

Approved March 20, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

3:30 ~~am~~ p.m. on March 15, 1990 in room 526-S of the Capitol.

All members were present except:

Representative Freeman
Representative Gatlin

Committee staff present:

Raney Gilliland, Principal Analyst, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Pat Mah, Legislative Research
Maggie French, Committee Secretary

Conferees appearing before the committee:

Mr. Raney Gilliland, Principal Analyst, Legislative Research
Mr. Larry W. McGill, Jr., Independent Insurance Agents of Kansas
Mr. Ray Rathert, Kansas Insurance Department
Ms. Lori Callahan, American Insurance Associates
Mr. William W. Sneed, State Farm Insurance
Mr. Joe Lieber, Kansas Cooperative Council
Mr. Bob Ott, Ott Oil Company and Kansas Oil Marketers Association
Mr. Art Brown, Mid-America Lumbermens Association
Mr. Bill Curtis, Kansas Association of School Boards

Chairman Dennis Spaniol called the meeting to order.

House Bill No. 3055 -- An act relating to insurance; concerning apportionment or assignment of risk of certain liability insurance required as financial responsibility with respect to underground storage tanks.

Chairman Spaniol discussed House Bill No. 3055, informing the committee he had received a press release stating the Environmental Protection Agency had announced they are postponing the mandate on storage tank owners of from one to 99 tanks for at least one year; therefore, the committee is still in the process of making a decision on how it will proceed.

Mr. Raney Gilliland, Principal Analyst, Legislative Research, was requested by the chairman to present an overview of House Bill No. 3055. Mr. Gilliland stated the one section not addressed by the State of Kansas is the provision for third-party liability for crop damage and bodily injury. He went on to say this bill addresses those issues and establishes a governing board to implement the plan.

The chairman recognized Mr. Larry W. McGill, Jr., Independent Insurance Agents of Kansas, who testified as a proponent on House Bill No. 3055 stating the cost of third party liability is an ordinary business expense and insurance companies will be able to better manage claims (Attachment 1). Discussion by the committee included the possibility of insuring excess out of the fund created last year so that excess assessment would not go back on the insurance carriers; what is involved in the pollution clean-up; if liabilities are being underestimated and risk retention groups. The chairman stated there has been a lot of concern on the rate proposed in the legislation and the rate was set arbitrarily because there was no loss ratio on which to base the rate.

Mr. Ray Rathert, Kansas Insurance Department, was introduced by the chairman as the next conferee. Chairman Spaniol stated he had requested

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,

room 526-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 15, 1990.

the Kansas Insurance Department to provide the committee with procedures needed to put House Bill No. 3055 into a workable form. He indicated two policy decisions were suggested (1) on the amount of deductible and (2) on the underwriting criteria from the length of time to come into compliance and when insurance could be purchased without proof of insurability. Mr. Rathert testified as a proponent reviewing the changes in the proposed balloon amendment (Attachment 2). The committee discussed the cost of insurance due to third-party liability and costs of clean-up; use of insurance or trust funds in other states; comparisons with the health care stabilization fund, and how coverage on old tanks will be handled.

Ms. Lori Callahan, American Insurance Associates, was recognized by Chairman Spaniol. She testified as an opponent on House Bill No. 3055 and stated American Insurance Associates supports proposals which provide for mechanisms which allow expedited and efficient claim handling of third-party liability claims (Attachment 3). Discussion by the committee included whether or not the trust fund is set up on actuarially sound principles; the time frame for setting rates; attraction of small specialty companies to the market; clean-up performed by storage tank owners during the year EPA has mandated; pollution of aquifers; why large insurance companies appear unwilling to write this line of insurance, and the desire of insurance companies to write the third-party liability after the clean-up called for in Senate Bill No. 554.

Chairman Spaniol called on Mr. William W. Sneed, representing State Farm Insurance, who presented testimony as an opponent. Mr. Sneed requested the committee to reject the proposals found in House Bill No. 3055 and support the compromise found in Senate Bill No. 554 (Attachment 4). No questions were forthcoming from the committee.

Mr. Joe Lieber, Kansas Cooperative Council, was recognized by the chair and testified as an opponent on House Bill No. 3055. He commented that the \$500 registration fee would put an additional financial burden on the tank owners (Attachment 5). In response to a question from the chairman, Mr. Lieber stated he felt the consumer should pay for third-party liability instead of the owner-operator. Discussion followed on possible monopoly of sales by cooperatives. Representative Patrick requested information on the number of cooperatives in the State of Kansas, gross income, etc.

Mr. Bob Ott, Ott Oil Company and Kansas Oil Marketers Association, was welcomed by the chairman. Mr. Ott testified as an opponent on House Bill No. 3055, citing an example of expense which would be incurred to come into compliance with the bill if it is passed (Attachment 6). He also discussed claims for third-party liability. The committee questioned Mr. Ott about the proposal in the State of South Carolina; creation of insurance for third-party liability by associations; storage tank linings; cost-sharing programs with the State of Kansas working with the industry; tank owners, etc.; how other states are handling this problem and the possibility of \$500 premiums forcing some owners out of business.

