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J. RONALD VIGNERY
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March 14, 2012

Senator Ralph Ostmeyer
Ralph.Ostmeyer@senate.ks.gov
Room 225E - State Capitol
300 SW 10th
Topeka KS 67712

Dear Senator Ostmeyer:

Find attached the two statements that Ron Schilling and I plan to testify to regarding the situation with the cesspools here in Sherman County, Kansas, and also with regard to your Senate Bill 405.

I have called the General Counsel for KDHE namely Tim Keck, on both Tuesday and Wednesday and have not received a phone call yet. He has been very busy but my calls to him are in response to his call to me early Tuesday morning.

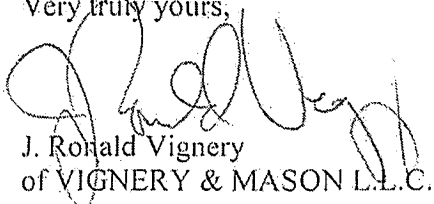
I have not called Nathan Bainbridge simply because if their attorney is calling me I probably should contact their attorney rather than Mr Bainbridge since I, too, am counsel for Mr Schilling.

However, that does not keep you from calling Mr Bainbridge if you would like to see what the status of this is. We would certainly like to avoid coming to Topeka if we possibly can due to the time and expense involved.

We are obviously willing to drive to Topeka based upon the statements that are attached, but would appreciate your help once again.

Finally, thank you very much for all your efforts in this regard. Mr Schilling and I are both very appreciative of what you have done on this topic.

Very truly yours,



J. Ronald Vignery
of VIGNERY & MASON L.L.C.

JRV/ssg
Attachments

cc: Ron Schilling - bull@st-tel.net

March 16, 2012

WRITTEN STATEMENT TO KANSAS SENATE COMMITTEE
ON NATURAL RESOURCES

My name is Ron Vignery and I have practiced law in Goodland, Sherman County, Kansas, since 1974 after serving 4 years in the United States Navy JAG Corps. In this capacity I helped form the Northwest Kansas Groundwater Management District No. 4 in 1975-76, have represented 6 different school districts and 3 different farmer cooperatives. I mention this only so that you are aware my experience is that constituents of governing bodies don't forget when a promise is made to them about enforcement of the laws and regulations by a particular governing body. This bill you are considering is about avoidance of inconsistent enforcement of regulations and laws.

Ron Schilling is a client of mine and a farmer/stockman living near Edson, Kansas. He came to me several months ago explaining that one night last April 16, 2011, his cesspool stopped functioning. He called around the area until he finally located Larry Heier in Colby, Kansas, who would come out and unplug the line from his house to the cesspool. THERE WAS NO DEFECT IN THE CESSPOOL ITSELF.

Subsequently, he was then informed in writing that he was going to be required to put in a septic tank and lateral system at a cost of some \$6,000 to \$10,000. He then contacted the Sherman County Attorney who at that time was Bonnie Selby as well as Sherman County Commissioners about the regulations that covered the replacement of cesspools in Sherman County, Kansas. He was cited to the Sherman County Environmental/Sanitary Code which was passed by 15 counties in extreme Northwest Kansas and approved by the Kansas Department of Health and Environment on January 29, 1993. In Section 2-4.2 of that code it says:

All existing private waste water systems that were installed prior to the effective date of this code shall be acceptable until such time as modification or replacement is required and necessary except those private waste water systems that are in violation of Kansas State Statute.

At paragraph 2-3.7 a private waster water system is defined as:

Any system which does not hold a Kansas Water Pollution Control Permit pursuant to K.S.A. 65-165. This includes the waste water systems which function by soil absorption, evaporation, transpiration, holding tanks or any combination of the above.

Also included in these same regulations was the definition of cess pool at 2-3.3 which states as follows:

Any covered or uncovered receptacle which receives untreated waste water from a building and permits the untreated waste water to seep into the surrounding soil.

The Kansas Livestock Association, the Kansas Farm Bureau, the then Sherman County Attorney and the Sherman County Commission all felt like Mr. Schilling's cesspool had been grand fathered in under those regulations.

For some history on this matter, Mr. Wayne Bossert, who has been the manager of Northwest Kansas Groundwater Management District No. 4 in Colby, Kansas, for the last 38 years back in 1992-1993 personally went to the 15 county commissions involved in the Northwest Local Environmental Protection Group (NWLEPG) and persuaded them to adopt this environmental sanitary code representing to every one of them that all existing waste water systems would be grand fathered in under the code. Mr. Bossert is willing to testify to that fact that a promise was made in order that a uniform environmental/sanitary code could be approved, which it was on January 29, 1993, by KDHE.

Further, in speaking with Wayne Bossert of the Northwest Kansas Groundwater Management District he advised that his research indicated that both cesspools and septic systems allow nitrates and phosphates to seep into the groundwater of the Ogallala Aquifer which his district administers in the Northwest Kansas area. However, neither system allows the seepage into the groundwater of pathogens which are toxic. Obviously the 60' deep cesspool is closer to groundwater 200' below the surface than is the 10' leach system that is used in connection with a septic system. However, both systems allow nitrates and phosphates to leak into the groundwater aquifer.

