

**Testimony on Local Environmental Protection Program
to**

Legislative Budget Committee

**Presented by Aaron Dunkel
Deputy Secretary, Kansas Department of Health and Environment**

October 9, 2012

Chairwoman McGinn, and members of the Committee, good afternoon and thank you for giving me the opportunity to appear before you today. Today I am here to provide testimony related to the Local Environmental Protection Program (LEPP). It is my intent to give a brief history of the program and information regarding the transition plan that has been communicated to our local partners as a result of funding for LEPP being discontinued.

Program Description

Legislation establishing the Local Environmental Protection Program (LEPP) was adopted in 1989 and the first grants were awarded in 1990. The program was established to fulfill the "Environmental Protection Strategy" component of the Kansas Water Plan, with the vision of developing and implementing programs that would protect water quality at the local level. Under the LEPP, an environmental protection plan was developed by each participating county that identified each agency's role and responsibility in water quality protection. At the core of each plan was the adoption and enforcement of county environmental codes with an emphasis on on-site wastewater systems and private wells. The environmental protection plans were also designed to identify broader responsibilities including: the management of county-wide water and wastewater, subdivision water and wastewater, nonpoint source pollution, sanitary landfill planning, and public water supply environmental protection.

From 1990 through State Fiscal Year (SFY) 2012, a total of approximately \$34 million in grant funds were provided to 49 agencies representing 104 counties. In addition to this grant funding, local agencies provided approximately \$31.5 million in matching funds to implement these programs. Approximately 80% of the grant funding provided was used for personnel and personnel related expenses.

Joint Legislative Budget Committee
October 9 and 10, 2012
Attachment: 7

Program Goals

Program goals were derived from the LEPP regulations, K.A.R. 28-66-1 and are summarized below:

1. Implement Local Environmental Protection Plans.
2. Establish and maintain a Local Environmental Protection Committee.
3. Develop, implement and enforce an environmental code for onsite wastewater treatment.
4. Develop, implement and enforce code for private drinking water wells and supplies.
5. Provide local environmental information, education, and technical assistance.
6. Participate in local subdivision water and wastewater programs.
7. Promote proper solid and hazardous waste management.
8. Participate in local nonpoint source pollution control programs, including WRAPS.
9. Promote public and private water supply protection.
10. Participate in the establishment and implementation of Total Maximum Daily Loads (TMDLs).
11. Where TMDLs have been established, address the impairments.

Transition Planning

A transition plan was drafted in January 2012 in anticipation of the loss of LEPP funding. An effort was made to make the plan available for review and comment to key stakeholders. As soon as KDHE knew that LEPP funding was not going to be available in FY 2013, the transition plan was finalized and copies were mailed to county sanitarians, county LEPP grant signatories, county commissioners, and conservation districts.

The plan discusses the benefits gained by counties that have adopted and are implementing sanitary codes. Benefits discussed include protection of surface and groundwater resources from the enforcement of minimum standards for on-site wastewater systems, the benefit of correctly locating and constructing private water wells, the value of protecting property values through local codes and minimum construction standards for on-site wastewater systems, and the benefit of local access to technical assistance on information about on-site wastewater systems and private wells.

Counties are encouraged to maintain the programs that they have built through the investment of local resources and service fees. These programs have done very well at training knowledgeable and capable county personnel that can move the programs forward. In addition, KDHE intends to continue to offer technical support and assistance to counties regarding on-site wastewater and private well issues.

Thank you for the opportunity to speak with you today. I would be glad to stand for any questions the Committee might have.

Aaron Dunkel
Deputy Secretary, Kansas Department of Health and Environment



Implemented

Kansas Water Plan

Quality Section

Sub-section: An Environmental Protection Strategy

Kansas Water Office
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FY 1989

**Approved
by the
Kansas Water Authority**

July 1987

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AN ENVIRONMENTAL PROTECTION STRATEGY

INTRODUCTION

Recognition of the interrelationship of water resource development, management, conservation and quality is essential to protect the Kansas environment while utilizing its natural resources. The long-range goals and objectives of the state for management, conservation and development of the waters of the state include: "The protection and the improvement of the quality of the water supplies of the state and the prevention of the pollution of the water supplies of the state."¹ The policies of the state that are deemed desirable for the achievement of these long-range goals and objectives include the achievement of primary drinking water standards, the maintenance of the surface waters within acceptable water quality standards and the protection of the quality of groundwater.²

Over the years, the Kansas Legislature has enacted a number of laws concerning the quality of water which authorize certain state agencies to control various private and governmental activities. These administrative agencies have adopted rules and regulations within legislative guidelines to carry out the mandates.

The State Water Resources Planning Act identifies as a state policy: "The encouragement of local initiative in the planning, implementation, funding and operation of local water programs."³ In addition, Kansas Statutes give broad power to counties and cities over sanitation programs and for the protection of the health, safety and welfare of its citizens, usually through land use controls.

CONCEPT

Most environmental protection programs have evolved as a part of the public health strategy. This was a logical development due to the close association between certain environmental factors and disease in man. As public policy regarding environmental protection grew, new responsibilities were added to the public health apparatus; the focus, however, was appropriately maintained on disease prevention. Concurrently, environmental programs with no known direct relationship to public health, were added to other parts of the state bureaucracy outside of the scope of the public health programs. Though public health protection was a central theme in the development of various environmental programs, at no time during this evolutionary process did a concept—scientific or otherwise—emerge as a guiding principle for designing the state's environmental protection effort. This has resulted in a variety of obstacles which can severely retard, if not ultimately prevent, the implementation of an environmental protection pro-

gram which can effectively respond to an ever-increasing number of pollution problems.

The development of a sound concept for environmental protection must be founded on a rational scientific base. Protection of the environment must rely on principles of the physical and biological sciences. The sciences of geology, hydrology and biology are well developed and capable of providing the needed scientific base for a comprehensive environmental protection strategy. It is not necessary to totally redesign the state's environmental protection efforts. Many of the fragmented programs that have evolved over the years are well conceived and would fit nicely into a comprehensive environmental protection strategy.

To design an environmental protection strategy, it is necessary to gain an understanding of the form and function of the object at risk, in this case, the physical and biological characteristics of a specific geographic area as defined by the 12 river basins in the state (see Figure 1). Widely varying geohydrologic conditions exist across the state. The Lower Arkansas Basin, for instance, features shallow aquifers that actively interact with flowing streams. In the upper reaches of the Smoky Hill-Saline Basin, there is virtually no surface water and depth to fresh water aquifers may be over 200 feet.