Mr. Art Brown, Director, Mid-America Lumbermens Association, was recognized by the chairman. Mr. Brown testified on House Bill No. 3055 as an opponent and urged the committee to consider enacting Senate Bill No. 554 instead of House Bill No. 3055 (Attachment 7).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S Statehouse, at 3:30 a.m./p.m. on March 15, 1990

At this time the chairman deferred questions from the committee until testimony of conferees was completed.

Mr. Bill Curtis, Assistant Executive Director, Kansas Association of School Boards, was called on by the chairman and presented his testimony against House Bill No. 3055, stating the Kansas Association of School Boards prefers the provisions in Senate Bill No. 554 at this time. Compliance of school districts with regulations regarding tank monitoring was discussed (Attachment 8).

Chairman Spaniol concluded hearings on House Bill No. 3055 at 4:55 p.m.

The next meeting of the committee will be at 3:30 p.m., March 20, 1990.

Date: 3-15-90

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Charles Nicolay	Ks Oil Marketers Assn	Topeka	233 9655
Art Brown	KS Lumber dealers	KCMO 86	951-2100
Bill Bryant	Sea	Wash Ks.	
Joe Lieber	Ks Co Op Council	Topeka	233 4085
George Winger	I35 Service	Ottawa Ks	242 7711
Bob Ott	Ott Oil Co	Salina	823 2331
DAN BAILEY	KS Oil Marketers Assn.	Topeka	232-0753
Bill Sneed	State Farm Ins	Topeka	273 7722
Bill Mitchell	Alliance Ins.	McPherson	1-800-362-1075
David Hanson	Ks Assoc Prop-Cas Insur	Topeka	232-0545
BEV BRADLEY	Ks Assoc of Counties	Topeka	233-2291
Ken PETERSON	Ks Petroleum Council	Topeka	234-0589
Chuck Stoner	KBA	"	232-3446
STEVE KEARNEY	PETE MCILL FOR COASTAL CORP.	"	233-4512
G. May	SWAT	Topeka	276-6103
Bill Fuller	Kansas Farm Bureau	Manhattan	587-6110
Steve Schul	KPOA	Topeka	
Kevin Allen	Ks Motor Car Dealers Assn	Topeka	233-6456
Lori Callahan	AM Ins Assoc.	Topeka	267-5063
Lee WRIGHT	FARMERS INS. GROUP	OVERLAND PARK	661-6379
POOB Johnson	ITAK	Lawrence	843-5454
Larry Magill	ITAK	Topeka	

Testimony on HB 3055
Before the House Energy and Natural Resources Committee
March 15, 1990

By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you very much, Mr. Chairman, and members of the committee, for the opportunity to appear today in opposition to HB 3055 without amendments. As we will explain, we are opposed to an assigned risk approach for third-party liability for tank owners and operators that is funded by assessments on insurance companies. We do support an assigned risk plan funded for any excess liabilities by the clean up fund.

Clearly the legislature must act either by including all third-party liability in the fund as proposed in SB 554, or by setting up an assigned risk plan. The next EPA deadline for proof of financial responsibility is April 26, 1990, for tank owners and operators with 13 or more tanks. Since the voluntary insurance market is limited in terms of the number of insurance companies writing the coverage, the cost is relatively high and the underwriting standards are strict, the voluntary insurance market will not solve the "problem" by itself.

The Problem

*The EPA has imposed financial responsibility requirements on tank owners and operators. We assume that other conferees have explained these requirements and that the committee is well aware of them.

*The voluntary insurance market is very limited in terms of the number of insurance companies willing to write the coverage. We have attached the most recent list we have of insurance companies. However, some of the companies on this list are out of business (Environmental Protection Insurance Company - EPIC, Petromark and Laramie). Some are not writing coverage in Kansas such as Front Royal and some are in the process of withdrawing from the market such as Federated. Basically, this leaves just two markets that we know of in Kansas, National Union Fire Insurance Company and Agricultural Excess and Surplus, a subsidiary of Great American.

*The cost is relatively high and can range anywhere from \$500 to \$1,500 per tank with the average probably being around \$700-800 per tank. Since most gas stations have three to five tanks, the total cost could be anywhere from \$1,500 to \$7,500 per station.

*Insurance company underwriting standards are fairly "tough". Many older tanks that have not had to meet EPA's technical requirements will not qualify for voluntary insurance. The EPA's technical requirements are phased in over a number of years, depending on the age of the tank.

Although you could argue that the cost of upgrading and replacing tanks and installing the required monitoring devices will really be what puts most marginal tank owners and operators out of business, we acknowledge that insurance costs may do it sooner. For that reason, we understand the legislature's concern for these small business owners and their desire to subsidize part or all of the costs. Plus, we are fairly certain that not all tank owners could meet the insurance industry's underwriting standards, even if they could afford the coverage.

