
10 65-171u. As used in this act, "person" means any individual, com-  
11 pany, corporation, institution, municipality, township, county, fed-  
12 eral agency or legally constituted sewer district. Any person who  
13 violates any of the provisions of K.S.A. 65-161 to 65-171, ~~inclusive~~  
14 *through 65-171, and amendments thereto*, or any duty imposed  
15 therein or who violates an order or other determination of the sec-  
16 retary of health and environment or authorized representatives of  
17 such secretary made pursuant to the provisions of such sections,  
18 including the stipulations of conditions of a permit to discharge sew-  
19 age, and, in the course thereof, causes the death of, or injury to,  
20 fish, animals, vegetation or other resources of the state whether  
21 natural or structural, or otherwise causes a reduction in the quality  
22 of the waters of the state below the standards set by the secretary  
23 of health and environment, thereby damaging the same, shall be  
24 liable to pay the state damages in an amount equal to the sum of  
25 money necessary to restock such waters, replenish or replace such  
26 resources and otherwise restore the stream, lake or other water  
27 source to its condition prior to the injury, as such condition is  
28 determined by the division of environment of the department of  
29 health and environment. Such damages shall not include damages  
30 to private rights or persons or damages to such person. If the person  
31 responsible for damage to resources fails to promptly submit payment  
32 for damages to resources of the state when notified in reasonable  
33 detail, then such damages shall be recoverable in an action brought  
34 by the attorney general on behalf of the people of the state of Kansas  
35 in the district court of the county in which such damages occurred.  
36 If damages occurred in more than one county the attorney general  
37 may bring action in any of the counties where the damages occurred.  
38 Any money so recovered by the attorney general shall be transferred  
39 to the agency of the state having jurisdiction over the resource  
40 damaged and for which said moneys were recovered, as appropriate.  
41 The agency receiving such money shall utilize the same on activities  
42 or projects to remedy the resources damaged. No action shall be  
43 authorized under this section against any person operating in com-

1 the order of the secretary of health and environment.

2 (e) Any action of the secretary pursuant to subsection (d) is sub-  
3 ject to review in accordance with the act for judicial review and civil  
4 enforcement of agency actions. The court on review shall hear the  
5 case without delay.

6 Sec. 9. K.S.A. 1991 Supp. 65-165 is hereby amended to read as  
7 follows: 65-165. Upon application made to the secretary of health  
8 and environment by the public authorities having by law the charge  
9 of the sewer system of any municipality, township, county, or legally  
10 constituted sewer district, or any person, company, corporation, in-  
11 stitution, municipality or federal agency, the secretary of health and  
12 environment shall consider the case of such a sewage discharge or  
13 sewer system, otherwise prohibited by this act from discharging  
14 sewage into any of the waters of the state, or the extension of a  
15 sewer system and whenever it is the secretary's opinion that the  
16 general interests of the public health would be served thereby, or  
17 that the discharge of such sewage would not detract from the quality  
18 of the waters of the state for their beneficial uses for domestic or  
19 public water supply, agricultural needs, industrial needs, recreational  
20 needs or other beneficial use and that such discharge meets or will  
21 meet all applicable state water quality standards and applicable fed-  
22 eral water quality and effluent standards under the provisions of the  
23 federal water pollution control act and amendments thereto as in  
24 effect on January 1, 1989, the secretary of health and environment  
25 shall issue a permit for the extension of a sewer system or for the  
26 discharge of sewage, or both, and shall stipulate in the permit the  
27 conditions on which such discharge will be permitted and shall re-  
28 quire such treatment of the sewage as determined necessary to pro-  
29 tect beneficial uses of the waters of the state in accordance with the  
30 statutes and rules and regulations defining the quality of the water  
31 affected by such discharge and may require treatment of the sewage  
32 in accordance with rules and regulations predicated upon techno-  
33 logically based effluent limitations. Indirect dischargers shall comply  
34 with all applicable pretreatment regulations and water quality  
35 standards.

36 Every such permit for the discharge of sewage shall be revocable,  
37 or subject to modification and change, by the secretary of health  
38 and environment, upon notice having been served on the public  
39 authorities having, by law, the charge of the sewer system any  
40 municipality, township, county or legally constituted sewer district  
41 or on the person, company, corporation, institution, municipality or  
42 federal agency owning, maintaining or using the sewage system. The  
43 length of time after receipt of the notice within which the discharge



1 of sewage shall be discontinued may be stated in the permit, but  
2 in no case shall it be less than ~~30~~ 10 days or exceed ~~two years~~ one  
3 *year*, and if the length of time is not specified in the permit it shall  
4 be 30 days. On the expiration of the period of time prescribed, after  
5 the service of notice of revocation, modification or change from the  
6 secretary of health and environment, the right to discharge sewage  
7 into any of the waters of the state shall cease and terminate, and  
8 the prohibition of this act against such discharge shall be in full  
9 force, as though no permit had been granted, but a new permit may  
10 thereafter again be granted, as hereinbefore provided.

