

Approved: Carl Dean Holmes
2/1/94 Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on January 26, 1994 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Shaun McGrath, Legislative Assistant - Office of
Congressman Jim Slattery, Washington D C
Phillip Barnes, Assistant Professor of Agriculture Engineering
Kansas State University
Dr. Charles Rice, Assistant Professor, Agronomy
Kansas State University
Dr. Paul Schwab, County Extension Agents
Kansas State University

Others attending: See attached list

Chairperson Holmes opened the meeting with a request for Committee bills.

Representative Grotewiel made a motion to introduce a draft for a Wind Energy Bill, outlining provisions to promote all kinds of renewable energy development. Representative Webb seconded. Motion carried.

Representative Grotewiel made a motion to introduce a bill draft to establish a trial program for two rivers to be designated as recreational rivers to determine eventual use of other rivers for canoeing purposes. Representative Alldritt seconded. Motion carried.

Representative McClure made a motion to introduce a bill draft to execute an order to mandate within the confines of the Capitol building the recycling of materials in all legislative offices, furnishing appropriate recycling containers in each office. Representative Alldritt seconded. Motion carried.

Representative McClure made a motion to introduce a bill draft recommending that attorneys use recycled materials when filing their briefs and various papers with the courts. Representative Grotewiel seconded. Motion carried.

Testimony on: Safe Drinking Water Act:

Shaun McGrath. (See Attachment #1) In the way of history, Mr. McGrath reported to the Committee that the Safe Drinking Water Act (SDWA) was originally passed in 1974, wherein the Environmental Protection Agency inherited 22 regulated contaminants. In the next ten-year period the EPA established regulations for one additional contaminant. Out of frustration with the EPA, Congress passed amendments in 1986 to the SDWA which included mandatory deadlines for setting standards. The EPA was specifically directed to 1) set standards for 83 priority contaminants within three years; and 2) issue regulations for at least 25 additional contaminants every 3 years thereafter.

Mr. McGrath said that although the intent of the 1986 amendments was genuine, the effect, due to the inflexibility of the Act and the lack of federal funds to state and local governments to implement all of the new standards, has been an unfunded federal mandate for compliance with standards that are potentially unnecessary.

The costs of the Act are disproportionately greatest for small systems (there are currently approximately 2000,000 Public Water Systems in the United States, serving about 243 million Americans. He added that

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most of Kansas' water systems are smaller with 65% serving less than 500 persons; 77% less than 1000; and 94% less than 3300. The EPA estimates that the shortfall in resources needed to effectively administer the drinking water program in all 50 states amounted to \$162 million in 1993. Further, it is estimated that in 1995 the total compliance cost will reach \$1.4 billion.

Mr. McGrath related other problems with the current Act, giving the example that all systems in the nation are legally required to monitor for all regulated substances. Thus, Portland, Maine is required to test its water for a herbicide that for the past seven years is only used in growing pineapples. The states do not have flexibility to tailor these monitoring requirements to the particular community. Another example is, the EPA is required by law to set standards as close to zero risk as technologically possible, taking cost into consideration. "Cost" is defined by what a system of 100,000 or more can afford. The current law does not allow the EPA to consider the risk reduction benefits of its standards. The reality of this situation is we are forcing cities to clean their water to a degree where there are potentially negligible health benefits, when the same city needs resources for police and fire protection, health care, ambulances, etc.

Mr. McGrath said Representative Jim Slattery, along with Representative Thomas Bliley of Virginia, introduced the 1993 Safe Drinking Water Act Amendments (House Resolution 3392). This bill would:

1. Protect the quality of drinking water more cost effectively by changing the standard setting process to allow the EPA to consider public health risk reduction benefits, as well as costs.
2. Replace the requirement to regulate 25 new contaminants every three years. There would be a requirement to regulate contaminants that are of public health concern and occur in drinking water.
3. Deal responsibly with the problems facing small water systems by requiring EPA to identify "best available technology" for small, medium and large systems. If a water system is unable to afford any such technology the State and EPA can approve the use of an interim affordable technology, protecting against unreasonable risk.
4. Allow states to establish practical, affordable compliance, reflecting conditions in the respective communities.
5. Allow pollution and watershed protection to be considered as treatment technologies.