Reasons We Oppose Insurance Industry Funding

As HB 3055 is presently drafted, any excess losses would be charged to insurance companies writing workers' compensation and property damage liability coverages. We are opposed to insurance company assessments for the following reasons:

1. "99%" of the insurance companies admitted to Kansas are not now insuring pollution liability, because they do not feel they can profitably write the coverage. Unlike other assigned risk plans such as workers' compensation or auto insurance, there is no broad voluntary market of pollution insurers to assess.
2. It is an unfair, "hidden tax" on buyers of insurance since it will ultimately be passed on to them in the form of higher rates. Neither the buyers of insurance or the insurance industry created the problem. It is much more equitable and logical to place a tax on fuel if the legislature is going to fund part or all of the cost of

insurance for tank owners and operators. It is the use of fuel that causes pollution, not the use of insurance.

3. It is a societal problem that should not be solved at the expense of the insurance industry or insurance buyers.
4. It will create a significant disincentive for companies to enter Kansas and could cause marginal companies to leave the state. This could cause availability and affordability problems for Kansans in other areas of coverage or eliminate potentially helpful competitors from entering the state.

Our Suggestions

Our association could support an assigned risk plan with the amendments proposed in the balloon draft of HB 3055 attached to our testimony. Our amendments would:

1. Eliminate the potential for an assessment on insurance companies.
2. Provide that the Kansas Storage Tank Fund would cover any shortfall in revenues compared to expenses, similar to the present JUA for medical malpractice primary coverage. The medical malpractice primary JUA has worked quite well since its inception in 1976. As long as the clean up fund exists, it provides a vehicle for funding excess liabilities for third-party pollution insurance.
3. Provide a single servicing carrier that would provide professional claims management and insurance company expertise.

If time permits, I would like to explain each of our proposed amendments.

The reasons we prefer HB 3055 with our amendments over the Senate proposal to include third-party liability in the clean up fund, SB 554 are:

1. We feel that the cost of third-party liability is an ordinary business expense of people who choose to sell or store fuel and that they should pay at least part of that cost.

When the state mandated auto insurance, it did not pass a fuel tax to pay for it for all Kansans.

2. Under an assigned risk plan, it will be easier for the state to transition to a voluntary, private enterprise market. You simply gradually raise the rates over the next four years until they are ultimately more than the voluntary market.
3. An insurance company as a servicing carrier will be able to manage claims better and is in the business of running an insurance company. It may take the Kansas Department of Health and Environment years to develop the expertise needed to properly manage the third-party liability insurance company. In fact, an insurance company may reduce the payout from the assigned risk plan and ultimately the clean up fund.
4. We are philosophically opposed to state funds for insurance such as SB 554. Although we did not oppose passage of the clean up coverage last year, because we felt it was an uninsurable exposure, we do not feel the same way about third-party liability.

We urge the committee to favorably consider our amendments and HB 3055. If you would like any additional information, we would be happy to try to provide it.

Appendix 5B — Companies Offering Pollution Liability Insurance for Underground Storage Tanks

One of the principal ways to meet EPA's financial responsibility requirements is to obtain insurance. Several options are available. Owners of underground tanks that are part of a small facility may be able to secure insurance from their existing carriers. The following list of companies (arranged alphabetically) may represent alternatives for larger UST facilities.

[Editor's Note: Thompson Publishing Group does not endorse these firms. They are included for reader information. UST owners and operators should consult appropriate counsel or professional advice pertinent to their needs.]

Agricultural Excess & Surplus Company (AESIC)

AESIC offers a claims-made policy specifically designed to meet EPA requirements in all states except Delaware, Maine, New Hampshire, Rhode Island and Vermont.

Contact:

Mike Ryan
AESIC
515 Main Street
Cincinnati, OH 45202
(513) 723-2722

American International Group (AIG)

AIG offers both a general insurance program and pollution liability insurance.

Contact:

John H. Sullivan, President or
Bill Cavaliere, Sales Director
Sullivan Risk Management Group
Waltham, MA
(617) 893-3500
or
John Armore, President — Technical Insurance Division
American International Group
New York, NY
(212) 770-7000

Anglo-American Insurance Company and Walbrook Insurance Company, Ltd.

Offers pollution liability insurance; currently writes in all states except Rhode Island and Massachusetts.

Contact:

James Group Service, Inc.
230 West Monroe Street
Suite 950
Chicago, IL 60606
(800) 621-5081
(312) 701-2724
(312) 236-0220
Douglas J. Pallay, President
Alvin J. Pallay, Vice President & Sales Manager
James Stewart, Vice President, Property & Casualty
Terri Czizik, Manager/Association Service Property & Casualty

Evanston Insurance Company*

Currently writes pollution insurance for petroleum tanks only in Illinois, Indiana and Wisconsin; intends to expand. Does not insure petroleum marketers; specializes in policies for small cities and townships and other governmental entities.