11 Sec. 10. K.S.A. 65-166 is hereby amended to read as follows:  
12 65-166. It is required of public authorities having by law the charge  
13 of the sewer system of any municipality, township, county, or legally  
14 constituted sewer district, and of each and every person, company,  
15 corporation, institution, municipality, or federal agency, that upon  
16 making application for a permit to discharge sewage into any waters  
17 of the state, or the extension of any sewer system, the application  
18 shall be accompanied by plans and specifications for the construction  
19 of the sewage collection systems and/or sewage treatment or disposal  
20 facilities, and any additional facts and information, *including but not*  
21 *limited to soil surveys and a basic environmental impact statement*,  
22 as the secretary of health and environment may require to determine  
23 adequate protection of the public health of the state and the ben-  
24 efitial uses of waters of the state.

25 Sec. 11. K.S.A. 65-166a is hereby amended to read as follows:  
26 65-166a. (a) The secretary of health and environment is authorized  
27 and directed to establish by duly adopted rules or regulations a  
28 schedule of fees to defray all or any part of the costs of administering  
29 the water pollution control permit system established by K.S.A. 65-  
30 165 and 65-166, and amendments to these statutes *thereto*. The  
31 amount of the fees so established shall be based upon the quantity  
32 of raw wastes or treated wastes to be discharged, units of design  
33 capacity of treatment facilities or structures, numbers of potential  
34 pollution units, physical or chemical characteristics of discharges and  
35 staff time necessary for review and evaluation of proposed projects.  
36 In establishing the fee schedule, the secretary of health and envi-  
37 ronment shall not assess fees for permits required in the extension  
38 of a sewage collection system, but such fees shall be assessed for  
39 all treatment devices, facilities or discharges where a permit is re-  
40 quired by law and is issued by the secretary of health and environ-  
41 ment or the secretary's designated representative. Such fees shall  
42 be nonrefundable.

43 (b) Any such permit for which a fee is assessed shall expire five

1   pliance with the conditions of a waste discharge permit issued pur-  
2   suant to K.S.A. 65-165 *and amendments thereto. Recovering of*  
3   *damages to private rights or persons caused by a violation of this*  
4   *act shall be assisted by the full resources of the state of Kansas to*  
5   *the extent determined by a panel composed of, but not limited to,*  
6   *a representative of the secretary of health and environment, the*  
7   *violator, the damaged persons, an independent arbitrator, interested*  
8   *persons and a representative of the attorney general.*

9   New Sec. 15. (a) The secretary of health and environment shall  
10   establish, within the limits of appropriations therefor, a program of  
11   grants to individuals and entities engaged in the investigation, de-  
12   velopment and application of new technologies for monitoring dis-  
13   charge quality and content and development of a regional  
14   climatological data base to aid in adopting rules and regulations to  
15   administer and implement the provisions of K.S.A. 65-161 through  
16   65-171x, and amendments thereto, to regionalize design standards  
17   for facilities to improve effectiveness and optimize costs.

18   (b) The secretary may adopt such rules and regulations as nec-  
19   essary to implement and administer the provisions of this section.

20   New Sec. 16. (a) No person who owns or has control of livestock  
21   shall allow such livestock open access to streams or rivers in this  
22   state and such access shall be controlled by placement of fencing  
23   not less than 100 feet from each side of a stream or river, in order  
24   to protect the riparian vegetation.

25   (b) As used in this section:

26   (1) "Livestock" has the meaning provided by K.S.A. 47-1501 and  
27   amendments thereto.

28   (2) "Streams or rivers" includes, but is not limited to, perma-  
29   nently flowing waterways and areas that experience no flow peri-  
30   odically during the year.

31   (c) Violation of this section shall be punishable by a civil penalty  
32   in the same manner and amount as provided by K.S.A. 65-170d and  
33   amendments thereto.

34   New Sec. 17. (a) Any person or entity which abandons a facility  
35   for which a permit is required under K.S.A. 65-165 and amendments  
36   thereto shall notify the secretary of health and environment of such  
37   abandonment not later than six months after the abandonment. Upon  
38   receipt of such notice, the secretary of health and environment shall  
39   cause the site of the facility to be investigated to determine if ad-  
40   ditional security provisions are necessary. If the secretary deems  
41   such provisions to be necessary, they shall be provided at the expense  
42   of the person or entity which abandoned the facility.

43   (b) A person or entity which fails to notify the secretary of health

1 and environment as provided by this section must comply with any  
2 provisions deemed necessary by the secretary and shall be liable for  
3 a civil penalty not to exceed \$500, to be assessed in the same manner  
4 as provided for civil penalties imposed under K.S.A. 65-170d and  
5 amendments thereto.

6 New Sec. 18. If a person or entity holds a current valid permit  
7 issued pursuant to K.S.A. 65-165 and amendments thereto and com-  
8 plies with all terms and conditions of such permit and all applicable  
9 requirements of K.S.A. 65-161 through 65-171x and sections 15, 16  
10 and 17, and amendments thereto, such person or entity shall not  
11 be liable for damages arising from a discharge of sewage pursuant  
12 to such permit and incurred by an owner or occupant of land in  
13 proximity to the point of discharge unless:

14 (a) The owner's ownership or the occupant's occupancy predates  
15 the issuance of the permit; or

16 (b) the discharge polluted waters in a manner prejudicial to the  
17 health of occupants or wildlife on such land or in a manner causing  
18 loss of the owner's or occupant's beneficial uses of water.