Attributes of HR 3392 are to protect the quality of drinking water more cost effectively; provide a requirement to regulate contaminants that are a public health concern and occur in drinking water; would deal responsibly with the problems facing small water systems; in the absence of state affordable technology, the State and EPA would be able to approve the use of an interim, alternative technology, protecting against unreasonable risk; existing monitoring requirements for contaminants that do not actually occur in water at levels of public health concern would be eliminated; allow pollution prevention and watershed protection to be considered as treatment technologies; and authorize \$100 million for state primary in FY 1994, \$125 million in 1995 and \$150 million for 96-98.

Congress passed authorization for an appropriation of \$4.6 billion over the next five years stipulated to be in state revolving fund problems. This was passed with the stipulation that authorization be passed before October 1994. (This appropriation has passed out of the Energy and Commerce Committee (HR 1701). (This has encountered a jurisdictional dispute with Public Works).

Mr. McGrath assured the Committee that HR 3392 is in no way designed to weaken the safe drinking water standards. He said problems do arise, however, when standards are set as close to zero as possible. He explained if a standard is set so low that there is no benefit to public health as a result of the investment, then the standard is indeed weak. Further, he said the issue is wasteful spending, rather than costly, and HR 3392 addresses these issues.

Thirteen national associations are presently recorded as endorsing HR 3392 (among them the National Council of State Legislatures (NCSL) and National Governors' Association), along with the National Drinking Water Advisory Council; Drinking Water Science Advisory Board to the U.S. EPA; and National Association of County Health Officials. In addition, nearly 100 Cosponsors have signed on in support of the bill, including five Democrats and the Ranking Minority Member of the Health and Environment Subcommittee.

Mr. McGrath will remain available to the Committee members for any assistance and further information he can provide from his Washington, D C office.

Dr. Phillip Barnes. Dr. Barnes advised the Committee that he is a research agricultural engineer from

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Kansas State University, with his work location being on the Kansas River Valley experiment field. He reported research findings to date involving agricultural nutrients and chemicals used in agriculture and their impact on surface and groundwater supplies in the State. His research covers 1986 to the present time, focused primarily in the Northeast Kansas region. He said the Kansas Board of Agriculture has been in support of various aspects of this research. He said the original studies were begun on small plots located north of Rossville, Kansas. At that particular site he said they looked at a field setting, both nutrient and pesticide losses from the soil, and at different conservation and agriculture practices used by the farmers. With the development of the management of the pesticide management area on the Delaware River, the studies advanced to search for potential solutions to retain the chemicals and nutrients on the fields. Further, they have studied watersheds on the Blue River for drainage into the Tuttle Creek Reservoir, specifically looking for atrazine. He reported they did a two-field study, with one field in Kansas and one in Nebraska. He said there is a problem on the Blue River and part of the contributing factor is atrazine coming in from Nebraska through the Blue River and then on into Tuttle Creek Reservoir. They have studied the pesticide management area on the Delaware River. The Board of Agriculture made a decision to go with the watersheds inside the state of Kansas, and instead of looking at the Blue River they elected to look at the Delaware River basin.

Professor Barnes stated it is his belief, with the research and monitoring process they have done, they can effectively keep the chemical nutrients on the fields and out of the water. He feels they have accomplished what the pesticide management area set out to do.

Dr. Charles Rice. Dr. Rice explained to the Committee the work and grants he is currently involved with regarding primarily nitrogen cycling in the soils, different rotation systems, the source (fertilizer, manures and crop residues), and how this impacts the soil.

The main focus of Dr. Rice's research is the profile study of leaching through the soil, not necessarily surface run-off. He said they have projects funded by KDHE, USDARS, National Science Foundation and Kansas Water Resources Institute, to name a few.

He reported that some of their key discoveries is that most of the nitrogen during the growing season is captured by the proper containment of the soil; the base problem (in northeast Kansas) is the non-growing season when there is rainfall or snow melt and there is no active crop to take up the water and nitrogen in the soil. In addition, they have found that many of the soils in Kansas occur in layers, wherein the layer in the soil creates conditions that can help remove the nitrate.

Dr. Rice will supply details of his work to the Committee, if they so desire.