Contact:

Shand Morahan & Company, Inc.
Shand Morahan Plaza
Evanston, IL 60201
(312) 866-2800
Chuck North, Assistant Vice President —Special Risk

Environmental Impairment Purchasing Group, Inc.*

Pollution liability insurance written through Presidential Fire & Casualty. Not available in all states.

Contact:

EIPG
P.O. Box 584
Hillsboro, WI 54634-0584
(608) 489-3221
Ed Hardy or Wendy Muller

* Revised November 1989

Environmental Protection Insurance Company (EPIC)

EPIC writes UST insurance policies in all 50 states.

Contact:

Charles LaBarge, President
Mike DePaemelaere
Berkeley Risk Retention Group Managers
3010 LBJ Freeway, Suite 504
Dallas, Texas 75234
(214) 243-8284

Federated Mutual Insurance Company

Federated writes UST insurance in all states except:

Alaska, Connecticut, Delaware, District of Columbia, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York and Rhode Island.

Contact:

Bob Rinaldi
(800) 533-0472

Front Royal Group

Will offer policies only in Virginia at first; plans to operate as surplus lines carrier in many states and eventually become national.

Contact:

Myra Anderson
John Gibson
Front Royal Group
7900 Westpark Drive, #A-300
McLean, VA 22102
(703) 893-0900

Oilman's Insurance Plan

Division of the Oil Marketers of America Risk Management Group
(Reinsured by Fireman's Fund)

Oilman's Insurance writes in the following states:

California, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Maine, Maryland, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, Washington, and West Virginia.

Contact:

Jane Jachimczyk, Sr. Vice President
Oilman's Insurance
350 5th Avenue, Suite 6505
New York, NY 20018
(212) 629-4290

Petroleum Marketers Mutual Insurance Company (Petromark)

Petromark writes UST insurance in all 50 states.

Contact

Max Clay
The Planning Corporation
11347 Sunset Hills Road
Reston, VA 22090
(703) 481-0200

[The next page is Appendix 5, Page 51]

HOUSE BILL No. 3055

By Committee on Energy and Natural Resources

2-21

6-1

9 AN ACT relating to insurance; concerning apportionment or assign-
10 ment of risk of certain liability insurance required as financial
11 responsibility with respect to underground storage tanks.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) The commissioner of insurance shall adopt and
15 implement a plan ~~for the equitable apportionment among insurers~~
16 ~~undertaking to transact in the state of Kansas the kinds of insurance~~
17 ~~specified in subsection (b) or (c) of K.S.A. 40-1102 and amendments~~
18 ~~thereto and rating organizations which file rates for such insurance~~
19 ~~of applicants for insurance who are in good faith entitled to, but~~
20 ~~who are unable to procure through ordinary methods, insurance~~
21 ~~necessary to achieve compliance with the financial responsibility re-~~
22 ~~quirements for third party compensation imposed by 40 CFR part~~
23 ~~280, subpart H, and part 281 adopted by the federal environmental~~
24 ~~protection agency. Such plan shall provide:~~

liability

25 (1) Insurance necessary to achieve compliance with the financial
26 responsibility requirements for third party ~~compensation~~ imposed by
27 40 CFR part 280, subpart H, and part 281;

Insurors undertaking to transact the kinds of insurance specified
in K.S.A. 40-1102 and amendments thereto and rating organizations
which file rates for such insurance shall cooperate in the preparation
and submission to the commissioner of insurance of a plan or plans
for the insurance specified in this section.

28 (2) ~~reasonable rules governing the equitable distribution of risks~~
29 ~~by direct insurance, reinsurance or otherwise and their assignment~~
30 ~~to insurers, including~~ provisions requiring, at the request of the
31 applicant, an immediate assumption of the risk by an insurer or
32 insurers upon completion of an application, payment of the specified
33 premium and deposit of the application and the premium in the
34 United States mail, postage prepaid and addressed to the plan's
35 office;

liability

For the appointment by the plan of a servicing carrier which need
not be a licensed insurance company and for reasonable rules
governing administration of the plan including

36 (3) rates and rate modifications applicable to such risks, which
37 rates shall be established as provided by subsection (b);

38 (4) the limits of liability which the insurer shall be required to
39 assume;

40 (5) coverage for only underground storage tanks located within
41 this state;

42 (6) coverage for any underground storage tank without requiring
43 tank integrity tests, soil tests or other tests for insurability if, within

01-1

1 the two years immediately preceding application for insurance, the
2 tank has been made to comply with all provisions of federal and
3 state law, and all applicable rules and regulations adopted pursuant
4 thereto;

5 (7) exclusion from coverage of any damages resulting from in-
6 tentional acts of the insured or agents of the insured;

7 (8) to the extent allowed by law, subrogation of the insurer to
8 all rights of recovery from other sources for damages covered by the
9 plan or plans;

10 (9) a deductible of the first \$10,000 of liability per occurrence
11 per tank for compensation of third parties for bodily injury and
12 property damage caused by accidental releases from underground
13 petroleum storage tanks;

14 (10) coverage only of claims for occurrences that commenced
15 during the term of the policy and that are discovered and reported
16 to the insurer within six months after the effective date of the can-
17 cellation or termination of the policy; and

18 (11) a method whereby applicants for insurance, insureds and
19 insurers may have a hearing on grievances and the right of appeal
20 to the commissioner.