Figure 2 illustrates the hydrologic cycle. The interaction of the water in the atmosphere, water on the surface and water below the earth's surface is a fundamental process in the environmental system. Using the understanding of this system in each basin is as important to preventing and treating pollution problems as is the knowledge of human anatomy and physiology when preventing or treating disease. Using this "systems" approach, it is obvious that water under the ground can become polluted by an event on the surface or in the air—and vice versa.

There are many potential pollution sources in our environment which represent some degree of danger depending on the geologic and hydrologic characteristics of the basin in which they are located. Septic tanks, for example, are relatively safe in some areas but are major sources of pollution in others. Overuse of water in some formations or streams can cause significant intrusion of naturally occurring or man-made pollution which can destroy fresh water sources. In some cases, the very presence of certain potential pollution sources should be prohibited.

POLICY ISSUE, OPTIONS AND RECOMMENDATION

A strategy to protect the quality of the environment must be developed to avoid a piecemeal approach by different programs with a variety of orientations.

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Most environmental protection programs have evolved as a part of the public health strategy. This was a logical development due to the close association between certain environmental factors and disease in man. As public policy regarding environmental protection grew, new responsibilities were added to the public health apparatus; the focus, however, was appropriately maintained on disease prevention. Currently, environmental programs with no known direct relationship to public health, were added to other parts of the state bureaucracy outside of the scope of the public health programs. Though public health protection was a central theme in the development of various environmental programs, at no time during this evolutionary process did a concept—scientific or otherwise—emerge as a guiding principle for designing the state's environmental protection effort. This has resulted in a variety of obstacles which can severely retard, if not ultimately prevent, the implementation of an environmental protection program which can effectively respond to an ever-increasing number of pollution problems.

The development of a sound concept for environmental protection must be founded on a rational scientific base. Protection of the environment must rely on principles of the physical and biological sciences. The sciences of geology, hydrology, and biology are well developed and capable of providing the needed scientific base for a comprehensive environmental protection strategy. It is not necessary to totally redesign the state's environmental protection efforts. Many years are well conceived and would fit nicely into a comprehensive environmental protection strategy.

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A strategy to protect the quality of the environment must be developed to avoid a piecemeal approach by different programs with a variety of orientations.

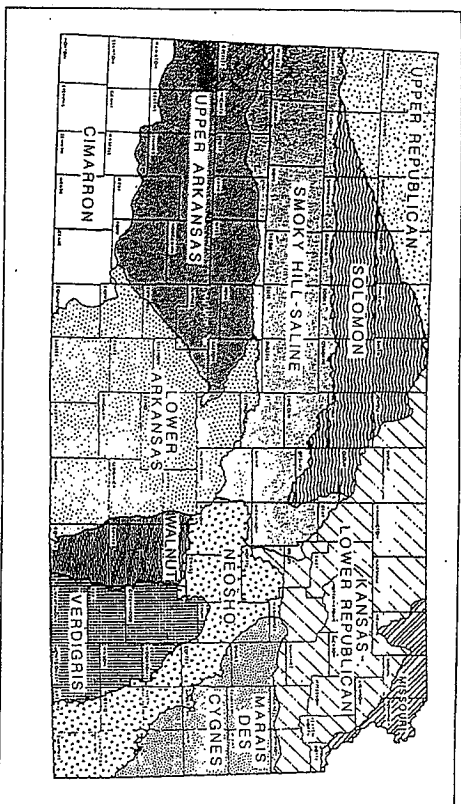
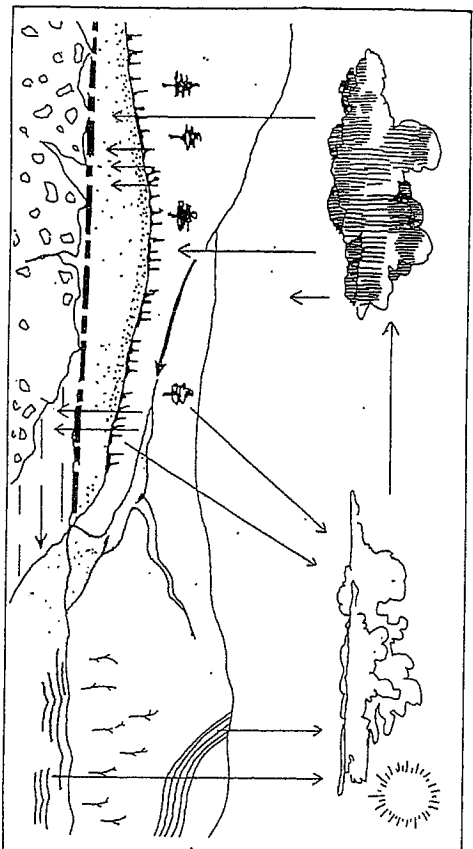


Figure 1

Major River Basins in Kansas



The Hydrologic Cycle

Figure 2

9-5

Options

1. The Kansas Department of Health and Environment, with assistance from the Kansas Water Office, the Kansas Corporation Commission, the Kansas State Board of Agriculture, the State Conservation Commission, the Kansas Department of Wildlife and Parks and other appropriate entities, will develop a statewide comprehensive environmental protection strategy by basin. Existing programs will be reorganized and needed new programs will be developed within the framework of an operating strategy which considers the environment as a whole and is based on the unique characteristics of the environment in the 12 river basins.

2. The Kansas Department of Health and Environment, with assistance from the Kansas Water Office, the Kansas Corporation Commission, the Kansas State Board of Agriculture, the State Conservation Commission, the Kansas Department of Wildlife and Parks and other appropriate entities, will develop a statewide comprehensive environmental protection strategy by basin. Counties will be encouraged to voluntarily develop Countywide Comprehensive Environmental Protection Operating Strategies consistent with the Statewide Comprehensive Environmental Protection Strategies that would be developed by basin.

Recommendation: A combination of Options 1 and 2 is recommended.

The present course of operation allows for gaps to occur in developing strategies for protecting the environment. Comprehensive environmental protection strategies for each basin, developed by the Kansas Department of Health and Environment with assistance from appropriate entities, would allow for planning to occur in relation to all aspects of the environment. The use of basins for planning purposes allows planning beyond artificial jurisdictional boundaries.

Though traditionally information such as population and vital statistics have been collected for county units, the widely varying geohydrologic conditions existing across the state indicate the necessity to develop an operating strategy in a manner consistent not only with laws and regulations but in context with the hydrologic conditions. It is recommended that the Kansas Department of Health and Environment develop the statewide strategies based upon the basin boundaries as shown in Figure 1. Many existing programs are well conceived and would fit well into a comprehensive basin environmental protection strategy. For example, the non-point source pollution program being developed by the Kansas Department of Health and Environment, will examine basinwide needs. In addition, the ongoing development of the Water Resources Management Information System is being done with basin boundaries as the unit for data grouping.