Dr. Paul Schwab. As a physical chemist, Dr. Schwab's research is focused on water quality and contamination, nitrates and pesticides. Some with which his research has been corroborated are the U. S. Geological Survey, USDA, KDHA and Kansas Water Resources and Research Institute. He said his overall objective has been to study the herbicides atrazine and alachlor, as well as nitrate, and to take a look at some of the management practices that may be involved and what can be done to reduce any hazards. Specifically, they compared soils of different textures and the differences among the chemicals to determine what may explain contamination with some of the chemicals and not other, and ultimately determine recommendations to avoid further contamination in some areas.

Dr. Schwab said the conclusions are that almost any soil is susceptible to the leaching of nitrate and draining into the groundwater. If the nitrate is put on at a rate that exceeds plant demand, the nitrate will then make its way down to the groundwater. Therefore, a lot of the nitrogen contamination in groundwater can be avoided by careful management of the fertilizers, using only the recommended base for application. He reported that the more sandy the soil, the more vulnerable it will be to leaching than a heavier textured soil.

Chairperson Holmes explained the procedure on HR 5030 will be to have a hearing Monday, January 31. It is his intent, once the Resolution is passed, to send a copy to Congress (as is stipulated in the Resolution) and to all appropriate Senate and House Chairs in the other 49 states.

At close of the hearing the Committee members and conferees held a lengthy question and answer forum.

Upon completion of its business, the meeting adjourned at 5:05 p.m.

The next meeting is scheduled for January 27, 1994.

MEMBER:

COMMITTEE ON
ENERGY & COMMERCE

COMMITTEE ON
VETERANS' AFFAIRS

CHAIRMAN:

SUBCOMMITTEE ON
COMPENSATION,
PENSION, AND INSURANCE



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TO: Kansas House Energy and Natural Resources Committee
FROM: Shaun McGrath, Legislative Assistant
RE: Testimony on Safe Drinking Water Act
DATE: January 26, 1994

My name is Shaun McGrath. I am Congressman Jim Slattery's Legislative Assistant for environmental issues in his Washington, D.C. office. On behalf of Congressman Slattery, I would like to express my appreciation to Chairman Holmes and the members of this Committee for the opportunity to inform you of Congressman Slattery's current efforts regarding the Safe Drinking Water Act (SDWA).

In the past year, Congressman Slattery has heard from many of you as well as from local government officials, public water system operators, and officials from the Kansas Department of Health and Environment. The common message sent to him in Washington was that the Safe Drinking Water Act needs major reforms. The statute, many wrote, is unreasonably burdensome, and results in limited public resources being spent on often negligible protections.

The SDWA was originally passed in 1974. In that Act, the Environmental Protection Agency inherited 22 regulated contaminants. Over the next ten years, the EPA established regulations for just one additional contaminant. Out of frustration with the EPA, Congress passed the 1986 Amendments to the SDWA which included mandatory deadlines for setting standards: specifically the EPA was directed to 1) set standards for 83 priority contaminants within 3 years; and 2) issue regulations for at least 25 additional contaminants every 3 years thereafter.

Although the intent of the 1986 Amendments was genuine (to improve the quality of drinking water), the effect, due to the inflexibility of the Act and the lack of federal funds to state and local governments to implement all of the new standards, has been an unfunded federal mandate for compliance with standards that are potentially unnecessary.

The costs of the Act are disproportionately greatest for small systems. Currently there are approximately 200,000 Public Water Systems (PWSs) in the U.S. serving about 243 million Americans. Community Water Systems serve the same population year around, and make up about 30 percent of all PWSs. Community water systems serving fewer than 3,300 account for about 10 percent of the population but bear over 2/3 of total national compliance costs for drinking water, according to EPA. In Kansas, most water systems are smaller systems: 65% serve less than 500 persons; 77% less than 1000; and 94% less than 3300.

SDWA has been significantly underfunded. The EPA estimates that the shortfall in resources needed to effectively administer the drinking water program in all 50 states amounted to \$162 million in 1993. Further, the EPA estimates that in 1995, total compliance costs will reach \$1.4 billion.

Other problems with the Act include:

- * The program is rigid and overreaching. For example, all systems in the nation are legally required to monitor for all regulated substances. Thus, Portland, Maine is required to test its water for a herbicide that for the past seven years is only used in growing pineapples! The states do not have flexibility to tailor these monitoring requirements to the particular community.
- * The law does not balance cost and risk. While few would dispute the enormous contribution to public health protection afforded by drinking water regulations, the EPA is required by law to set standards as close to zero risk as technologically possible, taking cost into consideration. 'Cost' is defined by what a system of 100,000 or more can afford! The current law does not allow the EPA to consider the risk reduction benefits of its standards. There is an underlying assumption that zero is best. While this may be true in a perfect world, in reality it means we are forcing cities to clean their water to a degree where there are potentially negligible health benefits, when the same city needs resources for police and fire protection, or health care, ambulances, etc.

