



# Kansas Register

Ron Thornburgh, Secretary of State

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State of Kansas

Legislature

Interim Committee Schedule

The following committee meetings have been scheduled during the period of November 4-9. Requests for accommodation to participate in committee meetings should be made at least two working days in advance of the meeting by contacting Legislative Administrative Services at (785) 296-2391 or TTY (785) 296-8430. When available, agendas can be found at http://kslegislature.org/klrd.

Date	Room	Time	Committee	Agenda
Nov. 4	313-S	10:00 a.m.	Joint Committee on Children's Issues*	4th: Roundtable on mental health and foster care.*
Nov. 5	313-S	9:00 a.m.		
Nov. 4	519-S	10:00 a.m.	Joint Committee on Information Technology	Review agency information technology projects.
Nov. 5	519-S	9:00 a.m.		
Nov. 8	514-S	10:00 a.m.	Long-Term Care Services Task Force	Agenda not available.
Nov. 8	123-S	10:00 a.m.	Joint Committee on Legislative Budget	8th: Long-term care funding issues, 27th pay period, state car rental contract, polling place report, and SRS deferrals. 9th: Billing and payment practices of EDS as the Medicaid fiscal agent, and discussion of recommendations.
Nov. 9	123-S	9:00 a.m.		
Nov. 8	313-S	10:00 a.m.	Select Joint Committee on School Finance	If the Supreme Court does not rule by the end of business October 29, this meeting is cancelled.
Nov. 9	313-S	9:00 a.m.		
Nov. 8	519-S	10:00 a.m.	Special Committee on Local Government	Agenda not available.
Nov. 9	519-S	9:00 a.m.		

\*Please Note: The Joint Committee on Children's Issues will conduct a roundtable on mental health and foster care November 4 in Room 313-S, State Capitol. Anyone wishing to participate in the roundtable should contact Emalene Correll at the Legislative Research Department, (785) 296-3181, or by e-mail at EmaleneC@klrd.state.ks.us. The number of participants is limited.

Jeffrey M. Russell  
Director of Legislative  
Administrative Services

Doc. No. 031265

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**State of Kansas  
Pooled Money Investment Board**

**Notice of Investment Rates**

The following rates are published in accordance with K.S.A. 75-4210. These rates and their uses are defined in K.S.A. 12-1675(b)(c)(d), 75-4201(l) and 75-4209(a)(1)(B).

**Effective 10-25-04 through 10-31-04**

Term	Rate
1-89 days	1.73%
3 months	1.82%
6 months	2.01%
1 year	2.16%
18 months	2.33%
2 years	2.51%

Derl S. Treff  
Director of Investments

Doc. No. 031256

(Published in the Kansas Register October 28, 2004.)

**City of Wichita, Kansas**

**Notice to Bidders**

The city of Wichita will receive bids at the Purchasing Office, 455 N. Main, 12th Floor, Wichita, 67202, until 10 a.m. Friday, December 3, for the following project:

**(KDOT Project No. 87N-0229-01/472-83686/  
448-89553/468-83460  
203317/771500/662467  
(OCA Code 706851/636102/620344)  
Paving**

Harry, I-135 to George Washington Blvd.

Plans and specifications for this project will be available November 3. Requests for the bid documents and plans should be directed to City Blue Print, (316) 265-6224, or to Marty Murphy, (316) 268-4488. Other questions should be directed to the respective design engineer at (316) 268-4501.

All bids received will thereafter be publicly opened, read aloud and considered by the Board of Bids and Contracts. All work is to be done under the direction and supervision of the city manager and according to plans and specifications on file in the office of the city engineer. Bidders are required to enclose a bid bond in the amount of 5 percent with each bid as a guarantee of good faith. The Wichita City Council reserves the right to reject any and all bids.

The successful bidder may contact Pam Plank at (316) 268-4499 or Marty Murphy at (316) 268-4488 for extra sets of plans and specifications.

Marty Murphy  
Administrative Aide  
City of Wichita—Engineering

Doc. No. 031260

**State of Kansas  
Kansas Sentencing Commission**

**Notice of Subcommittee Meeting**

The Kansas Sentencing Commission's Prison Population Subcommittee will meet from 10 a.m. to noon Wednesday, November 3, in the commission's conference room, Suite 501, Jayhawk Tower, 700 S.W. Jackson, Topeka. For more information, call (785) 296-0923.

Patricia Biggs  
Executive Director

Doc. No. 031275

**State of Kansas  
Department of Administration  
Division of Purchases**

**Notice to Bidders**

Sealed bids for items listed will be received by the Director of Purchases until 2 p.m. on the date indicated. For more information, call (785) 296-2376:

11/08/2004	07788	Lease of Automobile
11/08/2004	07839	Snow Removal Services
11/10/2004	07840	Kansas Transportation Maps 2005-2006
11/16/2004	07848	Internet Based Weather Information System
11/22/2004	07745	Information Technology Security Hardware, Software and Related Security Services
12/14/2004	07850	Pharmaceutical Bioterrorism Preparedness Program

The above referenced bid documents can be downloaded at the following Web site:

<http://da.state.ks.us/purch/rfq/>

Additional files may be located at the following Web site (please monitor this Web site on a regular basis for any changes/addenda):

<http://da.state.ks.us/purch/adds/default/htm>

Contractors wishing to bid on the projects listed below must be prequalified. For more information about the prequalification process or to obtain the following bid documents, call (785) 296-8899:

11/3/2004	A-9869	Porter/Kelce Steam Line Replacement
11/10/2004	A-9669(C)	Reroof Grounds Maintenance Barn, Paint Shop, Administration Building and Butler Building
11/16/2004	A-9894	Communication Department Labs
11/17/2004	A-9963	Water System Improvements

Chris Howe  
Director of Purchases

Doc. No. 031271

State of Kansas  
**Racing and Gaming Commission**

**Request for Comments**

Grant funds are available for the horse breeding development fund and the greyhound breeding development fund for equine research through institutions of higher education under the State Board of Regents and for greyhound research preferable through institutions of higher education under the State Board of Regents or in association with those institutions (K.S.A. 74-8829 and 74-8831). Those eligible and interested in applying should submit a grant proposal to the Kansas Racing and Gaming Commission at the address below postmarked by January 15. All grant applications submitted for funds must be in compliance with K.A.R. 112-15-3.

For additional information, contact the Kansas Racing and Gaming Commission, 3400 S.W. Van Buren, Topeka, 66611-2228, (785) 296-5800.

Tracy T. Diel  
 Executive

Doc. No. 031255

State of Kansas  
**Governmental Ethics Commission**

**Opinion No. 2004-22**

Written October 21, 2004, to Henry Mace, Tecumseh.

This opinion is in response to your letter of September 30, 2004, in which you request an opinion from the Kansas Governmental Ethics Commission concerning the state level conflict of interest laws (K.S.A. 46-215 *et seq.*). We note at the outset that the Commission's jurisdiction is limited to the application of K.S.A. 46-215 *et seq.*, and whether some other statutory system, common law theory or agency rule or regulation applies to your inquiry is not covered by this opinion.

**Factual Statement**

We understand that you are asking for this opinion as a programmer/analyst supervisor for the Kansas Department of Aging (KDOA). You are interested in contracting with Kansas Social and Rehabilitation Services (SRS) to provide a solution to a web project on which they are working. You have informed us that, in your capacity as a state employee, you do not provide services to SRS and that you have not been involved in the making of any contracts with SRS.

**Question**

May a programmer/analyst supervisor for the Kansas Department of Aging contract with Kansas Social and Rehabilitation Services to perform services on a web project?

**Opinion**

Three statutes apply to the question you have raised: K.S.A. 46-233(a), which involves participation in the making of contracts; K.S.A. 46-235, which governs restrictions on compensation of state employees; and K.S.A. 46-241, which involves the use of confidential information. Each of these statutes will be addressed in turn.

K.S.A. 46-233 states in pertinent part:

(a) (2) . . . Whenever any individual has participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business as an employee, independent contractor or subcontractor until two years after performance of the contract is completed or until two years after the individual terminates employment as a state officer or employee, whichever is sooner.

Pursuant to this statute, you would be prohibited from accepting employment as an employee, independent contractor, subcontractor or as a consultant with SRS, if you, in your capacity as a state employee, had participated in the making of any non-competitively bid contract with that agency. (See Commission Opinion 1996-29). This prohibition would be in place until two years after performance of the contract is completed or until two years after you terminate state employment, whichever is sooner. You have informed this Commission that you have not been involved in the making of any contracts with SRS. Therefore, this statute would not prohibit you from performing services for SRS.

K.S.A. 46-235 states in pertinent part:

No state officer or employee shall accept compensation for performance of official duties, other than that to which such person is entitled for such performance. . . . The receipt of wages or salary from an individual's non-state employer during a period of service as a state officer or employee shall not be construed as compensation for performance of official duties.

Pursuant to this statute, so long as it is not part of your current State duties to perform computer services for SRS, K.S.A. 46-235 would not prohibit you from accepting compensation for performing these services.

Finally, K.S.A. 46-241 states:

No state officer or employee shall disclose or use confidential information acquired in the course of his or her official duties in order to further his or her own economic interest or those of any other person.

This section is self-explanatory. Confidential information obtained during your official duties with the State may not be used for your financial gain or the financial gain of another.

In conclusion, under K.S.A. 46-233(a)(2), you would not be prohibited from accepting employment as an employee, independent contractor, subcontractor or consultant with SRS, if you, as a state employee, had not participated in the making of any non-competitively bid contracts with that agency. Pursuant to K.S.A. 46-235, as long as it is not part of your current State duties to perform computer services for SRS, you would not be prohibited from accepting compensation for performing those services. And finally, pursuant to K.S.A. 46-241, confidential information obtained during your official duties with the State may not be used for your financial gain or the financial gain of another.

Daniel Sevart  
 Chairman

Doc. No. 031273

## State of Kansas

**Department of Administration  
Division of Facilities Management**

**Notice of Commencement of  
Negotiations for Engineering Services**

Notice is hereby given of the commencement of negotiations for engineering services for Flinthills Lodge at the Kansas Neurological Institute in Topeka. The project consists of replacing the existing heating and air conditioning system in the building with new variable air volume (VAV) systems. The building was built in 1974, is one story, has 49,140 gsf of floor area, and serves as a housing unit that remains in operation 24 hours each day. The estimated construction budget is \$982,000.

For more information concerning the scope of services, contact Gary R. LaShell, (785) 296-3771.

To be considered, a letter of interest, an SF330 Part I, information regarding similar projects, and an SF330 Part II for each firm and consultant should be provided in one bound proposal. Also required are four bound copies of the same information and one CD with one PDF file of the same information. Proposals should be concise and follow the 2004 State Building Advisory Commission guidelines, which have previously been distributed to firms. If copies of the guidelines are needed, contact Phyllis Fast, Division of Facilities Management, Room 600, Landon State Office Building, 900 S.W. Jackson, Topeka, 66612, (785) 296-5796. Submittals should be received by Phyllis Fast before noon November 12.

D. Keith Meyers  
Director, Division of  
Facilities Management

Doc. No. 031269

## State of Kansas

**Kansas Development Finance Authority**

**Notice of Hearing**

A public hearing will be conducted at 9 a.m. Friday, November 12, in the conference room in the offices of the Kansas Development Finance Authority, 555 S. Kansas Ave., Suite 202, Topeka, on the proposal for the KDFA to issue not to exceed \$16.5 million principal amount of Educational Facility Revenue Bonds for Cleveland Chiropractic College, a 501(c)(3) corporation, or an affiliated entity. The bonds will be issued, pursuant to K.S.A. 74-8901 *et seq.*, to finance the costs of acquisition and rehabilitation of an existing facility located at 6363 College Blvd. in Overland Park, Johnson County, Kansas (the project).