19 Sec. 19. K.S.A. 74-2614 is hereby amended to read as follows:  
20 74-2614. *The director of the Kansas water office, with the consent*  
21 *of the governor, shall appoint and fix the compensation of an en-*  
22 *vironmental coordinator to direct the review committee composed of*  
23 *representatives of state agencies charged with the protection of the*  
24 *waters of Kansas and monitoring of all applications for permits*  
25 *having an impact on water resources or the environment.* The di-  
26 rector of the Kansas water office, with the consent of the governor,  
27 may appoint and fix the compensation of such *other* employees as  
28 deemed necessary to carry out the powers, duties and functions of  
29 the Kansas water office and the director of the Kansas water office.  
30 All clerical and financial management employees shall be in the  
31 classified service of the Kansas civil service act and all other em-  
32 ployees shall be in the unclassified service of the Kansas civil service  
33 act.

34 Sec. 20. K.S.A. 82a-325 is hereby amended to read as follows:  
35 82a-325. (a) This act shall be known and may be cited as the water  
36 ~~projects~~ *protection* environmental coordination act.

37 (b) In order to protect the environment *and water resources*  
38 while facilitating the use, enjoyment, health and welfare of the people  
39 of the state of Kansas, it is necessary that the environmental effect  
40 of any water development project be considered before such water  
41 development project is approved or permitted.

42 Sec. 21. K.S.A. 1991 Supp. 82a-326 is hereby amended to read  
43 as follows: 82a-326. When used in this act:

1 (a) "Water development project" means any project or plan which  
2 may be allowed or permitted pursuant to K.S.A. 24-126, 24-1213  
3 and 82a-301 *et seq.* or the multipurpose small lakes program act,  
4 and amendments thereto;

5 (b) "Environmental review agencies" means the:

- 6 (1) Kansas department of wildlife and parks;
- 7 (2) office of extension forestry;
- 8 (3) state biological survey;
- 9 (4) Kansas department of health and environment;
- 10 (5) state historical society;
- 11 (6) state conservation commission; ~~and~~
- 12 (7) state corporation commission; *and*
- 13 (8) *Kansas water office.*

14 Sec. 22. K.S.A. 82a-327 is hereby amended to read as follows:

15 82a-327. (a) Prior to approval or issuance of a permit for a proposed  
16 water development project, the permitting agency shall obtain a  
17 review of the proposed project for environmental effects by the  
18 appropriate state environmental review agencies, and shall consider  
19 their comments in determining whether to approve or issue a permit  
20 for such project. The permitting agency may condition the approval  
21 of or permit for the project in a manner to address the environmental  
22 concerns of the environmental review agencies.

23 (b) In reviewing a proposed water development project, the en-  
24 vironmental review agency shall consider:

25 (1) The beneficial and adverse environmental effects of a proposed  
26 project on water quality *and quantity*, fish and wildlife, forest and  
27 natural vegetation, historic, cultural, recreational, aesthetic, agri-  
28 cultural and other natural resources;

29 (2) the means and methods to reduce adverse environmental ef-  
30 fects of a proposed project; and

31 (3) alternatives to a proposed project with significant adverse  
32 environmental effects.

33 (c) Each environmental review agency shall send its written com-  
34 ments on the proposed project within 30 days of receipt of the  
35 proposal from the permitting agency.

36 (d) Nothing in this act shall be construed as prohibiting a per-  
37 mitting agency from approving or issuing a permit if an environ-  
38 mental review agency determines adverse environmental effects will  
39 result if the project is approved or permitted. Nothing in this act  
40 shall be construed as preempting or duplicating any existing envi-  
41 ronmental review process otherwise provided or authorized by law.

42 Sec. 23. K.S.A. 47-1502, 47-1505, 65-159, 65-161, 65-166, 65-  
43 166a, 65-170b, 65-171u, 74-2614, 82a-325 and 82a-327 and K.S.A.

1 1991 Supp. 47-1501, 47-1503, 47-1511, 65-164, 65-165, 65-170f and  
2 82a-326 are hereby repealed.

3 Sec. 24. This act shall take effect and be in force from and after  
4 its publication in the statute book.

Presentation to the House Agricultural Committee

RE: Feedlot Deregulation

DATE: March 9, 1994

My name is Joe Cooper. My grandfather was born in debt, worked his entire life in debt and delivered to his family a debt free farm in Stafford county. My roots are in the country. We were taught to respect the land. My family pulled rye from the wheat by hand and removed tumbleweeds from fence rows. My work ethic was born and nurtured in the country. I love the country. My father moved from the country to manage a flour mill. I come from an agricultural background.

There are certainly feedlot operations within the state that are maintained with high standards. I have not personally seen them but I am positive they exist because of the quality of individual that we enjoy within our great state. An operator of a well run facility would have no reason to want deregulation. In these operations compliance with quality standards is self-generated. We need regulation for those amongst us that do not have the discipline to operate at a high standard. We need regulation to protect them, ourselves and our friends in the environment.