Counties that so choose would develop operating strategies consistent with the statewide comprehensive environmental protection strategy developed by basin. The county strategies may include countywide water and wastewater plans, subdivision plans, sani-

tary landfill plans, and any other components deemed necessary. Counties could choose to work with other counties in multi-county efforts or with cities in joint city/county efforts. The counties may also choose to contract out components of the strategy to existing entities such as Groundwater Management Districts, Conservation Districts, Resource Conservation and Development Programs, etc.

PLAN IMPLEMENTATION

LEGISLATIVE ACTION

A local Department of Health and Environment Act should be adopted to specify the states commitment to the state/local partnership role for environmental protection efforts. The Act should incorporate the recommendations as follows:

1. Require the Kansas Department of Health and Environment, with assistance from the Kansas Water Office, Kansas Corporation Commission, Kansas State Board of Agriculture, State Conservation Commission, Kansas Department of Wildlife and Parks and other appropriate entities, to prepare a comprehensive environmental protection strategy by basin.

2. Encourage counties to create local departments of health and environment with allowance for "millage" and joint county/city efforts. The local department of health and environment would prepare a basinwide comprehensive environmental protection operating strategies consistent with the basin strategy.

3. Encourage local departments to have trained environmental specialists.

4. Establish state aid-to-counties for developing of countywide operating strategies and encourage counties to develop own local funding sources.

5. Encourage local departments to supplement enforcement activities through sanitary codes, laws, and delegations of state program activities.

6. Require Kansas Department of Health and Environment to provide technical assistance and training to local departments of health and environment.

ADMINISTRATIVE ACTION

Strategy Development

The Kansas Department of Health and Environment, with assistance from the Kansas Water Office, the Kansas Corporation Commission, Kansas State Board of Agriculture, State Conservation Commission, Kansas Department of Wildlife and Parks and other appropriate entities, will prepare comprehensive environmental protection strategies for each of the river basins.

A management structure should be developed to allow effective implementation of the comprehensive operating strategies that would be based on the unique characteristics of the basin. Though the Kansas Department of Health and Environment has primary responsibility, several state agencies have major roles in environmental quality protection. This role exists due to the evolution of environmental protection programs that occurred outside of the

the public health concept. If a clear association to public health was not recognized at the time, programs were located in other agencies where an association was recognized, i.e., some responsibility for oil and gas regulation has been assigned to the Kansas Corporation Commission. Thus, the Kansas Corporation Commission and Kansas Department of Health and Environment share responsibility for environmental impacts of the oil and gas industry. The Kansas State Board of Agriculture has primary responsibility for regulation of herbicides, insecticides and fertilizers—including a major new program enacted in 1985 to regulate chemigation. Due to the quantities of chemicals used in agriculture today, this represents one of the major potential dangers to the waters of Kansas. The Kansas Corporation Commission is responsible for regulation and reclamation of surface coal mines in Kansas, a major pollution threat. Serious problems associated with abandoned subsurface mines seem to be in an administrative "no-man's land." Some examples of state agencies and their environmental protection duties are shown in Table 1.

Some State agencies have field office operations. The Kansas Department of Health and Environment, for instance, has field offices in six different locations around the state. Because of limited field resources, the visibility of the Kansas Department of Health and Environment is obscured in many cities and counties. It consumes an excessive amount of travel time to cover wide areas within each district. The northwest office of the Kansas Department of Health and Environment, for example, covers 21 counties with seven employees. One is involved in remediation of pollution from the oil and gas industry. The remaining six

Examples of State Agency Roles in Environmental Quality Protection

Agency	Responsibility
State Corporation Commission	1. Oil and gas wells
Board of Agriculture	2. Mined surface lands
	3. Channel modification.
	4. Dam construction.
Department of Wildlife and Parks	5. Pesticides and fertilizers.
Kansas Geological Survey	6. Water appropriations.
Department of Health and Environment	7. Protection of endangered species.
	8. Data collection.
	9. Research.
State Conservation Commission	10. Air quality.
	11. Water quality.
	12. Sanitation.
	13. Data collection.
	14. Water quality and quantity protection programs.
	15. Planning.

Table 1

The local delivery system would be at the county level to take advantage of their existing broad authorities. If the county commissioners so chose, the local health department could be renamed as the local department of health and environment. The local department of health and environment would develop comprehensive environmental protection operating strategies consistent with the state developed basin strategy. The local department of health and environment would be the visible point of the group of counties that choose to go together to form a multi-county environmental protection effort. Joint city/county efforts could also be established or more fully developed. Another advantage of county level departments of health and environment would be to officially recognize the public health/environmental relationship that has been inadequately developed at the local level.

There are significant obstacles to the reorganization of state government. The development of a local delivery system can overcome the deficiencies in the present state structure by the integration of the programs at the local level. Primary responsibility for the state's environmental protection efforts would remain with the Kansas Department of Health and Environment. A local delivery system can enhance state-environmental efforts by involving local leaders in protecting the environment. Local delivery systems would create local accessibility, increasing the public's awareness of where to go with environmental problems.

The Kansas Department of Health and Environment with assistance from the Kansas Water Office, will make a statewide effort to educate county commissioners about this program and to promote the development of local departments of health and environment.

County Planning
If a county or group of counties voluntarily formed a local department of health and environment, it would be up to that local entity to develop a county-wide environmental protection strategy consistent with the state strategy developed by basins. The local department of health and environment would be responsible for evaluating the need for and coordinating the development of the county sanitary code, county-wide water and wastewater plan, subdivision plans, non-point source pollution control plans, sanitary landfill planning, public water supply protection plans, monitoring efforts, etc. The local department would also be responsible for establishing communication and coordination mechanisms with other local entities with responsibilities that impact on the environment. This would include conservation districts, watershed districts, groundwater management districts, various planning and zoning organizations, resources, conservation and development coordinators, municipalities, rural water districts, etc.

A state/local partnership can be achieved through the development and implementation of a local environmental protection operating strategy. The county would be encouraged to get more involved in

environmental protection efforts by the Kansas Department of Health and Environment, with assistance from the Kansas Water Office. The Kansas Department of Health and Environment will provide technical assistance to the local department of health and environment to develop the countywide comprehensive environmental protection operating strategies. In counties that extend into two or more basins, coordination of county level plans to assure consistency with the basinwide plans would be provided by the Kansas Department of Health and Environment, with assistance from the Kansas Water Office and other state agencies. The basin advisory committee would provide advice on water-related aspects of the environmental protection strategies through the Kansas Water Office basin planning process.