The bonds, when issued, will be a limited obligation of the KDFA and will not constitute a general obligation or indebtedness of the state of Kansas or any political subdivision thereof, including the KDFA, nor will the bonds constitute an indebtedness for which the faith and credit and taxing powers of the state of Kansas are pledged. The bonds will be payable solely from amounts received from the developer, the obligation of which will be sufficient to pay the principal of, interest and redemption premium, if any, on the bonds when they become due.

All individuals who appear at the hearing will be given an opportunity to express their views, and all written comments previously filed with the KDFA at its offices at 555 S. Kansas Ave., Suite 202, Topeka, 66603, will be considered. Additional information regarding the project may be obtained by contacting the KDFA.

Steven R. Weatherford  
President

Doc. No. 031266

## State of Kansas

**Department of Transportation**

**Notice to Contractors**

Sealed proposals for the construction of road and bridge work in the following Kansas counties will be received at the Bureau of Construction and Maintenance, KDOT, Topeka, or at the Wichita Airport Hilton, Wichita, until 2 p.m. November 17 and then publicly opened:

**District One—Northeast**

**Marshall**—58 K-9038-01—Junction of 11th Road and North Street then west 0.6 mile in Marysville, grading and surfacing. (State Funds)

**Marshall**—9-58 K-9743-01—K-9 from the east junction of U.S. 77 east to the south junction of K-99, 12.3 miles, overlay. (State Funds)

**Marshall**—9-58 K-9743-01—K-9 from the east junction of U.S. 77 east to the south junction of K-99, 12.3 miles, overlay. (State Funds)

**Marshall**—9-58 K-9743-01—K-9 from the east junction of U.S. 77 east to the south junction of K-99, 12.3 miles, overlay. (State Funds)

**Pottawatomie**—24-75 K-7642-01—U.S. 24 Vermillion River bridge, 3.8 miles east of K-99, bridge repair. (Federal Funds)

**Pottawatomie-Riley**—13-106 K-9780-01—K-13 from the Pottawatomie-Riley county line north to the junction of K-16; K-13 from the junction of U.S. 24 northeast to the Pottawatomie-Riley county line, 14.6 miles, overlay. (State Funds)

**Shawnee**—89 C-4022-01—Northwest Carlson Road over Post Creek, 0.1 mile, grading, bridge and surfacing. (Federal Funds)

**Shawnee**—89 C-4023-01—Northwest Hoch Road over Walnut Creek, 0.1 mile, grading and bridge. (Federal Funds)

**Shawnee**—89 K-9510-01—Various locations in Shawnee County on I-470, I-70 and U.S. 75, pavement marking. (State Funds)

**Wabaunsee**—30-99 K-9747-01—K-30, 0.5 mile north of the junction of I-70 north to the south city limits of Maple Hill, 1.4 miles, overlay. (State Funds)

**Wabaunsee-Shawnee**—4-106 K-9779-01—K-4 from the Wabaunsee-Shawnee county line northeast to county route 514; K-4 from the junction of K-177 northeast to the Wabaunsee-Shawnee county line, 49.6 miles, overlay. (State Funds)

(continued)

**District Two—Northcentral**

**Chase**—177-9 K-9196-01—K-177 from the south city limits to Washington Street in Strong City, 0.2 mile, grading and surfacing. (State Funds)

**Ellsworth-Lincoln**—232-106 K-9869-01—K-232 from the north city limits of Wilson north to the Ellsworth-Lincoln county line; K-232 from the Ellsworth-Lincoln county line north to the Lincoln-Russell county line, 8.3 miles, overlay. (State Funds)

**Geary**—57-31 K-9125-01—Dry Creek drainage bridges on K-57 south of I-70, bridge replacement. (Federal Funds)

**Geary**—57-31 K-9148-01—K-57 Dry Creek drainage, 7.7 miles south of I-70, bridge repair. (State Funds)

**Geary**—57-31 K-9154-01—Four culverts on K-57, culvert construction. (State Funds)

**Marshall-Riley**—77-106 K-9782-01—U.S. 77 from the Riley-Marshall county line north 0.5 mile south of the south city limits of Marysville; U.S. 77 from Riley County Road 893 north to the Riley-Marshall county line, 35.3 miles, overlay. (State Funds)

**District Three—Northwest**

**Norton-Phillips-Smith**—106 K-9727-01—K-9 from the east junction of U.S. 283 east to the Norton-Phillips county line; K-173 from Densmore north to the junction of K-9; K-9 from the Norton-Phillips county line east to the Phillips-Smith county line; K-9 from the Phillips-Smith county line east to the junction of U.S. 281, 59.4 miles, overlay. (State Funds)

**Osborne**—181-71 K-9721-01—K-181 from the Mitchell-Osborne county line west and north to the junction of U.S. 24 in Downs, 14.7 miles, overlay. (State Funds)

**Osborne**—24-71 K-6372-03—U.S. 24 from the junction of U.S. 281 and Main Street east 2 blocks in Osborne, 0.1 mile, overlay. (State Funds)

**Osborne-Rooks**—106 K-9736-01—U.S. 24 from the Rooks-Osborne county line east to the south junction of U.S. 281; U.S. 24 from the Graham-Rooks county line east to the Rooks-Osborne county line; K-258 from Webster Reservoir north to the junction of U.S. 24, 54.1 miles, overlay. (State Funds)

**Russell**—232-84 K-9723-01—K-232 from the Lincoln-Russell county line north to the junction of K-18, 9 miles, overlay. (State Funds)

**Smith**—92 C-3820-01—County road 3 miles west of Cedar then south 0.2 mile, grading and bridge. (Federal Funds)

**Trego**—70-98 K-9448-01—I-70 from the Gove-Trego County line east to the junction of U.S. 283, 14 miles, seal. (State Funds)

**District Four—Southeast**

**Chautauqua-Elk**—99-106 K-9834-01—K-99 from the junction of U.S. 166B north to the Chautauqua-Elk county line; K-99 from the Chautauqua-Elk county line north to the west junction of U.S. 160; K-99, 1.4 miles north of the east junction of U.S. 160 north to the north city limits of Howard, 24 miles, overlay. (State Funds)

**Chautauqua-Montgomery**—166-106 K-9835-01—U.S. 166 from the concrete pavement in Niotaze east to the Chautauqua-Montgomery county line; U.S. 166 from the Chautauqua-Montgomery county line east to the north junction of U.S. 75, 5.6 miles, overlay. (State Funds)

**Miami**—61 C-4021-01—Old Kansas City Road from Osawatomie Road to Moonlight Road, 1.6 miles, grading and surfacing. (Federal Funds)

**Montgomery**—75-63 K-9181-01—North junction of U.S. 75/U.S. 166 north of Caney, lighting. (State Funds)

**District Five—Southcentral**

**Barber**—4 C-3828-01—County road 3.5 miles north and 6 miles east of Aetna, 0.1 mile, culvert construction. (Federal Funds)

**Barber**—4 C-3829-01—County road 1.3 miles north and 6.1 miles east of Aetna, 0.2 mile, culvert construction. (Federal Funds)

**Barber**—4 C-3830-01—County road 7 miles north and 6.7 miles east of Aetna, 0.2 mile, grading and bridge. (Federal Funds)

**Barber**—4 C-3943-01—County road 6.5 miles north and 6.7 miles east of Aetna, 0.2 mile, culvert construction. (Federal Funds)

**Barton**—5 C-3672-01—County road 4 miles west and 3.3 miles north of Hoisington, 0.3 mile, grading, bridge and surfacing. (Federal Funds)

**District Six—Southwest**

**Gray**—23-35 K-9682-01—K-23 from the junction of U.S. 56 north to the concrete pavement in Cimarron, 12.1 miles, seal. (State Funds)

**Gray-Meade**—23-106 K-9703-01—K-23 from the Meade-Gray county line north to 1,000 feet south of the junction of U.S. 56; K-23 from the north city limits of Meade north to the Meade-Gray county line, 23 miles, seal. (State Funds)

**Ford**—50-29 K-9688-01—U.S. 50 from the east junction of U.S. 283 east to 1 mile east of county route 257, 10.8 miles, overlay. (State Funds)

**Ford**—54-29 K-9689-01—U.S. 54 from the Clark-Ford county line east to the west city limits of Bucklin, 17.6 miles, overlay. (State Funds)

**Ford**—54-29 M-1953-01—U.S. 54, KDOT mix strip along U.S. 54 in Bucklin, stockpile bituminous material. (State Funds)

**Hodgeman**—283-42 K-9702-01—U.S. 283 from the junction of K-156 north to the Hodgeman-Ness county line, 12 miles, overlay. (State Funds)

**Hodgeman**—283-42 M-1955-01—KDOT mixing strip, 2 miles west of the junction of U.S. 283/K-156 on K-156, stockpile bituminous material. (State Funds)

**Ness**—96-68 K-9698-01—K-96 from the Lane-Ness county line east to the junction of U.S. 283, 19 miles, overlay. (State Funds)

**Ness**—96-68 M-1954-01—KDOT mixing strip along K-96 in Ness City, stockpile bituminous material. (State Funds)

Proposals will be issued upon request to all prospective bidders who have been prequalified by the Kansas Department of Transportation on the basis of financial condition, available construction equipment and experience. Also, a statement of unearned contracts (Form No. 284) must be filed. There will be no discrimination against anyone because of race, age, religion, color, sex, handicap or national origin in the award of contracts.

Each bidder shall file a sworn statement executed by or on behalf of the person, firm, association or corporation submitting the bid, certifying that such person, firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid.

This sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the state to administer oaths. The required form of affidavit will be provided by the state to each prospective bidder. Failure to submit the sworn statement as part of the bid approval package will make the bid nonresponsive and not eligible for award consideration.

Plans and specifications for the projects may be examined at the office of the respective county clerk or at the KDOT district office responsible for the work.

Deb Miller  
Secretary of Transportation

Doc. No. 031238

(Published in the Kansas Register October 28, 2004.)

## City of Overland Park, Kansas

### Notice to Bidders

Sealed bids for **Metcalf Corridor Communications Network, KDOT Project No. 46N-0300-01, OP Project No. TS-0657**, will be received by the city of Overland Park, Kansas, at the office of the City Clerk, City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212, until 2 p.m. local time November 30. At that time all sealed bids will be transferred to the City Council Chamber, City Hall, where they will be publicly opened and read aloud. Any bid received after the designated closing time will be returned unopened.

All bids shall be submitted in sealed envelopes addressed to the City Clerk of Overland Park, Kansas, and marked "Bid For: Metcalf Corridor Communications Network, KDOT Project No. 46N-0300-01." Copies of plans, specifications, bid documents and other contract documents are on file at the office of the city traffic engineer located at City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212. Contractors desiring the contract documents for use in preparing bids may obtain a set of such documents from the city traffic engineer upon payment of \$40, which amount is not refundable.

Contractors should read and be fully familiar with all contract documents before submitting a bid. In submitting a bid, the bidder warrants that it has read the contract documents and is fully familiar therewith and that it has visited the site of the work to fully inform itself as to all

existing conditions and limitations, and shall include in its bid a sum to cover the cost of all items of the work.

Should a bidder find "defects" as defined in paragraph GC-3 of the General Conditions, it shall follow the procedures outlined in paragraph GC-3 to bring same to the attention of the city. Changes necessitated thereby shall be in the form of addenda issued by the consulting engineer.

All bidders shall verify that they have considered all written addenda. Neither the city nor the consulting engineer shall be responsible for oral instructions.

Any written addenda issued during the time of bidding shall be covered and included in the bid. There will be no clarifications or exceptions allowed on the bid. Bids are for a total bid package, total contract price.