The lot that I am familiar with cries out for regulation. This lot started out innocently enough with a few hundred head. As the numbers increased so did the stench, runoff and flies. A pond was used for waste containment. This pond overflows into a spring fed pond. A creek from this pond then flows to a third pond. All three are now dead. This particular feedlot never operated with a permit. Continued complaints to the KDHE and the EPA produced little to no action. At the time, we did not realize that the lot was being operated illegally with no permit, no approved plan for waste disposal and too many cattle. Continued complaints by the neighbors only resulted in retaliatory actions by the owner/operator. He installed hogs just due North of the Tweitmeyers' just to spite them. He not only admitted this to me, he bragged that they had tangled with the wrong man! As time marched on and conditions worsened mountains of manure appeared and dead cattle were left to rot in the sun. The sick pen was located North of the Tweitmeyers' pond. At times dead cattle were left in this pen. The conditions were deplorable. Discarded medications containers and syringes were left lying on the ground.

Approximately 5 years after attempting to get the KDHE to take action the agency stepped in and ordered a cease to the operation and leveled a very modest fine on the owner/operator. At this point the owner/operator applied for his first permit to operate. This new facility would have a containment basin. At this point we became educated about how the permit system works and what options are available to the public in dealing with problems associated with poor quality controls. The owner/operators permit application was not only incomplete but it was woefully inaccurate. Several neighbors requested a hearing. The hearing was granted but never scheduled because the fine was never paid. The KDHE dismissed the case with prejudice. This is where the situation stands today. My personal belief is that there is an expectation by this owner of deregulation and then it will be back to "business as usual".

Assuredly I would not be here if this lot were run in a conscientious fashion. This is a glaring

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example of what can happen even with regulatory controls. It doesn't require much imagination to foresee the environmental perils associated with deregulation.

When it comes to the environment/ecosystem we must start erring on the side of conservatism. We have made mistakes that we and future generations must live with. Some have been made out of ignorance. To make mistakes with prior knowledge of the outcome is unthinkable.

If the quality of life is to be affected by pollution, be it water or air, then it is only reasonable that those affected would have a forum in which to speak for their beliefs before the damage is done. Prevention is always the best path.

I fail to see the need for deregulation. Anyone not willing to take responsibility for their actions is never good for any business. It would seem that it would be to the industries advantage to avoid black eyes like the feedlot that adjoins our property. This individual's actions as an owner/operator have convicted him of being irresponsible and unwilling to "clean his own house". It is a sad commentary, but through conversations with others in similar predicaments, I know he is not "home alone".

As we move forward as a society every effort must be made to make certain everyone joins with us and comes along. There are those amongst us that require our help to do the right thing.

It has been brought to my attention that the KDHE has issued very few fines and only does so in the most miserable of cases. These fines have traditionally been small. The industry that I am a part of is often scrutinized by OSHA. Personal and public safety is a top priority for both KDHE and OSHA. There is a huge gap present in the levels of enforcement for what appears to be equally severe offenses. The Twitmeyers' and Smiths' water has been tested and found unsafe to drink. If it were apparent that I was responsible for the reckless endangerment of anyone's health at work we would be out of business.

The present permitting mechanism is inadequate to process the number of requested applications. We were told by KDHE staff that they do not check to see if applications are correct because they do not have the resources to do so. At least when the applications for permits are published it allows the affected neighbors a forum in which to speak. Professional engineers can be retained and sound decisions can be made. Some sites are simply not suitable. It doesn't make sense to install a feedlot on sandy ground where wastes can percolate freely to ground water. Like wise, the presence of springs and waterways, watersheds, etc., must be considered. These are resources that belong to the earth and all of us as a whole. They support the wild life majesty we all enjoy. It should not be left to one person's misguided judgement that irreversible damage occur to our resources as has happened in our back yard.

In the construction industry we take out permits for every job and every job is inspected. No one would ever consider doing away with construction regulations, permits and inspections. I

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March 9, 1994  
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can see no reason for the cattle industry to be any different.

A feedlot containing 300 head of cattle is very different from one holding 900 head. Even 300 cattle make a tremendous amount of waste. Disposal of waste in a proper fashion is not easily accomplished and must be planned.

This issue is not very complicated and the answer is simple. We do need at least as much regulation as we presently have. Let us, as citizens in a rural community, have some input as to how pollution will be held in check.



Testimony  
March 9, 1993

Susan Albertsen-Vaughan

The following information tells of my struggle to protect my family and our home. I urge you to read this and consider the Golden Rule, would you want this to happen to your family, to your children or grandchildren?

For over three years now I have been in contact with the Kansas Department of Health and Environment, I have spoken with several staff members including Larry Hess, Walt Wagner, and Max Richard, of the KDHE as well as the Director Charles Jones and the Secretary of the Environment Robert Harder regarding the operation of a cattle confinement feeding operation located adjacent to my property in Morris County, Kansas. The feedlot, owned by C.C. Hutchinson of Topeka, Kansas, known as the Hinchman Ranch was built and has been operated for many years without the required water pollution control permits needed for an operation of this size, in violation of both state and federal regulations (eg: KSA 65-164, d.). For example keeping the feedlot operation further than 1320 feet from a residence, this is not only a regulation but common courtesy as well. (In this case it is my residence as well as several others that are effected).