Staffing
Adequate staff and resources to develop and implement the comprehensive strategies must be provided.

- Options**
1. Increase staff at the various state agencies.
 2. Develop staff capabilities and coordination mechanisms of the local health and environment departments.

Recommendation: Both options are recommended; however, Option No. 2 is stressed.

The Kansas Department of Health and Environment will encourage counties to develop additional expertise in environmental protection efforts. The addition of local environmental specialists in counties that they are really needed. This would help increase the public accessibility and awareness of where to go for information and reporting problems. A local environmental specialist could be cross-trained to be a generalist in environmental concerns. Cross-training results in efficiency of use of resources since not as many personnel would be required. In many areas, the existing county sanitarian role might be expanded to focus on a wider range of environmental concerns. Counties could choose to add additional staff in areas where additional expertise may be desirable. The local environmental specialist would be responsible for evaluating the need for and coordinating the development of the county sanitary code, county-wide water and wastewater plan, subdivision plans, public education programs, non-point source pollution control plans, sanitary landfill planning, public water supply protection plans, water quality monitoring efforts, etc.

Local departments of health and environment could choose to contract for various services from existing entities such as groundwater management districts. Several counties could also go together to provide for necessary capabilities. Joint county/city staff arrangements may also be possible.

Financing
The financing of the local departments of health and environment is an important consideration in their effectiveness as an environmental protection force.

- Options**
1. State provide financial assistance to local departments for development of countywide environmental protection strategies.
 2. Counties develop funding sources entirely on their own.

Recommendation: A combination of Options 1 and 2 is recommended. The Kansas Department of Health and Environment should provide state aid to counties to allow the local department of health and environment to prepare the countywide strategies. The state aid-to-counties grant monies would be available to counties to address certain priority areas. These grant priorities would be established through public meetings in the basin to determine guidelines. Grants would be made to counties according to the severity of environmental problems proposed to be addressed by the county programs and within the priority areas as set by the guidelines. The amount of grants available would be contingent on legislative appropriations.

The counties would need to apply whatever combination of locally derived revenues that they so chose to implement the strategies after they were developed. The cost to the county would be dependent on local need, local priorities, and local staff coordination arrangements.

If a county department was delegated inspection and enforcement-related activities from a state agency, remuneration by the state for that service would be another source of revenue income.

Enforcement

The Kansas Department of Health and Environment has primary authority for enforcement of pollution causing activities. The Kansas Department of Health and Environment presently performs enforcement-related inspections and technical assistance through personnel located in Topeka and/or staff in one of six district offices. Because of limited field resources, this obscures the visibility of the Department in many cities and counties. It also consumes an excess amount of travel time to cover wide areas within each district. In addition, the Department has not been able to develop the number of positions desired for enforcement due to budget restrictions.

Counties presently have the authority to develop sanitary codes for the "control of those environments and environmental conditions that may adversely affect the health and well-being of the public." (K.S.A. 19-3701 et seq.) These codes are enforceable through the county attorney. Counties also have the authority to zone for the purpose of promoting the public health. "Zoning is enforceable by the county." (K.S.A. 19-2901 et seq.) In addition, cities may zone and establish or adopt codes within the corporate limits. Unless the county code was adopted by the city, it would not be enforceable within those corporate limits. (K.S.A. Chapter 12) There are existing city/county health departments that would have jurisdiction in the incorporated, as well as the unincorporated, areas.

There are some existing situations where the state has delegated program elements to a local unit. Examples are inspectors of air quality facilities and landfills in certain counties.

- Options**
1. Continue to strive for expanded enforcement staff at the state level.
 2. Increase local enforcement efforts through adoption or revision of sanitary codes and use of zoning authorities. In addition, the state should delegate inspection and enforcement-related activities to willing local departments that have the technical expertise to exercise such duties so that more cases can be referred to the state for enforcement.

Recommendation: Option 2 is recommended. Counties that choose to take a more active role in enforcement of pollution causing activities should be encouraged to do so by the Kansas Department of Health and Environment and other appropriate state agencies. The local department of health and environment should also refer any problems which cannot be resolved locally to the Kansas Department of Health and Environment.

Delegation by Kansas Department of Health and Environment of certain program elements would have to be on a case-by-case basis depending upon a county department's willingness and ability to assume inspection and enforcement-related duties. Kansas Department of Health and Environment will review the proposed program to assure the quality of the local program. This will assure consistency across the state, with the flexibility that local application demands. Remuneration by the state for services to be rendered through delegation will be included in the annual contract.

If such arrangements could be made, there would be several advantages. This would give the county an additional means to enforce local problems. The public would have more direct access for purposes of reporting a wider range of problems. There would be someone available at the local level for providing information necessary for regulated entities to achieve compliance with state laws. The frequency of inspections and response time to complaints could be greatly enhanced.

Training and Technical Assistance
Obtaining increased focus on county environmental protection programs will require not only the appointment of new, qualified personnel, but access to a great deal of technical assistance and legal information.

- Options**
1. The Department of Health and Environment will provide training and technical assistance on environmental issues and programs, as well as the development of the individual countywide operating strategies.

2. County departments would rely on their own resources to obtain necessary information.
3. The state's universities, community junior colleges and vocational schools will be utilized for training for local environmental specialists.

Recommendation: Option 1 and Option 3 are recommended.

The Kansas Department of Health and Environment will provide technical assistance to counties to develop operating strategies. Kansas Department of Health and Environment will develop training programs to keep local environmental specialists appraised of state laws and rules and regulations. Specialized training can be acquired through the state's universities, community junior colleges and vocational schools.

Summary of Administrative Actions

The major recommendations related to implementing the comprehensive countywide environmental protection strategies are:

1. **Strategy Development—Comprehensive Environmental protection strategies** will be developed by the Kansas Department of Health and Environment with assistance from the Kansas Water Office, Kansas Corporation Commission, Kansas State Board of Agriculture, State Conservation Commission, Kansas Department of Wildlife and Parks and other appropriate entities for the 12 river basins.
2. **Organization**—The Kansas Department of Health and Environment with assistance from the Kansas Water Office, will encourage counties to create local departments of health and environment.
3. **County Planning**—Local departments of health and environment will be encouraged by the Kansas Department of Health and Environment to develop countywide environmental protection strategies consistent with the statewide strategy developed by basins.
4. **Staffing**—The Kansas Department of Health and Environment, with assistance from the Kansas Water Office, will encourage counties to add trained local environmental specialists to the staff of the local departments of health and environment.
5. **Financing**—Local department of health and environment will be funded by state aid-to-counties to develop countywide comprehensive environmental

protection strategies according to priorities as established by basin guidelines. Counties will also be encouraged to develop their own combination of local funding sources.