Bids shall be made upon the form provided in ink or typewritten. Numbers shall be stated both in writing and in figures, the signature shall be long hand, and the complete form shall be without alteration or erasure. On alternate items for which a bid is not submitted, a written indication of "no bid" on the bid form is required.

No oral, telegraphic, facsimile or telephonic bids or alterations will be considered.

The following items must be included in the sealed envelope with the bid:

- a. Bid
- b. 5% Bid security—bid bond, cashier's check or certified check (see below)

Each bidder shall file with its bid a bid bond, a cashier's check or a certified check drawn on any acceptable bank, made payable to the city of Overland Park, Kansas, in an amount of not less than 5 percent of the total bid, which shall be retained by the city of Overland Park until a contract for the project has been executed. Bid bonds will be returned to the unsuccessful bidders, with the exception of the second qualifying bidder, at such time as their bids are rejected. The bid deposit of the successful bidder and the second qualifying bidder will be returned when satisfactory bonds in an amount equal to 100 percent of the contract amount, required insurance certificates and other required documents shall have been furnished and the contract documents have been executed.

In the event the successful bidder is unable to execute the contract, for whatever reason, the city may exercise its legal prerogatives, including, but not limited to, enforcement of its rights as to the bid security.

The city reserves the right to accept or reject any and all bids and to waive any technicalities or irregularities therein. Bids may be modified or withdrawn by written request of the bidder received in the office of the city clerk, prior to the time and date for bid opening; provided, however, that no bidder may withdraw its bid for a period of 30 days from the date set for the opening thereof. All bidders agree that rejection shall create no liability on the part of the city because of such rejection. It is understood by all bidders that an unsuccessful bidder has no cause of action against the city for bid preparation costs. The filing of any bid in response to this invitation shall constitute an agreement of the bidder to these conditions.

Nancy Sappington  
Contract Specialist  
City of Overland Park, Kansas

Doc. No. 031258

(Published in the Kansas Register October 28, 2004.)

## City of Overland Park, Kansas

### Notice to Bidders

Sealed bids for **US-69 Northbound Ramp (City of Overland Park Project) and 135th Street Widening Improvements, KDOT Project No. 46 N-0337-01, HDP-N033 (701)**, will be received by the city of Overland Park, Kansas, at the office of the City Clerk, City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212, until 2 p.m. local time November 30. At that time all sealed bids will be transferred to the City Council Chamber, City Hall, where they will be publicly opened and read aloud. Any bid received after the designated closing time will be returned unopened.

All bids shall be submitted in sealed envelopes addressed to the City Clerk of Overland Park, Kansas, and marked "Bid For: US-69 Northbound Ramp & 135th Street Widening Improvements, KDOT Project No. 46 N-0337-01, HDP-N033 (701)." Copies of plans, specifications, bid documents and other contract documents can be seen or purchased online at [www.kellyimaging.net](http://www.kellyimaging.net) in its eDistribution plan room; additional assistance is available at [distribution@kellyimaging.net](mailto:distribution@kellyimaging.net). At the Web site, information regarding this project can be found in the "Public Jobs" link. Contractors desiring the contract documents for use in preparing bids also may obtain a set of such documents from Kelly Imaging, 10840 W. 86th St., Lenexa, KS 66214, (913) 341-2333, upon payment of \$750, which amount is not refundable. Checks shall be made payable to Affinis Corp. Any questions regarding the project, plans, specifications or bid documents should be directed to Affinis Corp. at (913) 239-1100.

Contractors should read and be fully familiar with all contract documents before submitting a bid. In submitting a bid, the bidder warrants that it has read the contract documents and is fully familiar therewith and that it has visited the site of the work to fully inform itself as to all existing conditions and limitations, and shall include in its bid a sum to cover the cost of all items of the work.

Should a bidder find "defects" as defined in paragraph GC-3 of the general conditions, it shall follow the procedures outlined in paragraph GC-3 to bring same to the attention of the city. Changes necessitated thereby shall be in the form of addenda issued by the consulting engineer.

All bidders shall verify that they have considered all written addenda. Neither the city nor the consulting engineer shall be responsible for oral instructions.

Any written addenda issued during the time of bidding shall be covered and included in the bid. There will be no clarifications or exceptions allowed on the bid. Bids are for a total bid package, total contract price.

Bids shall be made upon the form provided in ink or typewritten. Numbers shall be stated both in writing and in figures, the signature shall be long hand, and the complete form shall be without alteration or erasure. On alternate items for which a bid is not submitted, a written indication of "no bid" on the bid form is required. No oral, telegraphic, facsimile or telephonic bids or alterations will be considered.

The following items must be included in the sealed envelope with the bid:

- a. Bid
- b. 5% Bid security—bid bond, cashier's check or certified check (see below)
- c. Signed documents (KDOT Certifications)
  - Certification—Noncollusion & History of Debarment
  - Certifications—Federal Funds for Lobbying
  - Required contract provisions—Certification—Contractual Services with Current Legislator or Legislator's Firm
  - Required contract provision—DBE Goals

Each bidder shall file with its bid a bid bond, a cashier's check or a certified check drawn on any acceptable bank, made payable to the city of Overland Park, Kansas, in an amount of not less than 5 percent of the total bid, which shall be retained by the city of Overland Park until a contract for the project has been executed. Bid bonds will be returned to the unsuccessful bidders, with the exception of the second qualifying bidder, at such time as their bids are rejected. The bid deposit of the successful bidder and the second qualifying bidder will be returned when satisfactory bonds in an amount equal to 100 percent of the contract amount, required insurance certificates and other required documents shall have been furnished and the contract documents have been executed.

In the event the successful bidder is unable to execute the contract, for whatever reason, the city may exercise its legal prerogatives, including, but not limited to, enforcement of its rights as to the bid security.

The city reserves the right to accept or reject any and all bids and to waive any technicalities or irregularities therein. The award of bid will be based on the total base bid for both US-69 Northbound Ramp (City of Overland Park Project) and 135th Street Widening Improvements, KDOT Project No. 46 N-0337-01, HDP-N033 (701) as a tied package. Inclusion in the contract of any or all parts of alternate bids shall be solely at the discretion of the city. Bids may be modified or withdrawn by written request of the bidder received in the office of the city clerk, prior to the time and date for bid opening; provided, however, that no bidder may withdraw its bid for a period of 30 days from the date set for the opening thereof. All bidders agree that rejection shall create no liability on the part of the city because of such rejection. It is understood by all bidders that an unsuccessful bidder has no cause of action against the city for bid preparation costs. The filing of any bid in response to this invitation shall constitute an agreement of the bidder to these conditions.

A pre-bid conference will be conducted at 2 p.m. Tuesday, November 16, in Conference Room No. 1, Overland Park City Hall, 8500 Santa Fe Drive, Overland Park.

Mary Lou McCann  
Public Works Department  
City of Overland Park, Kansas

Doc. No. 031268



**State of Kansas  
State Conservation Commission**

**Notice of Meeting**

The State Conservation Commission will meet at 2 p.m. Sunday, November 21, in the Consulate II Room of the Airport Hilton, 2098 Airport Road, Wichita. A copy of the agenda may be obtained by contacting Cathy Greene, State Conservation Commission, 109 S.W. 9th, Suite 500, Topeka, 66612-1215, (785) 296-3600. Persons requiring special accommodations should contact the commission at least three days prior to the meeting.

Greg A. Foley  
Executive Director

Doc. No. 031261

(Published in the Kansas Register October 28, 2004.)

**Summary Notice of Bond Sale  
City of Hutchinson, Kansas  
\$1,395,000\***

**General Obligation Bonds, Series 2004-B  
(General obligation bonds payable from  
unlimited ad valorem taxes)**

**Bids**

Subject to the notice of bond sale dated October 27, 2004, bids will be received by the deputy city manager/city clerk of the city of Hutchinson, Kansas, on behalf of the governing body at City Hall, 125 E. Ave. B, Hutchinson, KS 67501, or, in the case of electronic proposals, via *PARITY* electronic bid submission system, until 10 a.m. November 9, 2004, for the purchase of \$1,395,000\* principal amount of General Obligation Bonds, Series 2004-B. No bid of less than the entire par value of the bonds, except a discount of not greater than .50 percent of the par value of the bonds, and accrued interest to the date of delivery will be considered.

**Bond Details**

The bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The bonds will be dated November 15, 2004, and will become due on October 1 in the years as follows:

<b>Maturity October 1</b>	<b>Principal Amount*</b>
2005	\$ 75,000
2006	140,000
2007	110,000
2008	115,000
2009	125,000
2010	155,000
2011	140,000
2012	145,000
2013	125,000
2014	130,000
2015	10,000
2016	10,000
2017	15,000
2018	15,000
2019	15,000

2020	10,000
2021	15,000
2022	15,000
2023	15,000
2024	15,000

The bonds will bear interest from that date at rates to be determined when the bonds are sold as provided, which interest will be payable semiannually on April 1 and October 1 in each year, beginning April 1, 2005. A bidder may elect to have all or a portion of the bonds scheduled to mature in consecutive years issued as term bonds subject to the requirements set forth in the notice of sale.

**Paying Agent and Bond Registrar**

Kansas State Treasurer, Topeka, Kansas.

**Good Faith Deposit**

Each bid shall be accompanied by a cashier's or certified check drawn on a bank located in the United States or a financial surety bond in a form that complies with the requirements set forth in the notice of sale in the amount of \$27,900 (2 percent of the principal amount of the bonds).

**Delivery**

The city will pay for preparation of the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about November 29, 2004, at the offices of the Depository Trust Company, New York, New York.

**Assessed Valuation and Indebtedness**

The equalized assessed tangible valuation for computation of bonded debt limitations for the year 2003 is \$220,732,228. The total applicable general obligation indebtedness of the city as of the date of the bonds, including the bonds being sold, is \$29,213,000.

**Approval of Bonds**

The bonds will be sold subject to the legal opinion of Kutak Rock LLP, Kansas City, Missouri, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the city and delivered to the successful bidder when the bonds are delivered.

**Additional Information**

Additional information regarding the bonds may be obtained from the deputy city manager/city clerk at (620) 694-2613 or from bond counsel, Kutak Rock LLP, 444 W. 47th St., Suite 200, Valencia Place, Kansas City, MO 64112-1914, Attention: Dorothea Riley, (816) 960-0090.

Dated October 20, 2004.

City of Hutchinson, Kansas  
By Ross Vander Hamm  
Deputy City Manager/City Clerk  
Hutchinson City Hall  
125 E. Ave. B  
Hutchinson, KS 67501

\*Subject to change.

Doc. No. 031270

## State of Kansas

**Social and Rehabilitation Services****Notice of Hearing on Proposed  
Administrative Regulations**

A public hearing will be conducted at 1:30 p.m. Thursday, December 9, in the SRS board room, sixth floor, Docking State Office Building, 915 S.W. Harrison, Topeka, to consider the adoption of amendments to an existing rule and regulation on a permanent basis effective 15 days after publication in the Kansas Register. Telephone conference is not available.

This 30-day notice of the public hearing shall constitute a public comment period for the proposed regulation as stated in K.S.A. 2003 Supp. 77-421(a)(3). All interested parties may submit written comments prior to the hearing to Hope Burns, Office of the Secretary for SRS, Room 603-N, Docking State Office Building, 915 S.W. Harrison, Topeka, 66612. All interested parties will be given a reasonable opportunity to present their views, but it may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Hope Burns at (785) 296-3274 or by calling the Kansas Relay Center at 1-800-766-3777.

The adoption of the regulation will take place at 11 a.m. December 13 in the SRS executive conference room, 603-N, Docking State Office Building. Telephone conference will not be available.