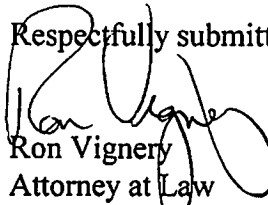
An informal enforcement system then developed which consisted of plumbers in the area being required to notify the NWLEPG of a FAILED cess pool or other system so that farmers would be required to replace it with a septic tank and leach system. Also, if a farmer applied for a grant to the Soil Conservation offices they were required to inform the NWLEPG of such an application for grant for a septic system. (In this regard, Sandy Rogers of the Sherman County Soil Conservation District advises me that there is \$10,000 a year to be divided amongst four (4) \$2500 grants to assist in the replacement of septic tank system). (These funds are usually exhausted fairly early on in the year). I also spoke with the local FSA loan office and they indicated that they often require the replacement of a cesspool with a septic tank system. Thus, although the State Law passed in 1973 states that cesspools were illegal, the monumental task of immediately requiring all farmsteads to replace their very common system of the cesspool for catchment of effluent wasn't practical. As the years have gone by, the steady pressure of enforcement by discovery of failing cesspools has gradually replaced them. To require replacement all at once would create financial and political chaos amongst all of the many farmsteads in the State of Kansas using cesspools.

It is my understanding that Senator Ostmeyer did introduce Senate Bill No. 405 in order to allow the grand fathering of cesspools he himself having been involved in the formation of the NWLEPG as a County Commissioner. We support Senate Bill No. 405 and also recommend that one further modification be passed and used in the bill in order to clarify that private waste water systems include a cesspool, said modification to include the following:

Section 1(b)(3) "Private Waste Water System" shall include "cesspools" and septic tank systems.

We believe with the declining number of farmsteads in Kansas, and the gradual replacement of cesspools that "fail" we will maintain the safety of the quality of the groundwater while at the same time allow the family farm to continue on the farmstead outside the city limits, a way of life which is vanishing in our society.

Respectfully submitted,



Ron Vignery
Attorney at Law
Goodland, Kansas

March 16, 2012

WRITTEN STATEMENT TO KANSAS SENATE COMMITTEE
ON NATURAL RESOURCES

We are Ron and Marsha Schilling of Edson, Kansas, and we own and operate a farm/ranch operation which is located in Sherman County. We are a farming community. We are here today because a local and a state regulatory group are trying to bully and intimidate us into replacing our cesspool with a septic tank when our system has not failed. My wife and I and our County Attorney researched the agreement (made in 1993 and approved the same year) with Sherman County and the NKLEPG which was approved by the KDHE at that time and since our system did not fail, our cesspool is grand fathered in until the date it fails and not when NKLEPG finds it. I am sorry to bother you here today, as you have many other issues to deal with. My wife and I have cows to take care of during this calving season, also. But, we believe if we don't take the time to inform you of the issue at hand these groups will continue to run over other Kansans and force their will upon them no matter what agreements they make with the citizens of this great state.

On Friday, April 16, 2011, we had our sewer back up in our basement, not a lot but some. I have been married long enough to know that you don't let your wife go through the weekend without a sewer. I couldn't get ahold of my local plumbers so I finally got ahold of a plumber from Colby. He showed up Saturday at noon and when he pulled into my yard he told me I had a cesspool, which I told him was correct. He said that since I had a cesspool we had to call and report it in to Shirley Weber at NKLEPG, which I did. She gave us the authority to work on my system. When the plumber checked my cesspool he could tell there wasn't anything wrong with it in that it wasn't very full. But, he said since I am here I am going to pump it anyway. I then asked him about fixing the line to my house but he didn't really want to take the time to do that. Instead he

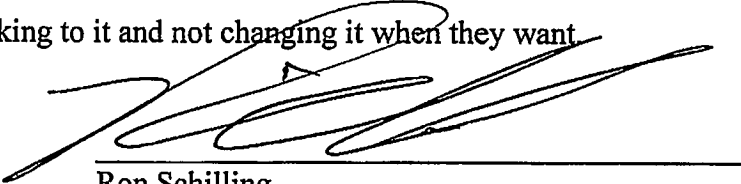
gave me an estimate for putting in a septic tank and showed me where we could put it. Then, he charged me \$300.00 for pumping my cesspool, which didn't need pumped. I still had a problem and my local plumber showed up on Sunday evening and roter routed out my line from my house to the cesspool and I have not had a sewer problem since. Then, I received a letter the next week from NKLEPG stating that I had to replace my cesspool with a septic tank according to certain laws. I went to the County Attorney, Bonnie Selby the following Wednesday, researched the agreement made with Sherman County and it was quite obvious to her that my cesspool was grand fathered in and the saga begins.

In closing we don't want to pollute our land. This is the land that my wife grew up on and we raised our kids on and just want to live here until the day we die, and we plan to stay here until they haul us off.

Our water table is at around 200 ft deep. This cesspool was installed in 1959. It is the same age as I am and is in probably better physical shape than me. My wife takes water samples every couple of years and sends it to a reputable lab and our water continues to show no signs of contamination. A cesspool is its own ecosystem and works very well, so if it's not broke don't force me to spend \$6,000 to \$10,000 just so the NWLEPG can get a \$300 fee to help fund itself.

I don't think my dilemma has anything to do with water quality or safety. It is about money and how the department funds itself. You see if the NWLEPG can't force people to put in new systems, they lose a revenue source, so I believe this is about people trying to save their own job and

not about working for the people they are supposed to help. But more importantly, it is about people making an agreement and sticking to it and not changing it when they want.

A handwritten signature in black ink, appearing to read 'Ron Schilling', written over a horizontal line.

Ron Schilling