21 (b) The commissioner of insurance shall establish rates, effective
22 January 1 of each year, for coverage provided under the plan adopted
23 pursuant to this section. Such rates shall be reasonable, adequate
24 and not unfairly discriminatory and shall be based upon loss expe-
25 rience, except that, before January 1, 1992, such rate shall be \$500
26 for each tank for which coverage is provided under the plan.

27 (c) The commissioner of insurance shall appoint a governing board
28 for the plan. The governing board shall meet at least annually to
29 review and prescribe operating rules of the plan. Such board shall
30 consist of the following members:

31 (1) Seven members appointed as follows: Three who are repre-
32 sentatives of foreign insurance companies, two who are represen-
33 tatives of domestic insurance companies and two who are licensed
34 independent insurance agents. Such members shall be appointed for
35 terms of three years, except that the initial appointment shall include
36 two members appointed for two-year terms and two members ap-
37 pointed for one-year terms, as designated by the commissioner.

38 (2) Two members representative of the general public interest,
39 to be appointed for terms of two years.

40 (d) Before adoption of a plan pursuant to this section, the com-
41 missioner of insurance shall hold a hearing thereon.

42 (e) An insurer participating in the plan adopted by the commis-
43 sioner of insurance pursuant to this section may pay a commission

(12) A method whereby adequate reserves are established for open
claims and claims incurred but not reported based on advice
from an independent actuary retained by the plan at least
annually, the cost of which shall be born by the plan.

(13) A method whereby annually the plan shall compare the premiums
earned to the losses and expenses sustained by the plan for
the preceding fiscal year. If there is any surplus of premiums
over losses, and expenses received for that year such surplus
shall be transferred to the fund. If there is any excess of
losses and expenses over premiums earned, such losses shall be
transferred from the fund.

1 with respect to insurance assigned under the plan to an agent li-
2 censed for any other insurer participating in the plan or to any insurer
3 participating in the plan.

4 (f) The commissioner of insurance may adopt such rules and reg-
5 ulations as necessary to administer the provisions of this section.

6 (g) If any clause, paragraph, subsection or section of this act shall
7 be held invalid or unconstitutional, it shall be conclusively presumed
8 that the legislature would have enacted the remainder of this act
9 without such invalid or unconstitutional clause, paragraph, subsection
10 or section.

11 ~~Sec. 2-~~ This act shall take effect and be in force from and after
12 its publication in the Kansas register.

Sec. 2. ("cross reference" authority within the Kansas Storage Tank
fund to pay any excess losses of the plan)

Sec. 3.

11-1

HOUSE BILL No. 3055

By Committee on Energy and Natural Resources

2-21

AN ACT relating to insurance; concerning apportionment or assignment of risk of certain liability insurance required as financial responsibility with respect to underground storage tanks.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) The commissioner of insurance shall adopt and implement a plan for the equitable apportionment among insurers undertaking to transact in the state of Kansas the kinds of insurance specified in subsection (b) or (c) of K.S.A. 40-1102 and amendments thereto and rating organizations which file rates for such insurance of applicants for insurance who are in good faith entitled to, but who are unable to procure through ordinary methods, insurance necessary to achieve compliance with the financial responsibility requirements for third party compensation imposed by 40 CFR part 280, subpart H, and part 281 adopted by the federal environmental protection agency. Such plan shall provide:

(1) Insurance necessary to achieve compliance with the financial responsibility requirements for third party compensation imposed by 40 CFR part 280, subpart H, and part 281;

(2) reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise and their assignment to insurers, including provisions requiring, at the request of the applicant, an immediate assumption of the risk by an insurer or insurers upon completion of an application, payment of the specified premium and deposit of the application and the premium in the United States mail, postage prepaid and addressed to the plan's office;

(3) rates and rate modifications applicable to such risks, which rates shall be established as provided by subsection (b);

(4) the limits of liability which the insurer shall be required to assume;

(5) coverage for only underground storage tanks located within this state;

(6) coverage for any underground storage tank without requiring tank integrity tests, soil tests or other tests for insurability if, within

shall cooperate in the preparation and submission to the commissioner of insurance of a plan or plans for the equitable apportionment among insurers

at least 12 months from the date of the original application with respect to

H ENERGY AND NR
3-15-90
ATTACHMENT 2

2-2

1 [The two years] immediately preceding application for insurance, the
2 tank has been made to comply with all provisions of federal and
3 state law, and all applicable rules and regulations adopted pursuant
4 thereto;

six months

5 (7) exclusion from coverage of any damages resulting from in-
6 tentional acts of the insured or agents of the insured;

, but may provide for renewal or continuation of such coverage to be contingent
upon satisfactory evidence that the tank or tanks to be insured continue to be
in compliance with such laws and rules and regulations