On October 27, 1993, together with Representative Thomas Bliley of Virginia, Representative Slattery introduced the Safe Drinking Water Act Amendments of 1993. This bill would reauthorize the SDWA by making various reforms to address the problems water systems are experiencing under the current statute.

H.R. 3392 would:

- 1) protect the quality of drinking water more cost effectively by changing the standard setting process to allow the EPA to consider public health risk reduction benefits as well as

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costs;

- 2) replace the requirement to regulate 25 new contaminants every 3 years with a requirement to regulate contaminants that are of public health concern and actually occur in drinking water;
- 3) deal responsibly with the problems facing small water systems by requiring EPA to identify "best available technology" for small, medium and large systems (as opposed to the current system of the New York City driving the best available technology for the rest of the country);
- 4) if a water system is unable to afford any such technology, the state and EPA would be able to approve the use of an interim, alternative affordable technology that would not meet the standard, but would protect against unreasonable risk;
- 5) allow states to establish requirements that are practical, affordable, and reflect the conditions in a particular community. Existing monitoring requirements for contaminants that do not actually occur in water at levels of public health concern would be eliminated;
- 6) allow pollution prevention and watershed protection to be considered as treatment technologies; and
- 7) authorize \$100 million for state primacy in FY 1994, \$125 in 1995 and \$150 million for 96-98.

Congress has already passed an appropriation for \$4.6 billion over the next 5 years to go toward state revolving fund programs (passed with the stipulation that authorization be passed before 10/94). The authorization for this appropriation has passed out of the Energy and Commerce Committee (H.R. 1701), but has run into jurisdictional dispute with Public Works.

Some environmental organizations have expressed concern with H.R. 3392, primarily about the standard setting provision, which they believe is an attempt by industry and local officials to 'weaken standards' in order to save money. The Natural Resources Defense Council has said this about the Slattery/Bliley bill:

"[H.R. 3392 would] gut the SDWA's health standard setting provision by replacing it with a vague and manipulable cost-benefit approach that would tie EPA up in gridlock and devalue human life and health by requiring water utility industry economics to override health protections."

Congressman Slattery believes that environmental organizations serve a very important role in this process. He has met with environmental group representatives at both the state and national level in order to hear their concerns. If the

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current language in H.R. 3392 would result in "weakened" standards, then Congressman Slattery agrees that we need to take a closer look at that language. **WEAKENING STANDARDS IS NOT THE GOAL OF H.R. 3392!**

A problem arises, however, when standards are set as close to zero as possible because the law says to, despite whether there is an actual benefit to public health protection in doing so. If a standard is set so low that there is no benefit to public health as a result of the investment, then that standard is already "weak"! Further, the issue is **not** whether the SDWA is too "costly." The issue is wasteful spending. H.R. 3392 addresses wasteful spending.

The following organizations have endorsed H.R. 3392, the Slattery/Bliley Safe Drinking Water Act Amendments of 1993:

National Governors' Association
National Association of Counties
Association of State Drinking Water Administrators
National Rural Water Association
American Water Works Association
National Water Resources Association
Association of Metropolitan Water Agencies
National League of Cities
U.S. Conference of Mayors
National Association of Water Companies
National Conference of State Legislators
National Association of Regulatory Utility Commissions
National Association of Towns and Townships

Additionally, the following groups have endorsed the concept in H.R. 3392 for standard setting, i.e. including "public health benefit risk reduction":

National Drinking Water Advisory Council
Drinking Water Science Advisory Board to the U.S. EPA
National Association of County Health Officials

H.R. 3392 has nearly 100 Cosponsors including five Democrats and the Ranking Minority Member from the Subcommittee on Health and the Environment. We have begun a process to sit down with the various groups interested in SDWA reauthorization, and work out the differences. We are hopeful that any reauthorization legislation that might pass this year would include solutions to the problems that H.R. 3392 has targeted.

Again, thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

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