6. **Enforcement**—Counties will be encouraged by the Kansas Department of Health and Environment to increase local enforcement authority through adoption or revision of sanitary codes and through zoning laws. The state will delegate inspection and enforcement-related activities on a case-by-case basis where counties are willing to undertake this responsibility and have the expertise to do so.

7. **Training and Technical Assistance**—The Department of Health and Environment will conduct a training and technical assistance program for local departments. In addition, the state's universities, community junior colleges, and vocational schools could be utilized to provide additional specialized training.

FINANCIAL REQUIREMENTS

The program could be promoted on a gradual basis by the Kansas Department of Health and Environment and the Kansas Water Office in an organized effort using existing staff.

Review and coordination of local environmental plans could be accomplished using existing staff. The cost for delegation authority would be determined on a case-by-case basis.

Cost for state aid-to-counties would be determined by the severity of environmental problems identified by the basin guidelines and the number of counties proposing to develop strategies.

Training and technical assistance can be accomplished using existing staff.

TIME SCHEDULE

Legislation should be introduced to the 1988 session of the Kansas Legislature.

REFERENCES

1. K.S.A. 89a-927
2. K.S.A. 89a-928
3. K.S.A. 89a-929
4. *Kansas Water Office, Background Paper No. 33, An Environmental Protection Concept*, November 3, 1986.

EA130189

State of Kansas
Local Environmental Protection Program Transition Plan
State Fiscal Year 2013

Considering the recent funding reductions for the Local Environmental Protection Program (LEPP), The Kansas Department of Health and Environment (KDHE)-Watershed Management Section (WMS) has drafted a Transition Plan in the event no funding is provided for the program in SFY 2013. While we have no insight into Legislative intent, at this time funding is absent for the LEPP in both the State Water Plan and the State General Fund. The intent of this Transition Plan is to encourage county governments' continued support of the LEPP and for KDHE to clarify the services we will continue to provide or expand. If funding for SFY 13 is absent, KDHE-WMS will shift our focus to more comprehensive training and technical assistance while providing consistent support to the LEPP. This document provides an overview of the history of the LEPP, the impact the program has had statewide, the current and future roles and responsibilities of state and local agencies, a plan for ongoing technical assistance and an expanded educational program.

Program History

A 1986 policy paper drafted by the Kansas Water Office (KWO) proposed a local environmental protection program jointly funded by state and local governments, organized at the county level, and implemented through KDHE. Under this comprehensive environmental protection concept, existing programs would be realigned and new programs developed within an operating strategy that considers the environment as a whole and would be based on the unique characteristics of the environment in specific regions. This comprehensive environmental protection concept would allow for local and state planning to occur in relation to all aspects of the environment.

Legislation establishing the LEPP, now K.S.A. 75-5657, was adopted in 1989. The program was established to fulfill the "Environmental Protection Strategy" component of the Kansas Water Plan, with the vision of developing and implementing programs that would protect water quality at the local level. Under the LEPP, a local environmental protection (LEP) plan was to be developed by each participating county identifying each agency's roles and responsibilities in water quality protection. At the core of each plan was the adoption and enforcement of county environmental codes with an emphasis on onsite wastewater systems (OWWS) and private water wells (PWW). This was modeled in part by counties who, preceding the LEPP, had developed and fully funded staff to enforce county sanitary codes. These plans were also designed to identify broader responsibilities including the management of: county-wide water and wastewater, subdivision water and wastewater, NPS pollution, sanitary landfill planning, and public water supply protection.

In 1990, the first year of the LEPP, KDHE awarded 24 grants totaling \$574,403 to county and multi-county LEPPs serving 65 counties. Currently, 104 of 105 counties participate and a total of approximately \$34 million in grant funds have been awarded since the beginning of the program.

One fundamental condition associated with a county receiving LEPP grant funding is the development and adoption of a KDHE-approved county sanitary code. All county sanitary codes, at their initial adoption and any subsequent revisions, must be reviewed and approved by KDHE. To date, 103 counties have KDHE-approved codes; the two remaining counties operate using the minimum state requirements for enforcement of OWWS and PWW installation.

The 2010 flood management goal is also assisted by local environmental codes reducing property damage from floods as well as the flood induced contamination potential proper damage restoration.

Program Development

In the mid-1990's KDHE adopted regulations that clarified the guidelines for the implementation of the LEPP. They better defined the requirements for base grants, 'target' or special need grants, and LEPP application procedures, and included the requirements that counties demonstrate progress toward adopting sanitary codes. The underlying standards for all county codes regarding private OWWS was the adoption under K.A.R. 28-5-7 of KDHE Bulletin 4-2, *Minimum Standards for Design and Construction of Onsite Wastewater Systems*, initially issued in 1972, and amended in 1997.

At the same time, it was determined that further information was needed regarding numerous health and environment related issues associated with OWWS and PWWs. As a result, the *Environmental Health Handbook* (EHH) (<http://www.kdheks.gov/nps/lepp/EHH.html>) was developed in conjunction with the Kansas State University Extension Service and the Kansas Association of Sanitarians (now Kansas Environmental Health Association (KEHA)) in 1992 to provide information and technical assistance on all aspects of the LEPPs. This document was partially updated in 2003 and plans are in process to fully update this information within the next three years.

In 2000, the Kansas Water Authority (KWA) directed that the KWA and KDHE to establish a study committee to review the existing LEPP and to provide program recommendations. The study group, lead by the Hugo Wall School of Urban and Public Affairs at Wichita State University, reaffirmed that the established county sanitary codes did provide protection of local water resources used by the public for drinking as well as for agriculture and industry uses; all assets essential to the Kansas economy. In return, Kansas citizens received both economic and health benefits from the effective enforcement of these codes through reduced costs of water treatment and health costs for themselves and livestock. As requested, the study group made further recommendations for the LEPP which were presented to the KWA by the study committee in 2001 (Contact KDHE at servin@kdheks.gov for a copy of the report). The primary recommendations implemented included the requirement for local cost share and base funding provided through the State Water Plan.