7 (8) to the extent allowed by law, subrogation of the insurer to
8 all rights of recovery from other sources for damages covered by the
9 plan or plans;

10 (9) [a deductible of the first] \$10,000 of liability per occurrence
11 [per tank] for compensation of third parties for bodily injury and
12 property damage caused by accidental releases from underground
13 petroleum storage tanks;

an optional deductible of the first \$2,500, \$5,000 or
at any one location

14 (10) coverage only of claims for occurrences that commenced
15 during the term of the policy and that are discovered and reported
16 to the insurer within six months after the effective date of the can-
17 cellation or termination of the policy; [and]

either gradual or sudden and
during the policy period or

18 (11) a method whereby applicants for insurance, insureds and
19 insurers may have a hearing on grievances and the right of appeal
20 to the commissioner;

21 (b) The commissioner of insurance shall establish rates, effective
22 January 1 of each year, for coverage provided under the plan adopted
23 pursuant to this section. Such rates shall be reasonable, adequate
24 and not unfairly discriminatory [and shall be based upon loss expe-
25 rience, except that, before January 1, 1992, such rate shall be \$500
26 for each tank for which coverage is provided under the plan.

27 (c) The commissioner of insurance shall appoint a governing board
28 for the plan. The governing board shall meet at least annually to
29 review and prescribe operating rules of the plan. Such board shall
30 consist of the following members:

31 (1) Seven members appointed as follows: Three who are repre-
32 sentatives of foreign insurance companies, two who are represen-
33 tatives of domestic insurance companies and two who are licensed
34 independent insurance agents. Such members shall be appointed for
35 terms of three years, except that the initial appointment shall include
36 two members appointed for two-year terms and two members ap-
37 pointed for one-year terms, as designated by the commissioner.

38 (2) Two members representative of [the general public interest],
39 to be appointed for terms of two years.

40 (d) Before adoption of a plan pursuant to this section, the com-
41 missioner of insurance shall hold a hearing thereon.

42 (e) An insurer participating in the plan adopted by the commis-
43 sioner of insurance pursuant to this section may pay a commission

; and

(12) a method whereby the plan shall compare the premiums
earned to the losses and expenses sustained by the plan for the
first 12 calendar months of operation if there is any excess of
losses and expenses over premiums earned, an amount equal to such
excess losses and expenses shall be transferred from the
petroleum storage tank release fund established by K.S.A. 1989
Supp. 65-34,114 and amendments thereto to the plan

. Such rates shall be based on loss and expense experience
developed by risks insured by the plan and shall be in an amount
deemed sufficient by the commissioner to fund anticipated claims
based upon reasonably prudent actuarial principles, except that:

(1) Due consideration shall be given to the loss and expense
experience developed by similar plans operating in other states
and the voluntary market; and

(2) before January 1, 1992, such rate shall be not more than

underground storage tank owners or operators

2-3

1 with respect to insurance assigned under the plan to an agent li-
2 censed for any other insurer participating in the plan or to any insurer
3 participating in the plan.

4 (f) The commissioner of insurance may adopt such rules and reg-
5 ulations as necessary to administer the provisions of this section.

6 (g) If any clause, paragraph, subsection or section of this act shall
7 be held invalid or unconstitutional, it shall be conclusively presumed
8 that the legislature would have enacted the remainder of this act
9 without such invalid or unconstitutional clause, paragraph, subsection
10 or section.

Insert section 2, attached

11 Sec. 2. This act shall take effect and be in force from and after
12 its publication in the Kansas register.

3

Sec. 1. K.S.A. 1989 Supp. 65-34,114 is hereby amended to read as follows: 65-34,114. (a) There is hereby established as a segregated fund in the state treasury the petroleum storage tank release trust fund, to be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) The proceeds of the environmental assurance fee imposed by this act;

(2) any moneys recovered by the state under the provisions of this act, including administrative expenses, civil penalties and moneys paid under an agreement, stipulation or settlement;

(3) interest attributable to investment of moneys in the fund; and

(4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the fund, but excluding federal grants and cooperative agreements.

(b) The fund shall be administered so as to assist owners and operators of underground petroleum storage tanks in providing evidence of financial responsibility for corrective action required by a release from any such tank. Moneys deposited in the fund may be expended for the purpose of reimbursing owners and operators for the costs of corrective action and for reimbursing the plan adopted pursuant to section 1 for any excess of losses and expenses over premium earned during its first 12 calendar months of operation, subject to the conditions and limitations prescribed by this act,--but-moneys-in-the-fund--shall not--be--used--for--compensating--third--parties--for--bodily--injury--or--property--damage--caused--by--a--release--from--an--underground--petroleum--storage--tank,--other--than--property--damage--included--in--a--corrective--action--plan--approved--by--the--secretary. In addition, moneys deposited in the fund may be expended for the following purposes:

(1) To permit the secretary to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release from an underground petroleum storage tank;

(2) to permit the secretary to take corrective action where the release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to, providing for alternative water supplies;

(3) payment of the state's share of the federal leaking underground storage tank trust fund cleanup costs, as required by the resource conservation and recovery act, 42 U.S.C. § 6991b(h)(7)(B); and

(4) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of sections 15 through 25, including the cost of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the fund.