This feedlot has not in the past and is still making no attempt to contain its waste, and the lots are located up slope and within just a few hundred feet from Kahola Creek, which drains into the Neosho River upstream from Emporia, Kansas. The Neosho River provides one of few remaining environments in which the Madtom Catfish, an endangered species, can survive. I feel we should be proud that we have a river that can sustain an endangered species and we should do all that we can to maintain that environment.

The Kansas Department of Health and Environment issued a order regarding the Hinchman Ranch, case #93-E-80, effective April 6, 1993. The order was appealed by the owner, C.C. Hutchinson, and the feedlot remained in operation. Recently the appeal was withdrawn, and the fine paid. However the "Order" states that as of April 6, 1993, the Hinchman Ranch was to:

- "A. Remove all livestock from the two east facilities within 30 days of the receipt of this order
- B. Remove all livestock from the facility within 60 days of the receipt of this order.
- C. Clean out the pens and land apply the manure solids onto agricultural cropland by June 1, 1993. The application site and method of application shall be approved by the KDHE prior to implementation.
- D. Upon removal of all livestock as specified in A and B above, the facility is not to be operated as a confined feeding

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operation until a valid water pollution control permit is obtained from the KDHE."

In addition to the required actions as set forth in the order by the KDHE, the Hinchman Ranch was also required to "remit to the State of Kansas a civil penalty of \$3,750.00 for failure to submit the required information to KDHE as requested and for continuing to operate a confined feeding facility without a water pollution control permit." As you can probably guess only the fine was paid, the other requirements have as of this date not been met. And the feedlot remains in operation.

The location of the Hinchman Ranch Feedlot not only devalues my home and property it also raises considerable questions in light of the presence of Coliform bacteria found in my well water several years into the feedlot's operation. I became aware of the water problem when several of my pets became sick and even died due to E.coli bacterial infections, all along my veterinarian said check you water. So I did and sure enough it is full of Choliform bacteria. Interesting that my animals never got sick from the water before the feedlot moved in adjacent to me. So I was faced with explaining to my children why their kitten died and I had to help them deal with this unnecessary sorrow. And now I must continually worry about my children bathing and brushing their teeth with the water, even playing in the sprinkler in the summer. Would you want this for your children or grandchildren? Is it going to take one of us getting sick before I can get someone somewhere to listen and help? And all the while the feedlot remains in operation.

Why not just move you might ask? To put it briefly this property provides for my family a secure location in which to reside, it is our "Place" in the world, it is our "Home". This "Place" has been my home for the past 15 years. This "Place" allows my children to attend school in a small rural school district as well as providing social support through a caring community and church network. This land is more than a piece of real estate to us, it represents the fulfillment of a dream. A dream to live in peace, enveloped in the beauty, privacy and tranquility of rural Kansas. Until the recent development of the Hinchman Ranch feedlot adjacent to my property I had indeed attained peace, tranquility, and privacy at this location. I hope to some day find that peace again.

The following is an abbreviated list of individuals I have contacted within the state of Kansas and elsewhere regarding this issue. They include Dr. Robert Harder, Secretary of the Environment; Charles Jones, Director of the KDHE; Larry Hess of the KDHE; Walter Wagner of the KDHE; Pat Eaton an aid in Governor Finney's office; Ralph Summers of the regional office of the Environmental Protection Agency; Project Concern; Greenpeace; Sierra Club; the Kansas Natural Resource Council; Ralph Nadar at Public Citizen in Washington D.C.; Kansas Department of Wildlife and Parks; Kansas Fish and Game; State of Kansas Water Resources; U.S. Army Corp of Engineers; the City of Emporia; 60 Minutes; 48 Hours; Eye to Eye; the Topeka Capitol Journal; the Wichita Eagle; the Emporia Gazette; the Kansas City Star; State of Kansas Animal Health; Clean Water Fund; Concern, Inc.; Midwestern Rural Community Assistance Program; The Land Institute; Friends of the Earth; the Morris County Commissioners; Morris County Attorney; the Council Grove Republican; KWCH T.V. in Wichita; WIBW T.V. in Topeka; KFDI radio in Wichita; Attorney General Robert Stephan; 68th District Representative Stephan Wiard; State Senator Nancy Kastenbaum; Representative Jim Slattey; Representative Dan Glickman; State Senator Jerry Karr.; John Simpson, attny.; Elvin Perkins, attny.; as well as others too numerous to list here.

Hours and hours have been spent on the phone and writing letters searching desperately for some sort of help at a great expense of both time and money. During this time I began and completed my undergraduate work at Emporia State University, began work on my Master's degree at E.S.U., continued to work full time and be a full time wife and mother. I urge you to consider my plight and what might become the plight of many others, before you vote on this issue. Consider, please, upper most the Golden Rule, and its implications regarding this issue.