Copies of the regulation and the economic impact statement may be obtained by contacting Hope Burns or by accessing the SRS Web site at [www.srskansas.org](http://www.srskansas.org). A summary of the proposed regulation and the economic impact follows:

**Article 5.—PROVIDER PARTICIPATION, SCOPE OF SERVICES, AND REIMBURSEMENT FOR THE MEDICAID (MEDICAL ASSISTANCE) PROGRAM**

**30-5-64. Prior authorization.** The following changes will be made to K.A.R. 30-5-64 regarding prior authorization of pharmaceutical products:

To ensure the most clinically appropriate utilization of these drugs in the most cost-effective manner, the following drugs will require prior authorization. These therapeutic classes of drugs have been evaluated by the Preferred Drug List Advisory Board and found to be clinically equivalent:

- calcium channel blockers: Taztia XT<sup>®</sup> and Cardizem LA<sup>®</sup>
- nifedipine sustained release with the following brand names: Nifedical XL<sup>®</sup>; Procardia XL<sup>®</sup> and all generic equivalents; nimodipine; nisoldipine; felodipine; isradipine; nicardipine SR
- nifedipine immediate release with the following brand names: Adalat<sup>®</sup> and Procardia<sup>®</sup> and all generic equivalents

**Federal Mandate:** This regulation change is not federally mandated.

**Economic Impact:** It is expected that this change will reduce Medicaid expenditures by \$300,000 SGF and \$750,000 FFP, annually.

**Bearer of Cost:** The cost of reviewing prior authorization (PA) will be borne by SRS. If a Medicaid consumer wishes to have a drug despite a PA denial, the cost will be borne by the consumer.

**Affected Parties:** Medicaid consumers, pharmacists and the Medicaid agency.

**Other Methods:** There were no other appropriate methods for the desired outcome.

Janet Schalansky  
Secretary of Social and  
Rehabilitation Services

Doc. No. 031274

(Published in the Kansas Register October 28, 2004.)

**City of Shawnee, Kansas****Notice to Bidders**

Sealed proposals will be received from bidders by the city of Shawnee, Kansas, hereinafter referred to as the owner, at the Shawnee City Hall, 11100 Johnson Drive, Shawnee, KS 66203, until 2 p.m. Tuesday, November 23, at which time the bids received will be opened and publicly read for all materials, supplies, tools and equipment, and to perform all necessary labor to fabricate, install and connect to existing utilities a compressed natural gas fueling station, and train employees on safety and daily maintenance as designated in the contract documents in accordance with all state and municipal laws, ordinances and regulations. The contract shall be awarded to the lowest, responsible bidder, but the city of Shawnee reserves the right to reject any or all bids and to waive informalities or irregularities in bids.

Contract documents and plans may be obtained at Shawnee City Hall at no cost to the prospective bidder. Each bidder shall file with their bid a cashier's check, certified check or bid bond drawn on an acceptable bank in an amount of not less than 5 percent of the total amount of the bid.

Each bid shall be made on a printed proposal form included with these documents. Bids shall be submitted in sealed envelopes and shall be marked "City of Shawnee, Kansas—Compressed Natural Gas Fueling Station, 2004." All proposal forms shall be properly executed by an officer of the firm making such proposal. Bids received after the time and date above specified shall be returned unopened to the bidder.

City of Shawnee, Kansas  
Jeff Meyers  
Mayor  
Attest: Vicki Charlesworth  
City Clerk

Doc. No. 031263

(Editor's Note: The following notice is being republished to correct an error in the dates and times of hearings. The original notice was published in the September 30, 2004 Kansas Register.)

## State of Kansas

### Social and Rehabilitation Services

#### Notice of Hearings

Governor Kathleen Sebelius is seeking input from citizens with disabilities, customers of vocational rehabilitation and independent living services, the State Rehabilitation Council, the State Independent Living Council of Kansas and other interested stakeholders regarding the possible transfer of the Client Assistance Program (CAP) to Kansas Advocacy and Protective Services, Inc. (KAPS). Background information on CAP and KAPS is given below. Public hearings have been scheduled as follows:

#### 7 to 9 p.m. November 2

North Heritage Room  
Highland Hotel  
3017 10th St.  
Great Bend

#### 4 to 6 p.m. November 3

Oaklawn Community Center  
2937 E. Oaklawn Drive  
Wichita

#### 7 to 9 p.m. November 4

Room 147  
SRS Regional Service Center  
500 S.W. Van Buren  
Topeka

The public hearings will be conducted by Dale Barnum, director of Rehabilitation Services and the governor's designee for these hearings. Persons interested in commenting are encouraged to bring written copies of their testimony for the record. Court reporting services will be provided at each hearing to assure that a complete record of comments is compiled.

The public hearings will be conducted in accessible locations, and sign language interpreters will be available. To request other reasonable accommodations, contact Liz Hapgood at (785) 267-5301, ext. 219. To receive a copy of this notice in special media, call (785) 296-3311.

Persons unable to attend one of the public hearings may submit their comments in writing to Dale Barnum, State Director, Rehabilitation Services, 3640 S.W. Topeka Blvd., Suite 150, Topeka, 66611. The deadline for receipt of written comments is November 5.

Complete transcripts of the public hearings and copies of all written comments will be provided to the governor for consideration. A decision is anticipated to coincide with the start of state fiscal year 2006 (July 1, 2005).

#### Background Information

\* CAP provides ombudsman services for customers of vocational rehabilitation (VR), independent living, and other programs funded through the Rehabilitation Act of 1973 as amended (the act). CAP helps individuals understand the services available through the act and advises them of their rights and responsibilities related to those services. Assistance (includ-

ing information, conflict resolution and advocacy regarding appeal rights) also may be provided to help individuals resolve concerns or issues related to their individualized services.

- \* KAPS is a private, nonprofit corporation, independent of state government and providers of disability services. KAPS works with individuals with disabilities to protect and advance their human, legal and service rights. KAPS operates the protection and advocacy system that is authorized under the Developmental Disability Assistance and Bill of Rights Act of 2000. KAPS operates specific protection and advocacy programs for individuals with mental illness (PAIMI), individuals with developmental disabilities (PADD), beneficiaries of Social Security (PABSS), and persons with traumatic brain injury (PATBI). In addition, KAPS operates protection and advocacy programs related to individual rights (PAIR), assistive technology (PAAT), and voting access (PAVA). More information about KAPS is available at [www.ksadv.org](http://www.ksadv.org).
- \* Section 112 of the act requires each state to have a client assistance program. The governor determines whether a public or private agency should operate the program.
- \* Currently in Kansas, the CAP is administratively located in the Rehabilitation Services section of the Kansas Department of Social and Rehabilitation Services. CAP functions as an independent unit within Rehabilitation Services. The CAP director reports directly to the rehabilitation services director.
- \* Nationally, the following organizational structures are in place:
  - 11 states or territories have an internal client assistance program, meaning that it is located within the VR agency. This is the current structure in Kansas.
  - 29 states or territories have designated their protective and advocacy systems. In Kansas, this system or organization is KAPS.
  - 5 states or territories have assigned CAP to the office of the governor.
  - 6 states or territories have assigned CAP to state agencies that are not responsible for the provision of VR services.
  - 4 states have designated legal aid or nonprofit organizations.
  - 1 has designated a private law firm.
- \* CAP programs receive funding through the Rehabilitation Services Administration of the U.S. Department of Education. The Kansas CAP receives an annual grant of approximately \$121,000. 100 percent of these funds are federal; no state match is required.
- \* The governor must determine whether there is good cause to transfer the program. The reason for the proposed redesignation is that KAPS has raised concerns about the organizational location of CAP. KAPS' position is that CAP would be more independent in terms of service delivery if it were placed in an agency outside of the Rehabilitation Services organization.

Janet Schalansky  
Secretary of Social and  
Rehabilitation Services

Doc. No. 031165

State of Kansas

Department of Health and Environment

Notice Concerning Kansas Water Pollution Control Permits

In accordance with Kansas Administrative Regulations 28-16-57 through 63, 28-18-1 through 15, 28-18a-1 through 32, 28-16-150 through 154, 28-46-7, and the authority vested with the state by the administrator of the U.S. Environmental Protection Agency, draft permits have been prepared and/or permit applications have been received for discharges to the waters of the United States and the state of Kansas for the class of discharges described below.

The determinations for permit content are based on staff review, applying the appropriate standards, regulations and effluent limitations of the state of Kansas and the EPA, and when issued will result in a State Water Pollution Control Permit and National Pollutant Discharge Elimination System Authorization subject to certain conditions.

All Kansas Department of Health and Environment district office addresses and telephone numbers are listed below.

Public Notice No. KS-AG-04-294/298  
Pending Permits for Confined Feeding Facilities

Name and Address of Applicant	Legal Description	Receiving Water
Jerry Sleichter 733 2500 Ave. Abilene, KS 67410	SW/4 of Section 31, T12S, R02E, Dickinson County	Smoky Hill River Basin

Kansas Permit No. A-SHDK-5020

This is a new permit for an existing facility for a maximum of 790 head of swine weighing more than 55 pounds (316 animal units) and 320 head of swine weighing 55 pounds or less (32 animal units), for a total of 1,110 head (348 animal units) of swine.

Name and Address of Applicant	Legal Description	Receiving Water
Gaylen Gosselin 32 Hwy. 18 Palco, KS 67657	SE/4 of Section 06, T08S, R21W, Graham County	Solomon River Basin

Kansas Permit No. A-SOGH-B006

This is a new permit for a new facility that will have a maximum capacity of 990 head (990 animal units) of cattle weighing greater than 700 pounds. A wastewater retention structure will be constructed in accordance with approved plans to control runoff from the operation. These facilities will replace a nearby feeding facility that has been determined to pose a significant potential for water pollution.

Name and Address of Applicant	Legal Description	Receiving Water
Errebo Dairy Errebo Farms 789 E. Rye Drive Sylvan Grove, KS 67481	NE/4 of Section 07, T11S, R09W, Lincoln County	Saline River Basin

Kansas Permit No. A-SALC-M003

This is a renewal permit for an existing facility for 152 head (178.5 animal units) of dairy cattle. The original design plan was for 200 head of dairy cows. Maximum capacity was never reached.

Name and Address of Applicant	Legal Description	Receiving Water
Cattle Empire #2 Paul Brown Route 1, Box 109A Satanta, KS 67870	All of Section 25, T28S, R34W, Haskell County	Cimarron River Basin

Kansas Permit No. A-CIHS-C007 Federal Permit No. KS0088391

This is a modified permit for an expanding facility for 84,500 head (84,500 animal units) of beef cattle weighing greater than 700 pounds. The facility is proposing the addition of a composting pad for disposal of dead animals on site. Additional measures are being required in the schedule of compliance to address the extraneous drainage entering the site and potential runoff from the site. The number of animal units will remain unchanged.

Name and Address of Applicant	Legal Description	Receiving Water
Knight Feedlot, Inc. Mark Knight 1768 Ave. J Lyons, KS 67554	E/2 of Section 23, T19S, R08W, Rice County	Lower Arkansas River Basin

Kansas Permit No. A-ARRC-C002 Federal Permit No. KS0116157

This is a permit for modification to an existing 20,000 head (20,000 animal units) facility. The cattle weigh greater than 700 pounds each. The proposed modifications consist of reshaping and reconstructing the existing wastewater controls for the south half of the facility into two sediment basins and a single-cell earthen retention structure. Also included is the construction of a wastewater transfer pipeline to facilitate the use of two additional center pivot sprinkler irrigation systems for liquid waste disposal.

