

Nebraska Wellhead Protection Network Meeting Notes
Tuesday, February 10, 2004, 10:30 a.m. – 2:00 p.m.
Lower Platte South NRD, Lincoln, Nebraska

Attending: Daryl Anderson, Little Blue Natural Resources District (NRD); Deana Barger, Nebraska Department of Environmental Quality (NDEQ); Lorrie Benson, The Groundwater Foundation (TGF); Wayne Brinkmeyer, Gage County Planning Commission; John Chess, Lincoln-Lancaster County Health Department (LLCHD); Mike Dekalb, Lincoln-Lancaster County Planning & Zoning; Clancy Dempsey, Nebraska Rural Water Association (NRWA); Dick Ehrman, Nebraska Association of Resources Districts; Russ Gierhart, Upper Big Blue NRD; Bruce Hansen, NDEQ; Nancy Glaubke, Valley County Planning & Zoning; Rachael Herpel, TGF; Jan Hygnstrom, University of Nebraska Cooperative Extension; Marlin Kliewer, Gage County Zoning; Bob Kuzelka, University of Nebraska - Lincoln; Eric Lee, Lincoln Water System; Stephanie Lindberg, U.S. Environmental Protection Agency Region VII; Marty Link, NDEQ; Bill Lukash, Graduate Student; Leon Marquardt, LLCHD; Kathryn Russell, Kearney County Planning & Zoning; EJ Schumaker, LLCHD; Gene Siadek, Metropolitan Utilities District; Dan Schulz, Lower Platte South NRD; Clint Shafer, TGF; Darla Svoboda, Hamilton County Planning & Zoning; Elbert Traylor, NDEQ; Don Vogel, Nebraska Corn Growers; Carrie Wiese, TGF; Hope Wise, NRWA.

I. Welcome and Update on Nebraska Wellhead Protection-related Activities

Attendees received a current list of public water systems with approved wellhead protection plans. Thirty plans have been approved.

II. Ramifications of the *City of Alma v. Furnas County Farms* Decision to Wellhead Protection in Nebraska

Professor J. David Aiken, University of Nebraska – Lincoln Water and Agricultural Law Specialist, gave a presentation on the court decision that upheld four of Alma’s five wellhead protection ordinances that regulate certain activities fifteen miles beyond its one-mile zoning jurisdiction. The decision was based upon Nebraska Statute Section 17-536 and pertains to villages (i.e. populations up to 800) and cities of the second class (i.e. populations of 801-5000). Section 17-536 states, “The jurisdiction of such city or village, to prevent any pollution or injury to the stream or source of water for the supply of such waterworks, shall extend fifteen miles beyond its corporate limits.”

Furnas County Farms (FCF) and Sands Livestock Systems proposed housing 30,000-36,000 hogs in a facility eight miles outside of Alma. Alma hired an environmental engineer to assess the threat of such a facility to their community water supply. In 1997 Alma passed five ordinances¹ based on the results of the engineer’s report. These ordinances required that animal feeding operations:

1. Obtain a permit
2. Install a synthetic lagoon liner

¹ This case occurred prior to passage of the Nebraska Wellhead Protection Act in 1998.

3. Install monitoring wells
4. Comply with manure application restrictions
5. Submit a clean-up bond

FCF challenged each ordinance. All were upheld except #5. Alma's clean-up bonds were found to be stricter than those required by NDEQ and therefore were invalidated.

The district court also ruled that Alma's ordinances were not pre-empted by the Nebraska Environmental Protection Act (NEPA); in other words, Alma had the authority to pass local environmental laws to regulate nuisance activities. Before NEPA was passed in the 1970's, local health departments and other city government agencies handled most local pollution prevention activities. Consequently, NEPA contains strong language recognizing the history and value of local pollution prevention regulations. Under NEPA local units of government are encouraged to regulate air, land, and water pollution problems and local environmental protection programs are to be protected and preserved.

In conclusion, lessons learned from Alma's experiences are:

- All cities and towns should designate their wellhead protection area boundaries, as per Section 46-1505 of the Wellhead Protection Area Act.
- Cities and towns may not automatically regulate a 15-mile radius beyond their zoning jurisdictions. Cities and towns may adopt regulations for activities within a wellhead protection area designated using sound science.
- Cities and towns should adopt ordinances to regulate potentially harmful land uses within their wellhead protection areas. Although the courts will probably not uphold regulations that go beyond those stated in the Livestock Waste Management Act, cities and towns could adopt regulations concerning siting and manure spreading. NRDs could adopt regulations restricting fertilizer use. Cities and towns should "fill in the gaps" and regulate those aspects of livestock waste management currently not regulated by NDEQ.
- Cities and towns may regulate the size of animal feeding operations (i.e. the maximum size of the operations) or completely ban the building of future operations within the wellhead protection area.
- Counties, cities and towns that have adopted a comprehensive development plan have the authority to adopt zoning regulations to protect the public health, safety and welfare of their residents.
- Rather than do all the work themselves, cities and towns have the option of developing inter-local or contractual agreements with county government(s) to administer wellhead protection regulations outside their one-mile zoning jurisdiction. County government(s) will then administer wellhead protection activities uniformly throughout their county jurisdiction(s).

To view a copy of Professor Aiken's presentation, visit the NE WHPN section of The Groundwater Foundation's website at www.groundwater.org/pe/newhp.html.

III. Open Forum

Little Blue NRD was recognized as the first NRD to earn designation as a Groundwater Guardian Affiliate. To earn the designation the Little Blue NRD helped Blue Hill and Fairfield to earn designation as Groundwater Guardian Communities, provided communities with water

testing for the presence of nitrates, and set up antifreeze and oil filter recycling in ten district communities.

Two bills are before the Nebraska Unicameral that could impact wellhead protection efforts. LB 1042 addresses Statute Sections 17-536 and 17-537 to state that wellhead protection area delineations must be based on sound science (i.e. it adopts the exact same language that is in the Wellhead Protection Area Act). LB 916 would amend the Livestock Waste Management Act to comply with US EPA regulations.

Deana Barger announced that an invitation for Source Water Protection Project Proposals is prepared to go out in March.² All project proposals are due June 2. Funding decisions will be made by July 1.

The group discussed the value of determining time-of-travel thresholds beyond the twenty-year delineation. The group also discussed the possibility of holding a network meeting in conjunction with a county government or planning event.

Darla Svoboda informed the group that county governments are working together to have more of their materials on-line. For example, newer zoning ordinances would be website friendly. Kathryn Russell informed the group about how joint planning commissions functioned and administered zoning regulations.

Hope Wise announced that the NeRWA 26th Annual Conference would be held in Columbus, March 15-17.

Marlin Kliewer and Wayne Brinkmeyer told the group about their wellhead protection regulations. They have made the process villages need to go through to protect their source water very clear. Now the villages just need to do it. A top priority for the county is to survey and inspect underground storage tanks. The county works with Southeast Community College students from Beatrice to conduct the tank surveys.

Marty Link informed the group that provisional wellhead protection area maps could be drawn for new well locations. Drawing provisional maps may help a town identify where they should drill new wells. Marty also reminded the group that cost share funds are still available to those who would like to properly decommission abandoned wells. For more information contact Marty Link at 402-471-4270.

IV. Next Meeting

The next NE WHPN meeting will be held Tuesday, May 4 from 10:30 a.m. to 2:00 p.m. at the Gage County Cooperative Extension Offices in Beatrice. The meeting will feature a case study of the Gage County Wellhead Protection program.

² The Invitation for Source Water Protection Project Proposals was sent to the NE WHPN listserve March 1.