Ladies and Gentlemen:

My name is Glenn Ringler, Jr. My family and I farm 7500 acres near Sylvan Grove, Kansas, which is in North Central Kansas. We farm wheat and feed approximately 2000 cattle each year.

We are extremely concerned regarding the provisions of Senate Bill 800. In particular, we are concerned with the provision which would allow people to feed more than 300 cattle in one location without a permit or pollution control plan. My family and I have spent the last two and one-half years in legal action, court hearings and public hearings concerning this issue.

The litigation we have been involved in is the cause of this bill being introduced. In our litigation we were able to stop construction of a less than 1000 head feedlot within 85 feet of our residence because present KDHE rules require a separation distance of 1320 feet. Senate bill #800 is an attempt to eliminate that and other similar rules.

It appears to us after reading Senate Bill #800 that it is nothing more than a special interest bill for one family. If this bill is enacted it will allow this family and a handful of others a chance to circumvent the rules about where you can build a feedlot. Under current rules a feedlot of 0 - 300 needs no permit, no separation distance, no pollution control plan.

300 - 1000 needs permit, and pollution control plan which requires 1320 feet separation distance from nearest residence.

1000 - 4999 needs permit, separation distance of 4000 feet, and pollution control plan.

We also believe that if a cattleman can feed 1000 head of cattle without a permit wherever he wants, that the State of Kansas can look forward to numerous lawsuits relating to pollution and other environmental issues.

Under the current rules and regulations a feedlot greater than 300 head must have a permit and pollution control plan. That means the feedlot must be located at least 1320 feet from the nearest residence or they must have written permission from that resident. That also means the feedlot must be an acceptable distance from streams, lakes, towns and businesses or they are ineligible. The feedlot must have proper waste disposal lagoons, monitoring of wells and watching for other pollution. If Senate Bill #800 is passed such controls will only exist with larger feedlots.

The current rules allow a feedlot of 300 or less to be built without regard to distance, monitoring wells, lagoons or other pollution control plans. In other words, a feedlot of 300 or less can be built next to your country home and you have nothing to say. Under most conditions that has not been a problem, but imagine 1000 head of cattle next to your house. Or, imagine 2500 hogs next to your house. Do we want feedlots next to the river or stream, next to a town, or next to your country home?

The feedlot we are in litigation with wants to build 85 feet from one of our houses. If you pass Senate Bill #800 a feedlot could be built next to your country home.

I learned a long time ago "if it ain't broke don't fix it"; I believe that relates well to this issue. The current rules and regulations are working well to protect the environment of the State of Kansas. I do not believe it is in the best interest of the people of Kansas to allow less control. The United States is becoming more environmentally conscious and with this bill we are doing the opposite.

I feed cattle too and I know it costs money to protect the environment, but some safeguards need to continue. There are many farmers and ranchers in Kansas who believe as I do that we owe it to our children to protect the environment.

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COMMENTS SUBMITTED TO: State of Kansas, House of Representatives, Agriculture Committee

SUBJECT: Senate Bill 800; an act relating to water pollution; defining confined feeding operations.

FROM: Duane H. Muetting, P.E., Muetting Engineering, 905 North Street, Seneca, KS 66538

This bill brought before the legislative committee this day has a far more significant impact on the citizens of Kansas and the livestock producers of Kansas than time will allow to address in this hearing. This matter should be studied much more thoroughly with input from a broader specter of the people affected by this bill. The current statutes governing confined feeding operations have been in effect for more than 25 years. This bill proposes major modifications that compel further detail study than has been allowed.

As a private licensed professional engineer, I have had the opportunity to provide design services to livestock producers in Kansas, Nebraska, Iowa and Colorado. In so doing, I have worked with the environmental regulatory agencies in each of these states. The laws administered provide great detail for the development of confined animal feeding facilities. In no state I have worked in is a policy of "NO PERMIT REQUIRED" for the size of confined feeding operations addressed in Senate Bill 800. As only one example, I offer the possibility of XYZ Corporation proposing to develop a very common sized 2400-sow breeding, gestation, farrowing and nursery operation. With the intent of SB 800 this operation could be built with no permit required because the total number of animals weighing more than 55# is under 2500 head. This may be great for the development of the livestock facility but completely overlooks the possible problems created for the neighboring Kansas Citizen living next door.

The current laws governing confined livestock feeding facilities in Kansas were developed with much thought and comprehension. Through my employment with the Kansas Department of Health and Environment for a period of nearly 7 years during which time I served as the Chief Engineer of the livestock waste program, I had the opportunity to work with Mel Gray and Norbert Thul who were involved in the development of the original laws governing water pollution from confined feeding facilities. From this experience, I am of the opinion the current laws are effective provided they are administered correctly.

KDHE has, during the past year, had a study performed by Mr. Gary Hall concerning the livestock waste program. This report to the Secretary of KDHE provides excellent recommendations for fine tuning and expediting the goals and objectives of an effective livestock waste control program. I have not witnessed implementation of a single one of his recommendations. I would recommend that should the legislature desire to take an action to cause change to the current administration of the law governing confined feeding waste control facilities that Senate Bill 800 be revised to cause KDHE to implement the recommendations of the "Hall Report" and not to implement a law as currently proposed without more forethought of the many consequences incurred.