Public Notice No. KS-04-216/223

Name and Address of Applicant	Waterway	Type of Discharge
Kansas City Board of Public Utilities 300 N. 65th St. Kansas City, KS 66102	Missouri River	Process Wastewater and Cooling Water Discharge

Facility Name: Quindaro Power Station

Kansas Permit No. I-MO25-BO02 Federal Permit No. KS0080942

Legal: Section 28, Township 10S, Range 25E, Wyandotte County

Facility Description: The proposed action is to reissue an existing wastewater discharge permit for operation of an existing power plant. This facility generates electrical power with high pressure steam produced by fossil fuel. The preliminary discharge is Missouri River water used for one pass condenser cooling (138 mgd winter and 210 mgd summer). Additional discharges include runoff from the municipal water plant, retired power station and the west yard, wastewater from the coal pile, ash and slag handling operations and miscellaneous, blowdowns and drains in the power plant. The proposed permit contains limits for temperature, total suspended solids, oil and grease, and pH. Monitoring of total residual chlorine and flow also will be required. The permittee is to perform an acute whole effluent toxicity test annually beginning in the year 2005. Contained in the permit is a schedule of compliance requiring the permittee to develop and implement a stormwater pollution prevention plan (SWP3) within one year of the effective date of the permit. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Kansas State University 105 Anderson Hall Manhattan, KS 66506	Kansas River via Stormwater Sewer	Process Wastewater and Cooling Water

Kansas Permit No. I-KS38-CO02 Federal Permit No. KS0094811

Legal: SE¼, NW¼, SW¼, S17, T10S, R8E, Riley County

Facility Name: Kansas State University Power Plant

Facility Location: Throckmorton Hall

Facility Description: The proposed action is to reissue an existing permit for operation of an existing cooling system. This permit is for the discharge of potable city water to the storm sewer from the Throckmorton Hall growth chamber cooling loops during system maintenance or emergency shut downs if the chiller system loses pressure. During emergency shut downs, the Throckmorton Hall cooling loops also discharge approximately 300 gallons of cooling loop water containing water treatment chemicals with the first outflow of the back-up system to the storm sewer. No treatment is added to the city potable water used for cooling. The maximum daily discharge is 72,000 gallons when discharging. The proposed permit includes generic water-quality language to protect waters of the state. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Hunt Midwest Mining 8300 N.E. Underground Drive Kansas City, MO 64161	Eight Mile Creek via West Fork Eight Mile Creek	Pit Dewatering & Stormwater Runoff
Kansas Permit No. I-MC55-PO01	Federal Permit No. KS0116106	
Legal: NE¼, S15, and SW¼, NW¼, S14, T15S, R18E, Douglas County		
Facility Name: Globe Quarry		

Facility Description: The proposed action is to reissue an existing permit for the discharge of wastewater during quarry operation. This facility is a limestone quarry and crushing operation with washing. This quarry only operates as needed to supply the demand for crushed rock. Washwater is recycled, so discharge of treated washwater does not occur. Outfall 001 and Outfall 002 consist of pit dewatering and stormwater runoff. The proposed permit includes generic water-quality language to protect waters of the state. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Hunt Midwest Mining 8300 N.E. Underground Drive Kansas City, MO 64161	Chicken Creek via Unnamed Tributary	Pit Dewatering & Stormwater Runoff
Kansas Permit No. I-MC21-PO03	Federal Permit No. KS0094714	
Legal: NW¼, S30, T17S, R16E, Osage County		
Facility Name: Lyndon Quarry		

Facility Description: The proposed action is to reissue an existing permit for the discharge of wastewater during quarry operation. This facility is a limestone quarry and crushing operation with no washing. Outfall 001 consists of pit dewatering and stormwater runoff. The proposed permit includes generic water quality language to protect waters of the state. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Hunt Midwest Mining 8300 N.E. Underground Drive Kansas City, MO 64161	Marais des Cygnes River via Middle Creek	Pit Dewatering & Stormwater Runoff
Kansas Permit No. I-MC38-PO01	Federal Permit No. KS0080403	
Legal: NW¼, S24, T18S, R19E, Franklin County		
Facility Name: Princeton Quarry		

Facility Description: The proposed action is to reissue an existing permit for the discharge of wastewater during quarry operation. This facility is a limestone quarry and crushing operation with washing. Outfall 001 consists stormwater runoff and Outfall 002 consists of treated washwater from a settling pond. The proposed permit contains effluent limits for total suspended solids and pH (Outfall 002), and generic water-quality language to protect waters of the state (Outfall 001). The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Hunt Midwest Mining 8300 N.E. Underground Drive Kansas City, MO 64161	South Fork of Pottawatomie Creek via Unnamed Tributary	Pit Dewatering & Stormwater Runoff
Kansas Permit No. I-MC13-PO03	Federal Permit No. KS0087904	
Legal: NE¼, S19, T20S, R21E, Anderson County		
Facility Name: Sutton Quarry #11		

Facility Description: The proposed action is to reissue an existing permit for the discharge of wastewater during quarry operation. This facility is a limestone quarry and crushing operation on a demand basis using portable equipment, with no washing. Outfall 001 consists of pit dewatering and stormwater runoff. The proposed permit includes generic water-quality language to protect waters of the state. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
OR-AL Quarries, Inc. 1974 All American Road Hanover, KS 66945	Tuttle Creek Lake via Little Blue River via Fawn Creek	Pit Dewatering & Stormwater Runoff
Kansas Permit No. I-BB22-PO01	Federal Permit No. KS0095125	
Legal: S35, T4S, R6E, Marshall County		
Facility Name: Waterville Quarry		

Facility Description: The proposed action is to reissue an existing permit for the discharge of wastewater during quarry operation. This facility is a limestone quarry and crushing operation with no washing. Outfall 001 consists of stormwater runoff. The proposed permit includes generic water-quality language to protect waters of the state. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Winfield, City of Power Plant Operations Division P.O. Box 646 Winfield, KS 67156	Walnut River via Black Crook Creek	Process Wastewater and Cooling Water
Kansas Permit No. I-WA17-PO02	Federal Permit No. KS0087122	
Legal: SW¼, S26, T32S, R4E, Cowley County		
Facility Name: Winfield Municipal Power Plant, East		
Facility Location: 2801 E. 12th St., Winfield, KS 67156		

Facility Description: The proposed action is to reissue an existing permit for operation of an existing power plant. This facility is a municipal steam electric power plant (26.5 MW) that operates (3 to 4 months/year) as a summer peaking station. Bower blowdown, cooling tower blowdown, miscellaneous plant drains, demineralizer regenerate and stormwater runoff are directed to a single-cell earthen lagoon. A discharge may occur year-round due to maintenance of equipment. About 32,000 gallons per day is discharged during power production periods to Black Crook Creek. The proposed permit includes limits for total suspended solids, oil and grease, dissolved copper, total iron and pH. Monitoring of sulfate, total recoverable copper, temperature and flow also will be required. The permittee shall perform a chronic whole effluent toxicity (WET) test within 180 days from the effective date of the permit. The permittee also shall modify and maintain the existing stormwater pollution prevention plan to meet existing requirements and guidelines. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Persons wishing to comment on or object to the draft permits and/or permit applications must submit their  
*(continued)*

comments in writing to the Kansas Department of Health and Environment if they wish to have the comments or objections considered in the decision making process. Comments or objections should be submitted to the attention of April Romero for agricultural permits or applications, or to the permit clerk for all other permits, at the Kansas Department of Health and Environment, Division of Environment, Bureau of Water, 1000 S.W. Jackson, Suite 420, Topeka, 66612-1367.

All comments regarding the draft permit or application notice postmarked or received on or before November 27 will be considered in the formulation of final determinations regarding this public notice. Please refer to the appropriate Kansas permit number (KS-AG-04-294/298, KS-04-216/223) and name of applicant/application as listed when preparing comments.

If no objections are received during the public notice period regarding any proposed permit, the Secretary of Health and Environment will issue the final determination regarding issuance or denial of the proposed permit. If response to this notice indicates significant public interest, a public hearing may be held in conformance with K.A.R. 28-16-61 (28-46-21 for UIC). Media coordination for publication and/or announcement of the public notice or public hearing is handled by the Kansas Department of Health and Environment.

For agricultural permits and applications, a copy of the permit application, supporting documentation and a KDHE-developed fact sheet, if appropriate, is available for review at the appropriate district office:

Northwest District Office, 2301 E. 13th, Hays,  
67601-2651, (785) 625-5664

North Central District Office, 2501 Market Place,  
Salina, 67401-7699, (785) 827-9639

Northeast District Office, 800 W. 24th, Lawrence,  
66046-4417, (785) 842-4600

Southwest District Office, 302 W. McArtor Road,  
Dodge City, 67801-6098, (620) 225-0596

South Central District Office, 130 S. Market, 6th Floor,  
Wichita, 67202-3802, (316) 337-6020

Southeast District Office, 1500 W. 7th, Chanute,  
66720, (620) 431-2390

Application information and components of plans and specifications for all new facilities and for expansions of existing swine facilities may be reviewed on the Internet at <http://www.kdhe.state.ks.us/feedlots>.

For all other proposed permits, the draft permit(s), including proposed effluent limitations and special conditions, fact sheets as appropriate, comments received and other information, are on file and may be inspected at the offices of the Kansas Department of Health and Environment, Bureau of Water.

Division of Environment offices are open from 8 a.m. to 5 p.m. Monday through Friday, excluding holidays. These documents are available upon request at the copying cost assessed by KDHE. Additional copies of this public notice also may be obtained at the Division of Environment.

Roderick L. Bremby  
Secretary of Health  
and Environment

## State of Kansas

### Department of Agriculture

#### Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 9 a.m. Wednesday, December 29, in the training room of the Kansas Department of Agriculture, 109 S.W. 9th, Topeka, to consider the adoption of proposed regulations to facilitate the administration of the authority transferred to the Secretary of Agriculture by Executive Reorganization Order No. 32 and Senate Bill No. 296, which requires that the Secretary of Agriculture shall promulgate regulations regarding the transfer of all powers, duties and functions under K.S.A. 65-619 through 65-689, and the food service and lodging act, K.S.A. 36-501 *et seq.*, relating to the licensing, inspection and regulation of mobile retail ice cream vendors; food service establishments located in retail food stores; food vending machines; food vending machine companies; and food vending machine dealers from the Kansas Department of Health and Environment to the Kansas Department of Agriculture.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 109 S.W. 9th, 4th Floor, Topeka, 66612. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic and environmental impact statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Leslie Garner at (785) 296-4623 or fax (785) 368-6668. Handicapped parking is located at the southwest corner of 9th and Kansas Ave., and the north entrance to the building is accessible to individuals with disabilities.

Copies of the regulations and their economic and environment impact statements may be obtained by contacting Leslie Garner. A summary of the regulations and the economic impact statement follows:

**K.A.R. 4-28-1 and 4-28-3 through 4-28-7** import the fee structure and definitions currently used by KDHE in the regulation of mobile retail ice cream vendors, food service establishments located in retail food stores, food vending machines and food vending machine companies. These regulations do not increase the fees.

**K.A.R. 4-28-2** adopts 21 CFR 100-169, good manufacturing practices, by reference and provides standards of good manufacturing processes applicable to food processing plants.

**K.A.R. 28-36-1, 28-36-32, 28-36-60 and 28-36-120** revoke the regulations under KDHE numbering to prevent con-

fusion resulting from having identical regulations in two separate places.

The fees set forth in these regulations will provide revenue to defray the costs incurred by the department in the licensing, inspection and regulation of these new programs. It is unclear at this time what the financial impact will be on the Kansas Department of Agriculture. Once the first license and inspection cycle passes, the department will be better able to calculate the costs involved with the Food Safety Program.