(c) The petroleum storage tank release trust fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(d) Neither the state of Kansas nor the petroleum storage tank release trust fund shall be liable to an owner or operator for the loss of business, damages or taking of property associated with any corrective or enforcement action taken pursuant to this act.

(e) The pooled money investment board may invest and reinvest moneys in the fund established under this section in obligations of the United States or obligations the principal and interest of which are guaranteed by the United States or in

interest-bearing time deposits in any commercial bank or trust company located in Kansas or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof. Any income or interest earned by such investments shall be credited to the fund.

(f) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

LAW OFFICES

BENNETT, DILLON & CALLAHAN

1605 S.W. 37TH STREET
TOPEKA, KANSAS 66611
(913) 267-5063

MARK L. BENNETT, JR.
WILBURN DILLON, JR.
LORI M. CALLAHAN

FAX (913) 267-2652

March 15, 1990

TO: House Energy and Natural Resources Committee

FROM: Lori M. Callahan
Legislative Counsel
American Insurance Association

SUBJECT: H.B. 3055

The American Insurance Association is a trade organization of over 200 property and casualty insurance companies providing insurance in all lines of property casualty insurance nationwide. AIA opposes H.B. 3055.

The American Insurance Association recognizes that although states are struggling with the problem of underground storage tanks and compliance with EPA requirements, no state has considered an assigned risk proposal. The reason for this goes to the heart of AIA's opposition to an assigned risk plan as a solution to the underground storage tank problem in Kansas.

Assigned risk plans are utilized for lines of insurance, such as automobile and workers' compensation, where insurance is mandatory and is generally provided, but in some instances unavailable by insurers in the state. The unavailability occurs because some risks have been deemed by insurance companies to be uninsurable and, therefore, these companies refuse to write these risks. Health care providers in Kansas also are sometimes found to be uninsurable risks by the private market. In that situation, however, rather than an assigned risk plan, a joint underwriting association is utilized with one insurance company being a servicing carrier for that plan. The difference between automobile and workers' compensation insurance and medical malpractice insurance which leads to the choice of an assigned risk for the first two and a JUA for the latter is because few companies have expertise in the underwriting and handling of medical malpractice cases as opposed to automobile and workers' compensation. Thus, to force companies to participate in the medical malpractice market when they have no expertise in that area is to force business on an individual who simply is not prepared nor experienced in the handling of that matter. It would be similar to asking a lawyer to handle architecture problems, both are professions, but each have expertise in their particular program.

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With medical malpractice, as with underground storage tanks, few companies in Kansas are writing the insurance and these companies tend to be very specialized single line insurance companies.

The result of H.B. 3055, therefore, would be to force all property and casualty insurance companies in the state of Kansas to participate in providing insurance for third party liability for underground storage tanks when these companies do not write and have no experience in such lines. This not only appears to be an unconstitutional taking, but also defeats the purpose of utilizing the companies. In other words, assigned risk plans work when those insurance companies which are forced to participate can lend their expertise to the particular line of insurance. H.B. 3055 would force companies who are not involved in underground storage tank third party liability insurance into handling such claims. Thus, those companies lend no expertise to the plan.

AIA supports proposals which will result in expedited and complete cleanup of the current underground storage tank problem. Once this is done, it is the opinion of AIA that companies who have never participated in writing environmental pollution insurance for underground storage tanks will then find that this is an excellent market within which to write such insurance. Requiring companies who have no expertise in this area through an assigned risk plan defeats that ultimate goal by forcing insurers into writing such insurance, thereby creating a negative insurance environment in which to participate in this business. If the goal is to attract a voluntary market, acts which force involvement drive away smaller specialized underground storage tank third party liability insurance companies from becoming involved in Kansas. This defeats the intent to attract this voluntary market.

For these reasons, AIA is opposed to H.B. 3055 and supports proposals which provide for mechanisms which allow expedited and efficient claim handling of third party liability claims. If you have any questions, I will be happy to respond to them.

4

MEMORANDUM

TO: DENNIS SPANIOL
Chairman, House Energy and Natural Resources Committee

FROM: WILLIAM W. SNEED
State Farm Insurance Companies

RE: HOUSE BILL 3055

DATE: March 15, 1990

Mr. Chairman and members of the House Energy and Natural Resources Committee, my name is Bill Sneed and I represent State Farm Insurance Companies. On behalf of my client I appreciate the opportunity to present testimony on House Bill 3055 which is one of several bills being reviewed by the Kansas Legislature regarding various issues concerning underground storage tanks. Based upon our review of House Bill 3055 and the current action taken by the Senate as demonstrated in Senate Bill 554 which has been forwarded on to your committee, we respectfully urge that the committee look unfavorably at House Bill 3055 and as an alternative would respectfully urge the committee to look favorably upon Senate Bill 554.