One cannot pick up a single agricultural publication without reading at least one article concerning the environment. The livestock producers and the Citizens of Kansas would not be served by implementation of Senate Bill 800.

As a minimum recommendation for the Committee to consider, the item (J) under the definition of "confined livestock waste control facility" should be revised to read as follows:

- (J) Any other individual confined feeding operation determined on a case-by-case designation under one of the following criteria:
  - (1) Pollutants are discharged into waters of the State through a man-made ditch, flushing system or other similar device; or
  - (2) Pollutants are discharged directly into waters of the State which originate outside the facility and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation; or
  - (3) The animal feeding operation is in a location which reasonably could be expected to adversely affect a hydrologically sensitive area.

Respectfully Submitted,

*Duane H. Muetting* HOUSE AGRICULTURE  
Duane H. Muetting, P.E. 3-9-94

Attachment #7

*Mr. Chairman*

Because of our own personal experience, my husband and I cannot in good conscience let this opportunity to speak out against the deregulation of small feedlots slip past without raising serious objections.

We have lived with a small feed lot next to our property for six years now. The first major rain in the autumn after it began operation was only a 2-3 inch rain. Not all that unusual a rain for Kansas. However, the results were horrible. The feedlot is located on land which slopes downward towards ours and the two ponds there are spring fed. Our pond unfortunately is fed only from direct rain, or from any excess water running out of the adjacent property's ponds! Guess what, those two ponds were being used to receive all the waste from the feedlot owner's cattle. The rain carried the waste into the semi-dry creek running from his ponds to ours and besides creating an unbearable stench in and around the creek, all the fish in our pond were suffocated with the waste.

We called the KDHE and they came out and promised us they would monitor Mr. Blocker's (the feed lot operator) operation. A short time later he brought in hog houses and put them not more than 500 feet away from our house. He did dig a lagoon to catch the hog waste, but it was an unlined lagoon for which he did not even have a required permit for. And, it was located not even 100 feet from our home! The stench was nauseating and the air became so foul that it burned our eyes and we could not even enjoy or endure being outside the house or have any window open. When we again complained to the KDHE, he did drain the lagoon, right down public road in front of our home, for two weeks. We complained to **KDHE** again, as did the County. He moved the hog houses another 500 feet away, but the odor was still quite unbearable, and with any warm weather there came a problem of thousands and thousands of flies which had never been a problem on our property before.

Sirs, imagine if you can, stepping out your own door and having to retreat immediately back inside due to such horrible stench and biting flies. And the feed lot operator over all these years has always had more than his allotted 300 head of cattle in his lots. He operated for five years not complying with any regulations even after numerous complaints from neighbors. Even with the current regulations, it took the KDHE five years to shut him down. This is now the first year in many that we have been able to enjoy ourselves out in our yard, and been able to spend time outdoors with family and friends.

Now we are not some city slickers who have just moved out into the country with unrealistic ideas about the realities of living next to agricultural activities. My husband was born on this very property 66 years ago. He was raised on the property, and to this day enjoys continuing the raising of some crops and livestock on the property as he and his father before him have done for decades.

*HOUSE AGRICULTURE  
3-9-94  
Attachment #8*

However, it is not right to suffer the lose of the right to enjoy the use of the out-of-doors on our own property, due to the callose use of a feed lot on the adjacent property where neither the size, the geographical slope, or the experience of the feed lot operator are appropriate for the location!

No, we are not in favor of the deregulation of small feed lots. My husband and I hope you realize that as much as we stand behind the right of every American to use their property as they desire and the right of all to participate in our free enterprize system, NOT all persons can be trusted to not infringe upon the rights of their neighbors or to respect and care for the environment, which is of so much importance to all of us.

We and our neighbors do not want this kind of environmental irresponsibility to continue, and in light of the lack of enforcement power and time constraints it now takes to bring about responsible and appropriate use of the land under current regulation, there needs to be more regulation, NOT LESS!

Perhaps some people might feel that we are here only because it is a matter of being a "not in my back yard" issue to us. In our final plea for sanity and responsibility, we ask you to not just consider the constitutional rights of livestock producers, but to equally consider the rights of other property owners. Even more importantly, consider the health of all the people of Kansas. Allowing corporate farming or deregulating feed lot operations of any size just so we can supposedly stay competitive with neighboring states is no advantage at all. Not if ~~is~~ our drinking water supplies, our fresh/clean air, and our treasured Kansas landscape becomes foul with unsafe levels of nitrates and bacterial wastes from livestock. Consider how difficult it has been to get any action taken to stop the irresponsible polluting and inappropriate use of the land adjacent to our home, and what effect deregulating small feed lot operations would have. The excessive nitrates and animal waste could well find its way right into your home, or the home of your children or their children. Living in a suburb or city wouldn't protect you or the safety of your water supply!