Adrian J. Polansky  
Secretary of Agriculture

Doc. No. 031257

State of Kansas  
Department of Revenue  
Permanent Administrative  
Regulations

Article 26.—AGRICULTURAL ETHYL ALCOHOL  
PRODUCER INCENTIVE

**92-26-4. Filing of quarterly reports; deadline.** (a)

(1) Each ethyl alcohol producer eligible to receive incentive funds shall file a Kansas qualified agricultural ethyl alcohol producer's report with the director of taxation within 30 days from the last day of each quarter. Each producer not filing a report within 30 days from the last day of the quarter shall be barred from seeking payment from the agricultural ethyl alcohol producer's fund for that quarter.

(2) Production incentives shall be paid on a quarterly basis from the new production account or the current production account in the agricultural ethyl alcohol producer incentive fund, whichever account is applicable. When the production incentive amount for the number of agricultural ethyl alcohol gallons sold by any producer to a qualified alcohol blender exceeds the balance in the applicable account at the time payment is to be made for that quarter's production, the incentive per gallon shall be reduced proportionately so that the current balance of the applicable account is not exceeded. Any amount remaining in the account following a quarterly payment of producer incentives shall be carried forward in that account to the next quarter for payment of future production incentives, except when the current production account balance is required by K.S.A. 79-34,161, and amendments thereto, to be transferred to the new production account.

(b) Each report shall be submitted on forms furnished by the director and shall contain the following information:

- (1) The beginning inventory of denatured alcohol;
- (2) the amount of alcohol produced and denaturant added;
- (3) the amount of agricultural ethyl alcohol sold to qualified blenders;
- (4) the amount of denatured alcohol sold to other than qualified blenders;

(5) the amount of denatured alcohol sold or used for miscellaneous purposes, including denatured alcohol that has been lost, destroyed, or stolen; and

(6) any other relevant information that the director may require.

Each ethyl alcohol producer filing a quarterly report shall furnish all information required by the director before receiving the funds. (Authorized by K.S.A. 2003 Supp. 79-34,163; implementing K.S.A. 2003 Supp. 79-34,161 and 79-34,163; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988; amended Nov. 12, 2004.)

Joan Wagnon  
Secretary of Revenue

Doc. No. 031272

State of Kansas  
Board of Mortuary Arts  
Permanent Administrative  
Regulations

Article 1.—EMBALMING; CONTINUING  
EDUCATION OF EMBALMERS AND  
FUNERAL DIRECTORS

**63-1-4. Examination.** Only applicants who have met the requirements of K.S.A. 65-1701a, and amendments thereto, and K.A.R. 63-1-3 may take the embalmer's examination approved by the board, which is the examination administered by the international conference of funeral service examining boards. In order to pass the examination, each applicant shall receive a score of at least 75 in the funeral service arts section and in the funeral service science section. Each applicant shall be required to pass both sections of the examination to be eligible for apprenticeship and licensure. (Authorized by K.S.A. 65-1730; implementing K.S.A. 65-1701a, as amended by L. 2004, ch. 57, sec. 3; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1987; amended June 26, 1989; amended March 19, 1990; amended July 1, 1993; amended Jan. 12, 2001; amended Nov. 12, 2004.)

Article 3.—PREPARATION AND  
TRANSPORTATION OF BODIES, BURIAL IN  
MAUSOLEUMS AND FUNERAL  
ESTABLISHMENTS

**63-3-21. General requirements relating to prefinanced funeral agreements.** (a) Each funeral director shall transfer all funds obtained by any prefinanced funeral agreement funded by one or more insurance policies, upon request by the purchaser, to the funeral director that provides the services or merchandise, or both, as specified in the prefinanced funeral agreement.

(b) If any balance is left in the prefinanced funeral agreement funded by an insurance policy after the disposition of the funds according to the agreement, the funeral director shall pay the remaining balance to the purchaser, the estate of the deceased, or the family of the deceased. However, if the purchaser or the deceased received any medical assistance from the department of social and rehabilitation services and if the department of

(continued)

social and rehabilitation services has provided the funeral director with written notice that the purchaser or the deceased had received medical assistance, then the funeral director shall pay the remaining balance, to the extent of the cost of the medical assistance expended on the purchaser or deceased recipient, to the secretary of social and rehabilitation services or the secretary's designee. (Authorized by K.S.A. 74-1707; implementing K.S.A. 2003 Supp. 16-311, as amended by L. 2004, ch. 36, sec. 2; effective March 16, 1992; amended Nov. 12, 2004.)

#### Article 5.—ADMINISTRATIVE HEARINGS AND DISCIPLINARY ACTION

**63-5-1. Definition of unprofessional or dishonorable conduct.** "Unprofessional or dishonorable conduct" by a licensee shall include any of the following: (a) Misrepresentation or fraud in the conduct of the licensee's business;

(b) refusing or neglecting to promptly obtain, complete, and file any death certificate, out-of-state transportation permit, or coroner's permit to cremate;

(c) refusing or neglecting to file monthly reports of bodies prepared for burial in accordance with K.A.R. 28-17-16;

(d) refusing or neglecting to file quarterly progress reports as specified in K.A.R. 63-1-3 and K.A.R. 63-2-12;

(e) committing abuse or showing disrespect in the handling of a dead human body;

(f) interference with, failure in, breach of, or obstruction of the performance of the contractual duties or services between a licensee and either the next of kin or a legal representative of any deceased person;

(g) requiring the purchase of a casket as a condition to providing funeral services if the dead body is to be cremated;

(h) disclosure of the confidences or secrets of any party served;

(i) using alcoholic liquor or using illegally a controlled substance while performing the duties or services of a licensee;

(j) placing any item on a funeral bill that is not a reasonable funeral expense; or

(k) failure to pay, in a timely manner, the prefinanced funeral agreement audit fees assessed by the secretary of state. (Authorized by and implementing K.S.A. 65-1751, as amended by L. 2004, ch. 57, sec. 4; effective, T-88-43, Oct. 27, 1987; effective May 1, 1988; amended Nov. 13, 1995; amended Jan. 12, 2001; amended Nov. 12, 2004.)

#### Article 6.—CONTINUING EDUCATION

**63-6-1. Continuing education requirements.** (a) Except as provided in subsection (d), each licensed embalmer or funeral director in this state shall submit with the license renewal application satisfactory proof of completion of a minimum of six clock-hours per year of continuing education credit approved by the board. Each licensee filing proof of completion of continuing education credit with the board on forms approved by the board shall file separately the verification of attendance at each continuing education activity. Compliance with this con-

tinuing education requirement shall be a prerequisite for each embalmer or funeral director license renewal.

(b) Continuing education credit may be obtained by attending and participating in continuing education courses or workshops approved by the executive secretary, continuing education committee, or the board if the program meets the requirements stated in K.A.R. 63-6-2.

(c) Any licensee desiring to obtain credit for completing more than 12 hours of approved continuing education credit during any two licensure years shall report this carry-over credit to the board on or before the expiration of the licensee's current license. The carry-over credit shall be limited to no more than six clock-hours.

(d) The continuing education requirements for each individual newly licensed shall be waived for the first-time renewal of that individual's license.

(e) No more than six hours shall be granted for any one approved continuing education topic.

(f) One hour of continuing education shall consist of at least 50 minutes of actual approved program time. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective May 1, 1988; amended Jan. 6, 1992; amended April 3, 1995; amended Jan. 12, 2001; amended Nov. 12, 2004.)

Mack Smith  
Executive Secretary

Doc. No. 031262

#### State of Kansas

### Department of Agriculture Division of Water Resources

#### Permanent Administrative Regulations

#### Article 22.—EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2

**5-22-1. Definitions.** As used in article 22 of these regulations, by the Equus Beds groundwater management district no. 2 in the implementation of the groundwater management district act and by the division of water resources in the administration of the Kansas water appropriation act, the following terms shall have the meanings ascribed to them in this regulation, unless the context clearly requires otherwise.

(a) "Above-baseflow stage" means streamflow that is in response to a significant runoff event during which period the water-level elevation of the stream is greater than the elevation of the adjacent water table.

(b) "Aquifer" means any geologic formation capable of yielding water in sufficient quantities that it can be diverted for beneficial use.

(c) "Aquifer storage" means the act of storing water in the unsaturated portion of an aquifer by artificial recharge for subsequent diversion and beneficial use.

(d) "Aquifer storage and recovery system" means a physical infrastructure that meets the following conditions:

(1) Is constructed and operated for artificial recharge, storage, and recovery of source water; and



(2) consists of apparatus for diversion, treatment, recharge, storage, extraction, and distribution.

(e) "Area of consideration" means the two-mile-radius circle whose center is the location of the proposed point of diversion. The area of consideration equals 8,042 acres minus the area of the circle that meets the following conditions:

(1) Is outside the district boundary;

(2) is inside an intensive groundwater use control area with a declining water table; and

(3) is in an area where the bedrock is not overlain by an aquifer.

(f) "Artificial recharge" means the use of source water to artificially replenish the water supply in an aquifer.

(g) "Bank storage" means water absorbed by and temporarily stored in the banks and bed of a stream during above-baseflow stage.

(h) "Bank storage well" means a well used to divert or withdraw water from bank storage.

(i) "Baseflow" means groundwater that seeps, flows, or is otherwise naturally discharged from an aquifer into a stream.

(j) "Baseflow allocation" means the annual quantity of water assigned to a baseflow node expressed in acre-feet per calendar year. The natural discharge to the stream shall be assumed to be equivalent to the rate of flow in the stream that is equaled or exceeded 90 percent of the time.

(k) "Baseflow node" means an artificial point located in the channel of a watercourse for the purpose of allocating a proportional amount of the baseflow.

(l) "Basin storage area" means the portion of the aquifer's unsaturated zone used for aquifer storage that has defined horizontal boundaries and is delimited by the highest and lowest index water levels.

(m) "Basin storage loss" means that portion of artificial recharge naturally flowing or discharging from the basin storage area.

(n) "Battery of wells" means either of the following:

(1) A group of two or more wells that meets the following conditions:

(A) Withdraws water from the same local source of supply;

(B) is connected to a common pump by a manifold or piping; and

(C) supplies water to a common distribution system; or

(2) a group of not more than four wells that meets the following conditions:

(A) Withdraws water from the same local source of supply;

(B) is located within a 300-foot-radius circle of the geographic center of the battery of wells;

(C) supplies water to a common distribution system;

(D) does not exceed a combined capacity of 800 gallons per minute; and

(E) has an individual pump installed in each well with a maximum capacity of 400 gallons per minute.

A battery of wells shall be considered to be one point of diversion.

(o) "Board" means the board of directors constituting the governing body of the Equus Beds groundwater management district no. 2.

(p) "Completed substantially as shown on aerial photograph, topographic map, or plat" means within 300 feet of the location as shown on the aerial photograph, topographic map, or plat accompanying the application.

(q) "Confined aquifer" means either of the following:

(1) An aquifer overlain and underlain by impermeable layers; or

(2) an aquifer in which the groundwater is under pressure greater than atmospheric pressure and will rise in a well above the elevation at which groundwater is first encountered.

(r) "Conjunctive use" means the management of the aquifer to achieve safe yield and the operation of the aquifer in coordination with a surface water system to enhance the use of the total water supply availability, in accordance with the provisions of the Kansas water appropriation act.

(s) "Consumptive use" means gross diversion minus the following:

(1) Waste of water; and

(2) return flows to the source of water supply by at least one of the following:

(A) Through the surface water runoff that is not waste; and

(B) by deep percolation.

(t) "District" means the Equus Beds groundwater management district no. 2.

(u) "Free-water surface" means water that is exposed to the atmosphere, including lakes, ponds, and pits that intercept the water table.