Program Impact

For the last twenty-one years the Local Environmental Protection Program (LEPP) has been responsible for oversight of activities that protect the health and environment of the State of Kansas. The primary activities are ensuring proper treatment and disposal of sewage from homes not serviced by a public wastewater treatment plant and providing services to ensure private water wells provide safe drinking water. The result of these services is protection of surface water quality by reducing nutrient loads into our valuable water bodies. A high quality of water in a reservoir or river can have a positive impact on the local economy.

Positive health and environmental impacts of private OWWSs and PWWs across the state have resulted through the adoption of local sanitary codes. Adoption and enforcement of these codes have addressed the following 2010 Water Plan water quality objects:

- Reducing the average concentration of bacteria, biochemical oxygen demand, dissolved solids, metals, nutrients, pesticides and sediment that adversely affect the water quality of Kansas lakes and streams.

- Reducing the average concentration of dissolved solids, metals, nitrates, pesticides and volatile organic chemicals that adversely affect the water quality of Kansas groundwater.
- Ensuring that water quality conditions are maintained at a level equal to or better than year 2000 conditions.

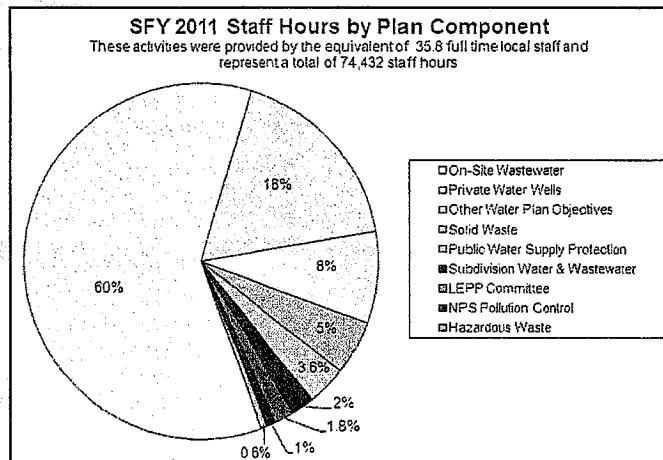
The LEPPs are the primary point of contact for a wide range of services governed by county sanitary codes, state regulations, and federal regulations. Examples of some of these activities are:

- OWWS permitting and preliminary and final inspections to verify minimum county sanitary codes and state standards are met.
- Providing the technical oversight to assist County Conservation District (CCD) offices with the cost-share program for failing OWWSs.
- Licensing of OWWS installers and septage pumpers.
- Ensuring PWWs are properly sited prior to installation.
- Conducting inspections of OWWSs and PWWs that serve foster care homes and day care facilities as required by current KDHE regulations.
- Responding to environmental complaints and conducting follow up investigations for failing OWWSs, PWWs, and illegal dump sites that may include collaboration with KDHE.
- Providing education and technical assistance to elected officials and county residents.
- Maintaining databases of OWWS permits and inspections for present and future reference.
- Conducting inspections of OWWSs and PWWs when required for a real estate transaction.

Onsite Wastewater Activities

Approximately 60% of LEPP staff hours are dedicated to OWWS activities. Almost half of these hours are dedicated to permitting and providing technical assistance with repair of existing systems and proper sizing and placement of new systems. The primary benefit of these services is the reduction of NPS pollution. A benefit of reduced NPS pollution is the protection of public health resulting from proper treatment of domestic sewage.

OWWSs can contaminate ground and/or surface water if they are misused, improperly maintained, or improperly constructed. The major contaminant discharged from septic systems is disease-causing germs (bacteria and germs). Historically, major epidemics of cholera and typhoid fever were primarily caused by improper disposal of wastewater. Another contaminant discharged from septic systems is nitrogen in the form of nitrate. If the nitrate level of drinking water is too high, the drinking water limit is 10 mg/L, infants and the elderly can develop a fatal disease called blue baby syndrome (methemoglobinemia). When these individuals ingest high levels of nitrates, their blood can lose the ability to effectively carry oxygen. Pregnant women, nursing mothers and the elderly are also at risk. Additionally nitrogen and phosphorous from failing OWWSs can contribute to the nutrient loading in our surface water bodies.



The 1,651 systems that were repaired in SFY2011 resulted in approximately 180 million gallons of domestic wastewater statewide now receiving proper treatment that previously were not. This

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is comparable to the volume of sewage treated annually for a city with a population of 4,800 such as Baxter Springs, Colby, Paola or Russell. The 1,517 new systems installed in SFY11 will ensure proper treatment of an additional 166 million gallons of private wastewater annually.

Using a model developed by the State of Ohio, load reductions for wastewater pollutants for repaired and newly installed systems in SFY2011 were calculated. Load reductions are the estimated reductions in pollutants entering a water body needed to preserve or restore the designated uses of that water body. Some examples of designated uses include contact recreation, public drinking water source, fishing, irrigation, and livestock watering. As the LEPPs are not required to report to the State specific information for each system repaired, the calculations were completed assuming each system was designed for a family of four in an average two bedroom home. These values represent the approximate gross number of gallons of domestic wastewater that are receiving proper treatment and the amount of pollution potential these systems represent if appropriate systems were not installed. The potential load reductions calculated are:

- 59,601 pounds of total nitrogen,
- 22,619 pounds of total phosphorus,
- 45,237 pounds of ammonia nitrogen,
- 108,471 pounds of total suspended solids, and
- 211,493 pounds biological oxygen demand-5 day.

Private Water Well Activities

In addition to the proper siting of PWWs, the primary service provided by the programs under the PWW section of the LEP plan is water quality screening. Most programs provide screening for nitrate and bacteria and all provide information for PWW testing by private certified labs. Some programs have the ability to test for other components such as pH, sulfate, and hardness. Many programs also require an evaluation of PWWs in the event of a real estate transaction and regular testing of PWWs that serve foster homes and day care facilities.

Supplemental Activities

In addition to these core focus areas, LEPPs are often the primary point of contact for information on household hazardous waste, local solid waste management, source water protection (SWP) for local public water supplies, and coordination and support for NPS pollution control efforts. In more recent years LEPPs have been involved in the implementation of Total Maximum Daily Loads (TMDLs) and Watershed Restoration and Protection Strategy (WRAPS) projects that impact their local watersheds. The LEPPs were also tasked to support any priority issues identified in the basin sections of the Kansas Water Plan that were pertinent to their area by incorporating this information in their LEP plans. Most of the LEPPs provided assistance for the EPA mandated Source Water Assessments that were completed in 2004 primarily by completing the pollutant source inventories for the report. These inventories identified the potential sources of contamination for each active public water supply well in the state.

