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CODE
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M E M O R A N D U M

DATE: February 13, 1992
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Bureau of Environmental Quality
FROM: *EL* Eugene Lueger, Attorney
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SUBJ: K.S.A. 19-3706

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BUREAU OF ENVIRONMENTAL QUALITY

The following questions have been posed concerning K.S.A. 19-3706:

1. Can a county enforce a general provision extending the acreage limitation to "all unincorporated areas", or must a specific acreage limitation be set forth?

K.S.A. 19-3706 provides that any sanitary codes adopted pursuant to this act shall not apply to any premises under one ownership which exceeds 10 acres in area, unless such code specifically provides for a greater acreage limitation. When a county sanitary code provides that the code applies to "all unincorporated areas", the intent may be to extend the limitation to infinite acreage, but the code would not include a specific number of acres. Because there is a possibility that a court may rule that the county has exceeded its authority, an individual on a plot of land greater than ten acres may successfully challenge the application of a sanitary code against him. For this reason, if a county wants to cover larger areas than those which exceed ten acres, it should set forth a specific number.

2. Does a sanitary code apply to all residences, regardless of the size of the tract of land on which it is located?

K.S.A. 19-3706 provides that a sanitary code does not apply to any premises under one ownership which exceeds 10 acres in area, unless such code specifically provides for a greater acreage limitation, and which is used only for agricultural purposes. The term "agricultural purposes" is further defined to mean: a purpose related to the production of livestock or crops. Premises which have a residence located on them and which are larger than ten acres would not be exempt under the sanitary code because the premises is used for purposes other than agricultural. Because the language "related to the production of livestock or crops" is subject to interpretation, it would be beneficial to specify a large acreage limitation by those counties who want to include all residences located on large tracts of land.

SEPTAGE MANAGEMENT

Following is a general discussion of septage management. This discussion is in response to proposed codes for sanitary services, or the disposal of septic tank sludge, from several counties across Kansas.

- I. Industrial discharges to septic systems (or any on-site system that functions by absorption) are prohibited by KDHE policy. Industrial wastewater must be discharged to a permitted lagoon which is lined according to KDHE specifications. The county may permit the discharge of domestic waste only to a septic system. The county should refer any requests to dispose of industrial waste to the Kansas Department of Health and Environment, Bureau of Water.
- II. Septage should be required to be removed and disposed of by licensed septage haulers only. If the county wishes to permit individuals to remove and dispose of septage, individuals should be required to comply with all code requirements. Licensing individuals would increase the workload of administering the code with respect to both education and enforcement. Resources would be best utilized by requiring septage to be handled by licensed septage haulers.
- III. The Board of County Commissioners should require all septage haulers to apply for a license to handle septage from the Administrative Agency. The application should require at least the following information:

Name (of owner and of business)
Address
Phone Number
Services Provided
Amount of Septage Handled Annually (pumped and disposed)
Disposal Plan

The disposal plan should identify the disposal method to be used, and include written agreements as identified below. Currently, there are three disposal methods that are acceptable.

- A. The most desirable method is disposal of septage at a municipal wastewater treatment plant. The septage hauler should submit a written and signed agreement between the hauler and the plant indicating the amount of septage that the plant agrees to accept annually. This should not be less than the amount of septage handled annually by the hauler, unless more than one disposal method is identified in the plan.

B. Land application of septage also is an acceptable method. The state currently has no statutes or regulations governing the land application of septage. However, the

following requirements for land application are advisable to prevent runoff to surface water and nuisances.¹

1. limit land application to less than 30,000 gallons of septage per acre per year in order to reduce surface run-off from the application site;
2. require stabilization of septage with lime to reduce pathogens and vector attraction;
3. require incorporation of septage within 24 hours or apply to a nitrogen consuming crop, and in both cases account for septage application when determining fertilizer application rate²;
4. prohibit application to parks and recreational areas, or restrict access to those areas for twelve months following application;
5. restrict application and cultivation of edible plants;
6. establish a depth to groundwater requirement that must be met in order to protect groundwater quality;
7. prohibit the application of septage to frozen, snow covered, or saturated soil caused by heavy rain or flooding;
8. prohibit land application sites within the ten year flood plain;
9. require at least a 200' separation between land application sites and any surface water bodies.

The septage hauler should submit a signed agreement with the landowner which identifies site characteristics and application rates. Application to farm land may reduce the farmer's costs of fertilizing.

C. The disposal of septage in a sanitary landfill is generally prohibited. Although not common, the Kansas Department of Health and Environment, Bureau of Air and Waste Management, may issue a special use permit to landfill septage if it is determined that the landfill has sufficient capacity and design features to prevent environmental contamination and public health hazards.

- IV. Licenses should be renewed annually, and licensed haulers should be required to submit disposal logs for renewal. The disposal logs will help verify the implementation of the approved disposal plan. The Board of County Commissioners has statutory authority to license septage haulers, charge a licensing fee, and enforce penalties for violations (K.S.A. 19-3701). If the disposal plan does not coincide with the logs, renewal could be denied or a higher fee could be charged.

The administrative agency may wish to require haulers to submit disposal logs on a regular basis. The disposal log should at least:

- A. record the date of the service,
- B. identify the origin of the septage (i.e., client's name and address),
- C. identify the disposal site by location and owner,
- D. specify the volume disposed, and
- E. be signed by the hauler, client, and disposal site owner.

The hauler and the administrative agency should retain copies of the log in their files. The client and disposal site owner may also wish to receive copies for future reference.

The information presented in this discussion is intended to provide guidance for the development and implementation of county codes for sanitary services. These suggestions may need to be modified to satisfy local needs. Implementing these suggestions should contribute to the prevention of surface and groundwater contamination, and public health nuisances, resulting from careless disposal of septage.

1. These requirements are based upon rules proposed by the federal Environmental Protection Agency for septage management, and Kansas' requirements for land application of livestock waste.
2. The application of both septage and any commercial fertilizer should: (1) be based on a soil test at the site and the nutrient content of the septage, (the federal Environmental Protection Agency estimates a nitrogen content for domestic sewage of 700 milligrams per liter), and (2) should only be allowed at rates not to exceed crop nutrient uptake. The owner should agree to this. The testing should be done by the hauler.