(v) "Geographic center" means either of the following:

(1) The arithmetic mean of the northing and westing coordinates or measurements for each well in a battery of wells; or

(2) the apparent center of a groundwater pit.

(w) "Groundwater" means water below the surface of the earth.

(x) "Groundwater pit" means an excavation in the earth that meets all of the following criteria:

(1) Exposes the current or historic groundwater table;

(2) has caused, or will likely cause, annual evaporation of groundwater; and

(3) has a perimeter equal to or greater than the depth of the excavation.

(y) "Index water level" means water-level elevations established spatially throughout a basin storage area to be used to represent the maximum volume of a basin storage area and the volume of stored water available for recovery, based upon accounting methodology and the conditions of the permit.

(z) "Non-consumptive use" means the beneficial use of water in which essentially all of the water diverted from the source of supply is returned to the source of supply.

(aa) "Person" means a natural person, a partnership, an organization, a corporation, a municipality, and any agency of the state or federal government.

(bb) "Point of diversion" means the point at which water is diverted or withdrawn from a source of water supply.

(cc) "Primary well" means a well equipped with a flowmeter for which a standby well is available.

(continued)

(dd) "Recharge" means the natural infiltration of surface water or rainfall into an aquifer from its catchment area.

(ee) "Recharge credit" means the quantity of water that is stored in a basin storage area and that is available for subsequent appropriation for beneficial use by the operator of the aquifer storage and recovery system.

(ff) "Safe yield" means the total quantity of groundwater meeting the following conditions:

(1) Can be artificially withdrawn from an aquifer; and

(2) naturally discharges to a stream without exceeding the aquifer recharge value for the area of consideration and without impairing the water rights diverting from the aquifer.

(gg) "Standby well" means a well that meets the following conditions:

(1) Is used to provide water for any of the following:

(A) Fire protection;

(B) emergency purposes; or

(C) any period during which the primary well has mechanical failure, maintenance, or power failure;

(2) is maintained in good operating condition;

(3) withdraws water from the same source of supply as the primary well;

(4) is located within 300 feet of the primary well;

(5) is limited to the same rate and quantity authorized by the primary well's appropriation or vested right;

(6) is equipped with a flowmeter; and

(7) is operated only when water is temporarily unavailable from the primary well or wells, except when water is needed for fire protection or a similar type of emergency.

(hh) "Stream" means any watercourse that has a well-defined bed and well-defined banks, and that flows continuously during the calendar year, except during periods of drought.

(ii) "Surface water" means water in creeks, rivers, or other watercourses, and in reservoirs, lakes, and ponds. This term shall not include water in groundwater pits.

(jj) "Thermal exchange" means the use of water for climate control in a nondomestic building and in a manner that is essentially nonconsumptive to the source of supply.

(kk) "Unconfined aquifer" means an aquifer with a water table at atmospheric pressure.

(ll) "Waste of water" means any act or omission that causes any of the following:

(1) The diversion or withdrawal of water from a source of supply that is not used or reapplied to a beneficial use on or in connection with the place of use authorized by a vested right, an appropriation right, or an approval of application for a permit to appropriate water for beneficial use;

(2) the unreasonable deterioration of the quality of water in any source of supply, thereby causing impairment of a person's right to the use of water;

(3) the escaping and draining of water intended for irrigation use from the authorized place of use; or

(4) the application of water to an authorized beneficial use in excess of the needs for this use.

(mm) "Water balance" means the method of determining the amount of water in storage in a basin storage area

by accounting for inflow to, outflow from, and changes in storage in that basin storage area.

(nn) "Water table" means the top or surface of an unconfined or confined aquifer at which the pore water pressure is atmospheric.

(oo) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, or otherwise constructed if the intended use of the excavation is for the acquisition, diversion, or artificial recharge of groundwater. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective May 1, 1979; amended Oct. 15, 1990; amended March 7, 1994; amended Nov. 12, 2004.)

**5-22-4b. Water flowmeter maintenance.** (a) If a water flowmeter required by the district is ever out of compliance, the owner shall promptly repair or replace the water flowmeter, or correct any problems with the installation.

(b) A water flowmeter shall be considered to be out of compliance if any of the following conditions is met:

(1) The water flowmeter registers less than 94 percent or more than 106 percent of the actual volume of water passing the water flowmeter. If necessary, this determination may be made by a field test conducted or approved by the chief engineer.

(2) The seal placed on the totalizer by the manufacturer or the manufacturer's authorized representative has been broken, or the totalizer value has been reset or altered without the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer.

(3) A seal placed on the water flowmeter or totalizer by the chief engineer has been broken.

(4) The water flowmeter register is not clearly visible or is unreadable for any reason.

(5) There is not full pipe flow through the water flowmeter.

(6) The flow-straightening vanes have not been properly designed, manufactured, and installed.

(7) The water flowmeter is not calibrated for the nominal size of the pipe in which the flowmeter is installed.

(8) The water flowmeter is not installed in accordance with the manufacturer's installation specifications. However, five diameters of straight pipe above the water flowmeter sensor and two diameters below the water flowmeter sensor shall be deemed the minimum required spacing, regardless of the manufacturer's installation specifications.

(9) A water flowmeter is installed at a location where the flowmeter does not measure all of the water diverted from the source of supply. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Nov. 12, 2004.)

**5-22-4c. Water flowmeter testing by a nondistrict person.** If a water right owner desires to have a water flowmeter flow rate test performed by a person other than district staff to comply with any requirement of the district, that person may be approved by the board to perform a water flowmeter flow rate test if the person demonstrates to the district both of the following: (a) The

person has the training, skills, and experience necessary to properly conduct the test.

(b) The person has the appropriate water flowmeter to perform the test, and the water flowmeter has been tested for accuracy with water flowmeter test equipment that has been found to be accurate using standards traceable to the national institute of standards and technology (NIST). The equipment shall have been tested and found to be accurate within 12 months of performing the water flowmeter test. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Nov. 12, 2004.)

**5-22-4d. Water flowmeter installation procedures.**

(a) If installation of a water flowmeter is required by the board, the owner of the approval of application or the water right shall be notified of the requirement in writing.

(b) A water flowmeter shall be installed on a new or replacement point of diversion within 30 days after the point of diversion is operational, or before the diversion of water, whichever occurs first.

(c) A water flowmeter shall be installed on an existing point of diversion within 30 days of the issuance of the water flowmeter order by the district, or before the diversion of water, whichever occurs first.

(d) An extension of time to install the water flowmeter may be granted by the board if a request for an extension of time is filed with the district before the expiration of the time to install the water flowmeter and one of the following conditions is met:

(1) The water right owner has a contract with a vendor to install a water flowmeter, but the vendor cannot complete the installation within the time allowed.

(2) Weather, site conditions, or other conditions beyond the control of the owner prevent the water flowmeter from being installed within the time allowed.

(3) The owner demonstrates any other reason constituting good cause why the water flowmeter cannot be installed within the time allowed and that granting of an extension of time will not be adverse to the public interest.

(e) The water right owner shall notify the district within 30 days after the required water flowmeter is installed. The notification shall be submitted on a form prescribed by the district.

(f) An inspection of the water flowmeter installation may be made by the district to determine if the water flowmeter has been properly installed in accordance with the requirements of K.A.R. 5-22-4, K.A.R. 5-22-4a, and K.A.R. 5-22-4b.

(g) If an inspection is made by the district, the owner shall be notified by the district of the results of the inspection in writing. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Nov. 12, 2004.)

**5-22-7. Safe yield.** (a) Except as set forth in subsection (b), the approval of each application for a change in the point of diversion, term permit, and permit to appropriate water for beneficial use shall be subject to the following requirements:

(1) The sum of prior appropriations, including the proposed application, vested rights, appropriation rights,

term permits and earlier priority applications and baseflow nodes, shall not exceed the allowable safe-yield amount for the area of consideration. The non-consumptive use of groundwater previously authorized by the chief engineer shall be excluded from the sum of prior appropriations.

(2) The quantity authorized on all prior permits, certificates, and vested rights, the quantity requested on prior applications, and the quantities allocated to baseflow nodes shall be used to calculate the sum of prior appropriations and baseflow allocations.

(3) All conditions and limitation clauses listed on all prior appropriations and applications in the area of consideration shall be considered in effect.

(4) The baseflow allocation for baseflow nodes shall be calculated using the formula  $Q_a = T/N$  where:

(A)  $Q_a$  is the baseflow allocation per baseflow node in acre-feet per year;

(B)  $T$  is the total baseflow allocation for a reach of a stream in acre-feet per calendar year.  $T$  is the average of the 12 calendar months' daily flow values in cubic feet per second that were equaled or exceeded 90 percent of the time during a specifically designated hydrologically significant period of record, times a factor of 724; and

(C)  $N$  is the number of baseflow nodes established on a stream or reach of a stream. Nodes are located at the upstream end of the watercourse reach and thereafter at the intersection of the channel of a watercourse and an arc of a 1,320 foot-radius circle whose center is located on the previously established baseflow node.

(5) The allowable safe-yield amount shall be calculated using the formula  $S = A \times K$  where:

(A)  $S$  is the allowable safe-yield amount in acre-feet per year;

(B)  $A$  is the area of consideration; and

(C)  $K$  is an aquifer recharge value in feet. Everywhere in the district, except in McPherson county,  $K$  is equal to 0.5 feet per year. In McPherson county,  $K$  is a constant equaling 0.25 feet per year.  $K$  is calculated by multiplying the recharge percentage, which is 10 percent in McPherson county and 20 percent for the rest of the district, times the average annual precipitation of 2.5 feet per year.

(6) When evaluating an application for a change in the point of diversion, each application with a priority earlier than the priority established by the filing of the application of change shall be included in the safe-yield analysis.

(7) If the perimeter of the area under consideration intersects a group of wells authorized under prior applications, permits, certificates, or vested rights, a reasonable quantity of water shall be assigned to each well based upon the best available information.

(b) The following shall not be subject to this regulation:

(1) An application to appropriate groundwater in an area not closed by regulation or intensive groundwater use control area order by the chief engineer to new non-domestic, non-temporary permits and term permits for five or fewer years, if all of the following conditions are met:

(A) The annual quantity of water requested in the application does not exceed 15 acre-feet;

(continued)

(B) the sum of the annual quantity of water requested in the application and the total annual quantities of water authorized by prior approvals of applications allowed because of an exemption pursuant to this regulation does not exceed 45 acre-feet in a two-mile-radius circle surrounding the proposed point of diversion;

(C) the approval of the application does not authorize an additional quantity of water out of an existing authorized point of diversion with a non-domestic approval of application or water right that would then authorize a total combined annual quantity of water from that point of diversion in excess of 15 acre-feet;

(D) the application complies with the well spacing criteria in K.A.R. 5-22-2; and

(E) the application complies with all other applicable regulations in effect when the application is filed;

(2) an application for a non-consumptive use of groundwater;

(3) an application for change in point of diversion, if the diversion works were completed:

(A) 300 feet or less from the originally authorized point of diversion;

(B) within 150 feet of the location approved by the chief engineer; and

(C) a notice of completion was timely filed with the chief engineer under the original approval of application;

(4) an application requesting only an additional rate of diversion on an existing well, if the approval of the application:

(A) Is limited to the maximum annual quantity of water authorized by a prior certified, vested, or appropriation right; and

(B) contains both of the following conditions:

(i) The approved application for additional rate shall be dismissed if the prior certified, vested, or appropriation right is dismissed and terminated; and

(ii) the approved or certified maximum annual quantity of water shall be reduced in an amount equal to any subsequent reduction in the maximum annual quantity of water authorized by the prior certified, vested, or appropriation right;

(5) an application for a standby well;

(6) an application for a bank storage well only to the extent that the bank storage well is withdrawing bank storage water; and

(7) an application for an aquifer storage and recovery well. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective May 1, 1983; amended Oct. 15, 1990; amended March 7, 1994; amended Nov. 12, 2004.)