Over the last several years, the LEPPs have been an important resource in disaster relief efforts. Many sanitarians contribute to the development of county emergency response plans to ensure counties are eligible for disaster funds administered by the Federal Emergency Management Agency (FEMA) and often serve on the Emergency Preparedness Committee for their county. County sanitarians provide valuable assistance in the aftermath of tornadoes and floods by restoring PWWs for human consumption, locating OWWs in the aftermath of the disaster, clean-up, and assistance with solid waste and HHW disposal.

The KDHE Water Well Program often relies on coordination with local LEPP sanitarians regarding non public water wells when questions arise during installation and for complaint investigation. LEPP staff provides assistance to the KDHE Geology section on large capacity OWWS and Class V Underground Injection Control situations, primarily with investigations and identification of Class V wells. The EPA defines Class V wells as:

...typically shallow injection systems designed to place non-hazardous fluids into the subsurface. Typical examples of Class V wells include storm water drainage wells and large capacity septic systems. By definition a Class V drainage well is any bored, drilled, or driven shaft, or dug hole that is deeper than its widest surface dimension, or an improved sinkhole, or a subsurface fluid distribution system.

Large capacity septic systems are those that have the capability of serving more than twenty persons on any given day.

State Recommendations for the Local Environmental Protection Program (LEPP) in Absence of Grant Funding

KDHE strongly recommends that counties continue implementation and enforcement of their adopted county environmental code. The LEPP is the only program in which a local sanitary code is developed and administered to address OWWS and PWWs. Benefits of maintaining and enforcing the sanitary code include:

- Protection of public health and the environment; the LEPP is the only permitting authority in Kansas for private OWWS and PWWs.
- Providing county residents with the opportunity to apply for local CCD cost-share funds for the repair of OWWSs. Rescinding or electing to not enforce a county code eliminates a county's eligibility for cost-share funding.
 - The cost-share funds are provided through the CCD by the State Division of Conservation (DOC) within the Department of Agriculture.
 - Approximately 54% of the statewide DOC NPS funding is directed to the repair of failing onsite septic systems.
 - Statewide average cost-share assistance is \$2,065 per system.
 - In SFY2011, 562 failing systems were repaired statewide with total repair costs of \$2,919,667; \$1,160,646 or 40% of these total repair costs were provided by DOC cost-share funds.
- Groundwater contamination protection.
- Surface water quality protection due to degradation and potential impairments.
- The county sanitary code is an "enforcement tool" to protect public health.
- Property values are enhanced by preventing/addressing nuisance conditions.
- Complements the local zoning ordinances/codes, if present.

KDHE recommends continued local financial support for Sanitarian and/or Delegated Personnel positions and responsibilities. Benefits of having staff dedicated to enforce the sanitary code and other LEP plan goals and objectives include:

- Having a trained and knowledgeable staff person available to assist homeowners, builders and realtors with OWWS planning, design and problem solving.
- Identification of failing OWWS and offering solutions to homeowners on the proper procedure to repair or replace the system including proper siting, installation and choice of equipment for new installations.

- Educating homeowners on the importance of proper OWWS maintenance, proper abandonment procedures for abandoned water wells, and protecting private and public drinking water sources.
- Local staff are more immediately available to respond and have better knowledge of local conditions and issues.
- Make CCD cost-share funds available to county residents.

Additionally, county LEPP committees should be continued or reorganized. Benefits of the LEPP committee include:

- Provides awareness and support of the sanitary code within the county.
- Provides an opportunity for local input for the content and administration of the local environmental protection plan.

KDHE strongly recommends county sanitary codes be updated and revised. Benefits include:

- Ensuring the current needs within the county are adequately addressed.
- Verifying that the sanitary code complies with minimum state standards.
- Incorporating new onsite wastewater treatment technology.
- Including real estate transfer inspections to protect homebuyers.

Services Available from KDHE to LEPPs in the Absence of Grant Funding KDHE has identified technical support, training opportunities and support services that can be provided by KDHE staff and, in some cases, in a partnership with other agencies or organizations. One primary component is assisting Sanitarians/Delegated Personnel with educating local government bodies on the LEPP and their responsibilities to the LEPP. Examples of such audiences may include:

- County Commissioners,
- County Attorneys,
- County Conservation District Managers,
- County Health Department staff,
- County Appraisers,
- County Clerk,
- Sheriff,
- Public Water Supply Operators,
- City Governments,
- County residents,
- County Road and Bridge staff, and
- Solid Waste Management staff

Educational assistance may include PowerPoint presentations, brochures or informational materials and maintenance of a statewide LEPP website.

In support of the LEPP, KDHE Watershed Field Coordinators (WFCs) are located in three district offices; Hays, Lawrence and Wichita. WFC responsibilities include coordination, education and technical guidance to support LEPPs located in their respective areas. KDHE personnel continue to be involved in both KEHA and the Kansas Small Flows Association (KSFA) in their efforts to provide continuing educational opportunities and trainings for local sanitarians, and continuing education units for local licensing of contractors. Examples of these educational events include the KSFA soil profiling school and onsite drip disposal workshops which benefit local sanitarians, onsite wastewater installers, sanitary pumpers, and manufacturers of onsite wastewater equipment and services.

An equally important component of this transition plan is the need to provide technical assistance regarding private OWWS and PWWs and information on state statutes and regulations applicable to Sanitarians, OWWS installers, OWWS pumpers, the general public, realtors, and lending institutions. Training may be conducted through conference calls, webinars, on site, regional or statewide meetings.

Training is needed by onsite service providers and regulators to keep themselves knowledgeable about new technology and new products. The onsite wastewater industry changes rapidly and continuously as new technologies are developed. In addition to traditional sub-surface systems consisting of a tank and a soil absorption component options are now available for onsite wastewater treatment systems that include a variety of advanced treatment devices. Proper treatment of onsite wastewater is vastly improved as a result of these changes.

LEPP Training Program

Each sanitarian has the responsibility to determine the appropriate system for the site conditions, inspect the installation and determine if the installation was completed in accordance with the design plan, meets all appropriate regulations, and is constructed out of high quality materials. Contractors assist with determining the appropriate system for the site conditions, install the OWWS, and should maintain open communication with the sanitarian and homeowner. Additionally, sanitarians and contractors are both responsible for providing information to the landowner on proper maintenance of the system. Failure to perform these tasks adequately may result in substandard performance and/or premature failure of the system. State personnel are available upon request to provide technical assistance.