Thank You  
Zob + Phyllis Truittmeyer  
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Cheney KS 67025-8550

# BOB EYE FOR GOVERNOR

Suite 209  
701 S.W. Jackson  
Topeka, Kansas 66603-3772  
Phone: 913-354-1224

BOB EYE ANNOUNCES OPPOSITION TO LEGISLATIVE FEEDLOT DEREGULATION,  
WARNING TAXPAYERS THEY RATHER THAN OPERATORS WILL PAY COSTS LATER

For release: 8:00 a.m., Wednesday, March 9, 1994.

For more info.: Owen de Long, Media Coordinator: (913) 232-0464.

Bob Eye, Independent candidate for Governor, today announced his opposition to a bill, passed 38 to 2 in the Kansas Senate last week and now coming before the House Agriculture Committee, to exempt feedlots with less than 1,000 head of cattle from the need to obtain KDHE operating permits. "This bill turns about 90% of the 2,400 licensed feedlots in the state -- all those with more than 300 head but less than 1,000 -- into a welfare system for feedlot operators, whereby the cleanup and long-term health-care costs resulting from their operations will be borne exclusively by the taxpayers of this state," said Eye.

"This is special-interest legislation, passed by your very own representatives in the Legislature who will now take out of your very own pocketbooks the long-range environmental cleanup and health-care costs of these operations -- costs which should be borne by their owners as part of their right to operate in such a polluting manner in the first place."

"Instead of this kind of deregulation of feedlots, we should begin to look at alternative means to deal with the consequences of feedlot operations, means in the public interest. These alternatives include diversion ditches funneling environmentally harmful runoff into artificially constructed wetlands, which have been shown to filter out harmful elements. Such alternatives could be paid for by operators drawing on a fund built up by all feedlot operations paying into it a per-head (or "check-off") fee. This kind of longer-range financial and ecological planning is -- in my view -- far preferable to the in-your-face legislative combat now being waged among operators, regulators, and environmentalists."

Paid for by Bob Eye for Governor  
Owen de Long, Treasurer

House AGRICULTURE  
3-9-94  
Attachment # 9



Tue., 3/8/94.

## KDHE fighting feedlot deregulation

### Pollution a concern; KLA talking savings

By Jean Hays

The Wichita Eagle

A bill before the state Legislature would exempt many of the state's feedlots from environmental regulation.

The Kansas Livestock Association says the change would save taxpayers hundreds of thousands of dollars a year by reducing the need for regulation.

But the Kansas Department of Health and Environment says feedlots are a big source of pollution in rivers and streams. The department says that the attempt could lead to even filthier rivers. About

67 percent of the state's rivers already are too polluted with bacteria for swimming, it says.

Under the bill, which passed the Senate last week and goes to the House Agriculture Committee on Wednesday, only feedlots with more than 1,000 head of cattle would need permits from the KDHE to operate. That would exempt most of the feedlots in the state.

The department now regulates all feedlots with more than 300 head.

"This is an outrage," said Charles Jones, director of environment for the KHDE. "It will roll the state back 25 years in terms of our efforts to protect the Kansas environment."

The Kansas Livestock Association and the chairmen of the House and Senate

agriculture committees say the department is overreacting.

The KDHE would still be able to regulate feedlots that are a significant pollution threat, they say.

Some of those feedlots are far away from rivers, said Rich McKee, a lobbyist with the livestock association. "To have an inspector go out and look at the facilities and license them seemed to us to be a waste of taxpayer's money," he said.

About 90 percent of the 2,400 licensed feedlots in Kansas have fewer than 1,000 cattle, McKee said. Larger feedlots, however, handle most of the fed cattle.

Jones said the KDHE would have no say in how far a feedlot must be built from a neighbor or from a river and could not require odor or dust controls.

The dispute started last year when the KDHE decided to raise the fees it charges feedlots so that the livestock industry, not taxpayers, would pay for most of the KDHE's \$400,000 feedlot budget.

The KDHE planned to raise the fee for a 1,000-head feedlot from \$30 to \$1,539.

The livestock association asked the Legislature to change the law. If the department regulated fewer feedlots, some legislators decided, it would need less money.

For David Corbin, a farmer from Towanda who chairs the Senate Agriculture Committee, the dispute is over money, not feedlots.

"The fee increase they were proposing was way out of line," he said. "This might be a way to get their attention."

Dear Legislature,

I was born and raised on a beef and dairy farm. I feel this bill to deregulate feedlots will cause environmental hardships to anyone living near it.

In my area a feedlot was started on 80 acres, this land is of gravel-like sand. This type of sand allows nitrates to get into the groundwater. The feedlot operated year round with 800 to 1000 head. Maintenance was very poor. Run off could be seen in creeks and ditches, from lots and ground stored silage.

My neighbors that lived close to it, had manure running down to the creeks and ponds. The ponds then turned green from it. Well water, when tested, showed a high level in nitrates.

This feedlot stopped operation after an administrative order was given.

I hope that you would please seriously consider what I am saying. Peoples health and environment are at risk.

Sincerely,

Edward M. Becker

HOUSE AGRICULTURE  
3-9-94  
Attachment #10