**5-22-8. Change applications.** (a) Except as set forth in subsection (d), the approval of each application for a change in point of diversion for a vested right, appropriation right, permit, term permit, or an application to appropriate groundwater shall be subject to the following requirements:

(1) The maximum distance a replacement well can be located from the originally authorized location shall be 2,640 feet.

(2) A replacement well located more than 300 feet from the currently authorized location shall comply with the provisions of K.A.R. 5-22-2.

(3) An application for a change in point of diversion shall be accompanied by either a completed abandoned-well or inactive-well agreement if the original well will no longer be authorized by any other vested right, appropriation right, approval of application, or term permit and the well has not been properly physically adapted for, and actually used for, domestic use. The completed agreement shall be submitted by the applicant with the application for a change in point of diversion on a form prescribed by the district.

(4) Each point of diversion described in the application shall be equipped with a water flowmeter that meets or exceeds the criteria of K.A.R. 5-22-4, K.A.R. 5-22-4a, K.A.R. 5-22-4b, and K.A.R. 5-22-4d.

(b) The approval of each application for a change in place of use or the use made of water for a vested right, appropriation right, approval of application, and term permit shall have a condition that a water flowmeter that meets or exceeds the requirements of K.A.R. 5-22-4, K.A.R. 5-22-4a, K.A.R. 5-22-4b, and K.A.R. 5-22-4d be installed on each point of diversion described in the application.

(c) Except as specified in subsection (d), each approval of application for a change in place of use for irrigation purposes shall be subject to the following requirements:

(1) If the time to perfect the water right has expired, the water right shall be certified before the change application may be approved.

(2) The approval of the application for change in place of use shall not authorize an increase in the size of the authorized place of use in excess of the limits specified in K.A.R. 5-5-11(b).

(d) An application for change in place of use for irrigation purposes filed only for the purpose of creating an identical place of use with another water right or rights shall not be subject to subsection (c) if all of the following conditions are met:

(1) There is not a net increase in the number of authorized acres.

(2) Each water right involved in the proposed identical overlap in place of use is certified by the chief engineer before processing the change application if approval of the change application would authorize an increase in base acreage as defined in K.A.R. 5-5-11(a).

(3) The total quantity authorized by all existing water rights and all permits involved is reasonable to irrigate the land authorized after the change in place of use is approved. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Oct. 15, 1990; amended March 7, 1994; amended Nov. 12, 2004.)

**5-22-9. Exceptions.** Each recommendation timely submitted by the district concerning an exemption from, or waiver to, a regulation adopted by the chief engineer shall be considered by the chief engineer. An exception to these regulations may be granted by the chief engineer if the applicant demonstrates that the exception will neither impair a use under an existing right nor prejudicially affect the public interest. (Authorized by K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Oct. 15, 1990; amended Nov. 12, 2004.)

**5-22-17. Bank storage wells.** (a) Each applicant for one or more bank storage wells shall demonstrate all of the following:

(1) The hydraulic connection from the streambed and banks to each bank storage well screen is sufficient to transmit bank storage water from the bed and banks of the stream to each bank storage well screen at a rate sufficient to sustain the authorized rate of diversion of the well or wells.

(2) Within seven days after the pumping of all bank storage wells has ceased, the water level in each bank storage well, or a monitoring well located within 100 feet of that bank storage well, will recover to an elevation equal to or greater than the water level elevation immediately before the bank storage well began to pump, adjusted for any regional groundwater level changes not caused by the pumping of the bank storage well.

(3) The naturally occurring and artificially induced rate of infiltration from the bed and banks of the stream when bank storage is occurring will be sufficient to meet the following conditions:

(A) Equal or exceed the authorized rate of diversion of all of the bank storage wells;

(B) prevent impairment caused by all bank storage wells; and

(C) prevent groundwater mining caused by all bank storage wells.

(b) If an application for a bank storage well is approved by the chief engineer, the applicant shall install one or more water-level measurement tubes at locations that will allow adequate monitoring of groundwater quality and groundwater levels within the area where the annual cone of depression of the bank storage well or wells could be greater than 0.5 feet. Each water-level measurement tube shall be constructed and maintained in accordance with K.A.R. 5-6-13. (Authorized by K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Nov. 12, 2004.)

Adrian J. Polansky  
Secretary of Agriculture

Doc. No. 031259

**INDEX TO ADMINISTRATIVE REGULATIONS**

This index lists in numerical order the new, amended and revoked administrative regulations and the volume and page number of the *Kansas Register* issue in which more information can be found. Temporary regulations are designated with a (T) in the Action column. This cumulative index supplements the 2003 Volumes and 2004 Supplement of the *Kansas Administrative Regulations*.

**AGENCY 1: DEPARTMENT OF ADMINISTRATION**

Reg. No.	Action	Register
1-9-4	Amended	V. 23, p. 718
1-45-18	Amended (T)	V. 23, p. 424
1-45-18	Amended	V. 23, p. 1044
1-45-19	Amended (T)	V. 23, p. 424
1-45-19	Amended	V. 23, p. 1044
1-45-20	Amended (T)	V. 23, p. 424
1-45-20	Amended	V. 23, p. 1045
1-45-23	Amended (T)	V. 23, p. 425
1-45-23	Amended	V. 23, p. 1045
1-45-24	Amended (T)	V. 23, p. 425
1-45-24	Amended	V. 23, p. 1045

**AGENCY 4: DEPARTMENT OF AGRICULTURE**

Reg. No.	Action	Register
4-8-14a	Amended (T)	V. 23, p. 900
4-8-14a	Amended	V. 23, p. 1102
4-8-27 through 4-8-37	Amended	V. 23, p. 1102, 1103
4-8-39	Amended	V. 23, p. 1103
4-8-40	Amended (T)	V. 23, p. 901
4-8-40	Amended	V. 23, p. 1103
4-8-42	Amended	V. 23, p. 1103
4-11-2	Amended	V. 23, p. 895
4-11-3	Amended	V. 23, p. 895
4-11-6	Revoked	V. 23, p. 896
4-11-7	Revoked	V. 23, p. 896
4-11-8	Amended	V. 23, p. 896
4-11-9	Amended	V. 23, p. 896
4-11-14	Amended	V. 23, p. 896
4-25-16	Amended (T)	V. 23, p. 2176
4-25-16	Amended	V. 23, p. 95

**AGENCY 5: DEPARTMENT OF AGRICULTURE—DIVISION OF WATER RESOURCES**

Reg. No.	Action	Register
5-3-4e	Amended (T)	V. 23, p. 1284
5-3-5o	New	V. 23, p. 1130
5-3-29	New (T)	V. 23, p. 1284
5-17-1 through 5-17-18	New	V. 23, p. 1131-1137
5-23-1	Amended	V. 23, p. 181
5-23-3	Amended	V. 23, p. 181
5-23-3a	Amended	V. 23, p. 182
5-24-1	Amended	V. 23, p. 65
5-24-2	Amended	V. 23, p. 65
5-24-3	Amended	V. 23, p. 66
5-24-4	Amended	V. 23, p. 68
5-24-6	Amended	V. 23, p. 68
5-24-8	Amended	V. 23, p. 68
5-24-11	New	V. 23, p. 69

**AGENCY 7: SECRETARY OF STATE**

Reg. No.	Action	Register
7-18-1	Revoked	V. 23, p. 1366
7-18-2	Revoked	V. 23, p. 1366
7-18-3	Revoked	V. 23, p. 1366
7-27-1	Amended	V. 23, p. 1366
7-29-2	Amended	V. 23, p. 1366

**AGENCY 22: STATE FIRE MARSHAL**

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22-1-2	Amended	V. 23, p. 978
22-1-7	New	V. 23, p. 978

**AGENCY 28: DEPARTMENT OF HEALTH AND ENVIRONMENT**

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28-4-576	Amended (T)	V. 23, p. 389
28-4-576	Amended	V. 23, p. 1255
28-4-577	Amended (T)	V. 23, p. 390
28-4-577	Amended	V. 23, p. 1257
28-4-578	Amended (T)	V. 23, p. 391
28-4-578	Amended	V. 23, p. 1257
28-4-583	Amended (T)	V. 23, p. 392
28-4-583	Amended	V. 23, p. 1258
28-4-585	Amended (T)	V. 23, p. 392
28-4-585	Amended	V. 23, p. 1259
28-4-587	Amended (T)	V. 23, p. 394
28-4-587	Amended	V. 23, p. 1260

28-4-590	Amended (T)	V. 23, p. 396
28-4-590	Amended	V. 23, p. 1262
28-4-591	Amended (T)	V. 23, p. 397
28-4-591	Amended	V. 23, p. 1264
28-4-600 through 28-4-613	New	V. 23, p. 957-962
28-4-700 through 28-4-705	New (T)	V. 23, p. 398-400
28-4-700 through 28-4-705	New	V. 23, p. 1265, 1266
28-15-11	Revoked	V. 23, p. 1367
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28-15-15a	Revoked	V. 23, p. 1367
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28-15-22	Revoked	V. 23, p. 1368
28-15-35	Amended	V. 23, p. 305
28-15-36	Amended	V. 23, p. 309
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28-15a-6	New	V. 23, p. 1369
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28-15a-70	New	V. 23, p. 1370
28-15a-72 through 28-15a-76	New	V. 23, p. 1370, 1371
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28-15a-100	New	V. 23, p. 1371
28-15a-101	New	V. 23, p. 1371
28-15a-110	New	V. 23, p. 1371
28-15a-111	New	V. 23, p. 1371

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found in the Vol. 22, No. 52, December 25, 2003 Kansas Register. The following regulations were filed after January 1, 2004:

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111-2-151 through		
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111-2-155	Amended	V. 23, p. 262
111-2-156	Amended	V. 23, p. 262
111-2-157	New	V. 23, p. 262
111-2-158	New	V. 23, p. 459
111-2-159	New	V. 23, p. 901
111-3-13	Amended	V. 23, p. 1433
111-3-22	Amended	V. 23, p. 97
111-4-881	Amended	V. 23, p. 97
111-4-1448	Amended	V. 23, p. 98
111-4-2052	Amended	V. 23, p. 262
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111-4-2173	New	V. 23, p. 1025-1033
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111-4-2180	New	V. 23, p. 1169-1171
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111-5-115	New	V. 23, p. 245, 246
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111-7-192	New	V. 23, p. 319, 320
111-7-190	Amended	V. 23, p. 473
111-7-192	Amended	V. 23, p. 473
111-9-122	New	V. 23, p. 910
111-9-123	New	V. 23, p. 910

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111-11-11	New	V. 23, p. 911-914
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111-12-1	New	V. 23, p. 914

**AGENCY 112: RACING AND GAMING COMMISSION**

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112-10-3	Amended	V. 23, p. 93
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112-10-6	Amended	V. 23, p. 1073
112-10-6a	New	V. 23, p. 1074
112-10-13	New	V. 23, p. 495
112-13-2	Amended	V. 23, p. 94

**AGENCY 115: DEPARTMENT OF WILDLIFE AND PARKS**

Reg. No.	Action	Register
115-3-2	Amended	V. 23, p. 1043
115-18-10	Amended	V. 23, p. 1043

**AGENCY 117: REAL ESTATE APPRAISAL BOARD**

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117-2-2	Amended	V. 23, p. 1407
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117-4-2	Amended	V. 23, p. 1408
117-8-1	Amended	V. 23, p. 337
117-9-1	Amended	V. 23, p. 150

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