In order to ensure appropriate decisions are made during the design, installation, and inspections of an onsite wastewater system, KDHE personnel will work in conjunction with KSFA, KEHA and the LEPP programs to identify training needs for sanitarians and contractors alike. Goals for this program include:

- ensuring the program is accessible by all contractors and sanitarians,
- identifying a marketing plan for the program,
- identifying training venues,
- providing training materials and supplies,
- recording and reporting continuing education units,
- identifying all training that has previously been developed,
- ensuring the training program is financially supported and cost effective, and
- exploring the use of scholarships and potential funding sources for these scholarships

Program Accessibility

One of the primary hurdles many sanitarians and contractors have encountered has been travel involved to attend training sessions. This will be addressed using one of three methods:

1. Hold multiple sessions of one course. KDHE has offices in seven locations throughout the state. Additionally, several of the county health departments have facilities that can be used for classrooms.
2. Utilize webinars. Webinars have been used successfully for various types of training. KDHE and/or county facilities that have webinar capabilities could be used for training.
3. Provide scholarships.

Marketing Strategy

The following identified methods to disseminate information on the training program:

- KDHE website
- KSFA website
- KEHA website
- E-mail notifications by KDHE central office and WFCs
- KSFA Newsletter
- KEHA Newsletter

These methods will provide notification to a maximum number of people without incurring a cost to the program. If necessary, postcards can be sent to anyone that does not have reliable internet service. Additional benefits of these methods are a reduction of the class cost as a facility charge would not be needed. Experienced county and/or state personnel could be onsite to provide technical assistance and answer any questions. In order to determine the number of and location of classes, sanitarians and contractors will be surveyed to determine the level of interest for proposed classes.

Continuing Education Units (CEUs)

Registered sanitarians are required to obtain a set number of CEUs each year to maintain a license. Many contractors also have certifications that require CEUs. KDHE will work with the necessary organizations to ensure the training program meets the CEU requirements. KDHE will provide printed CEU certificates to each participant with the required information.

Sanitary Code Enforcement – Options Available to Counties, Possible Effects of Each Option, and Procedures

The LEPPs provides services within their local area to reduce nutrient loading that may impact the local economics, health issues, and environmental impacts. The local sanitary code is the primary vehicle that establishes the standards to eliminate and/or prevent the development of environmental conditions that are hazardous to health and safety. The continued enforcement of the code will keep the number of nuisances to a minimum. K.S.A. 65-159 provides authority for the joint boards of health to examine all nuisances, sources of filth and causes of sickness that, in their opinion, may be injurious to the health of the inhabitants within any county or municipality in this state.

Continued Enforcement of Adopted Sanitary Codes

Enforcement of existing codes by experienced and trained local officials or staff is a cornerstone of the LEPP. Numerous benefits are realized by enforcing the sanitary codes. Examples include:

- Protection of public health and the environment.
- Availability of county cost-share funding to residents for the repair of failing OWWS
- Groundwater contamination protection.
- Surface water quality protection due to degradation and potential impairments, such as surfacing sewage.
- Enhanced property values by preventing and/or addressing nuisance conditions.
- Complements local zoning ordinances/codes, if present.
- Residents working with local regulatory personnel.
 - Faster response to issues encountered.
 - Knowledgeable about local issues and site conditions.

Procedures for enforcement of existing codes are generally well defined by the counties in the sanitary code or local procedures. Examples of the primary procedures and benefits are:

- Issue permits for the construction of OWWS and PWWs.
 - Ensures compliance with sanitary code requirements and minimum state requirements.
 - Provides revenue for financial support of the program.
- Issue sanitary licenses for persons constructing or cleaning private onsite wastewater systems
 - Ensures compliance with code and federal requirements.
 - Provides revenue for financial support of the program.
- Involvement of the County Attorney for support and enforcement of the county sanitary code.

KDHE provides assistance to the LEPPs for the enforcement of county sanitary codes by:

- Providing technical assistance.
- Identifying and/or providing training.
- Working with county staff to ensure minimum state standards are enforced.
- Providing documentation of relevant State Statutes and Regulations.

Rescission of Adopted Sanitary Codes

County commissions may elect to rescind their adopted county sanitary code. If the county commissioners choose this option they must first consult with their County Attorney to determine the appropriate procedures. Rescission of the county sanitary code may result in several disadvantages including:

- No local protection of public health or the environment.
- Elimination of county cost-share funding available to residents for the repair of failing OWWS.
- No groundwater or surface water quality protection.
- Decreased property values due to pollution and nuisance conditions.
- Public perception of possible health risks could discourage new residents relocating to the area.
- Loss of recourse by citizens negatively impacted by others failing OWWS, etc.

In the event the county commissioners rescind their adopted code KDHE will include ensure minimum state standards are enforced. Bulletin 4-2 provides the minimum requirements for OWWSs in the State. If a county chooses to rescind their code, these requirements must continue to be met. Complaints received by KDHE will be addressed on a case-by-case basis and, due to staffing limitations at KDHE, complaints will be addressed in a less timely manner.

No Enforcement of Adopted Sanitary Codes

Although counties are required to enforce their adopted sanitary codes a county LEPP may be directed to discontinue enforcement of their adopted code without actually rescinding the code. The procedures used to address private onsite wastewater systems and water wells are developed by the County Commissioners with advice and support provided by the County Attorney. Disadvantages associated with failure to enforce the code include:

- No local protection of public health or the environment resulting in an increased risk of health problems.
- No groundwater or surface water quality degradation protection.
- Decreased property values due to pollution and nuisance conditions.

- A potential increase of health problems locally.
- Loss of recourse by citizens negatively impacted by others failing OWWs, etc.

Enforcement for Counties without an Adopted Code

Few counties operate under the State of Kansas minimum requirements for OWWs as outlined in Bulletin 4-2 rather than an adopted sanitary code. The procedures and disadvantages in this scenario are identical to those outlined in the previous section. KDHE will continue to enforce the minimum requirements as stated in Bulletin 4-2.

Long Term Planning

The "*Journal of Environmental Health*" dated October 1, 2003 states "Septic systems serve approximately 25 percent of U.S. households, and one in three (33%) of new homes built today use these systems". This combined with continuously advancing technology will require consistent and continuous training for contractors and sanitarians so KDHE's mission of protecting public health and the environment will be realized.

Long term planning for this program may include:

- Identifying local staff that can be trained to inspect OWWs for the CCD cost-share program.
- KDHE personnel attending the "Train the Trainer" program so that more instructors are available to assist KSFA instructors.
- A standardized list of recommended training for contractors to maintain county licenses.
- Work in conjunction with KSFA and KEHA to develop training for the registered sanitarian license that is applicable to the LEP Program and county codes.