As you are aware the 1989 Legislature enacted Senate Bill 398 which created a petroleum storage tank release fund to assist owners and operators in complying with the cleanup cost requirements of the Environmental Protection Agency (EPA) in the event of leakage and other necessary corrective action. In general terms, the EPA requirements are actually two-fold. First, is the cleanup cost requirements which the legislature attempted to speak to in Senate Bill 398. The other is a requirement that owners and operators of underground storage tanks be financially responsible for legal obligations they may incur as a result of leakage. I think it is important to point out that Senate Bill 554 as originally drafted and House Bill 3026 were both attempts to correct certain areas left unresolved by the 1989 act found in Senate Bill 398. In regards to the financial responsibility for legal obligations, that issue was originally addressed in Senate Bill 550 and of course the bill at hand, House Bill 3055. After much discussion in the Senate, both issues were incorporated in Senate Bill 554 and as stated above is currently in this committee for your review. Thus, although House Bill 3055 deals with the specific issue of financial responsibility, it is important to note that both issues are critical to the general public and as stated earlier we believe have been adequately responded to in Senate Bill 554.

In its simplest terms, House Bill 3055 is an attempt to create an "assigned risk" plan for those operators unable to procure insurance in the normal markets for their underground storage

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ATTACHMENT 4

tanks. We believe such a plan strikes against the original intent of the Federal EPA Guidelines and for public policy reasons creates an undue burden on the general public who purchases property and liability insurance as found in K.S.A. 40-1102b and/or c which are unrelated to the issue encompassed by the Bill before this committee.

1. It is important to point out that the Federal Guidelines that are found in 40 CFR part 280, subpart H and part 281 are designed to designate that owners of underground storage tanks must demonstrate financial responsibility. That can be done in various ways. The owner can seek to purchase a letter of credit, the purchasing of a bond, self-insure, and of course purchase insurance. Thus Congress has provided the underground storage owners the availability of many different options. We believe that it is incumbent to remember that no where in the Federal law is there a demonstration that a residual market place of insurance should be created in the insurance industry to satisfy the requirements of financial responsibility of the underground storage tank owners. Thus, we believe that such an action goes against the original intent of the Federal Guidelines and Congress and would argue that the creation of such market place is not required.

2. Given the above, we do recognize that the Kansas Legislature may feel a need, as a matter of public policy, to provide assistance to underground storage tank owners in their search for establishing financial responsibility. That being the case, it appears to us that if the legislature believes there is such a public policy need, such need should be satisfied by utilizing the trust fund that was established in 1989. Thus, the discussions surrounding that issue and the results are found in Senate Bill 554.

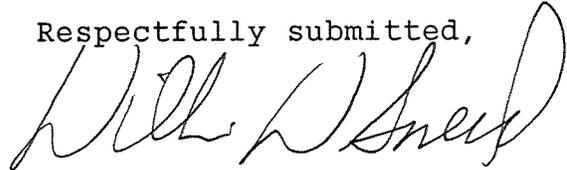
3. We also feel it incumbent to point out that House Bill 3055 will create an undue burden on those Kansas citizens who purchase property and liability coverages in this state. If House Bill 3055 would be enacted, any assessments made by the "assigned risk" pool would be reflected in the premium rates that Kansas citizens would be paying on their normal property and liability and workers' compensation coverages. My client is in the personal lines business of insurance, i.e. homeowners and automobile coverages and this Bill, in essence, requiring my client to become involved in a "commercial" line of insurance that they are neither familiar with, or have the expertise to implement. Thus, the policyholders, i.e. homeowners, automobile owners, and small businesses who purchase workers' compensation will be asked to subsidize a particular coverage that is not contemplated when they buy their insurance products.

4. Assuming for argument that such bill is passed we would strenuously argue that subsection (b) could be arbitrary and inadequate. By placing a specific rate for the first year

coverages through the use of an arbitrary \$500 for each tank, we believe that such figure could in fact be inadequate and as such cause greater losses to the assessed companies and again reflect in higher rates to the Kansas citizens who purchase property and liability coverages. Again, although we do not believe that an assigned risk plan is the appropriate approach, if such approach is adopted by the legislature, we believe that such rates should be fixed by the normal rate making process and the use of historical data as is done with all other types of liability coverages. We believe it is unwise to mandate arbitrary rate levels and we believe that such action would retard any growth or availability in conventional markets.

Again, on behalf of my client, I appreciate the opportunity to appear before the committee. We believe based upon the foregoing that the committee should reject the proposals found in House Bill 3055 and would urge the committee to support the compromise that is now found in Senate Bill 554. I am available for questions on this at your convenience.

Respectfully submitted,



William W. Sneed

WWS:cn

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Testimony on HB 3055
House Committee on Energy and Natural Resources
March 15, 1990
Prepared by Joe Lieber
Kansas Cooperative Council

Mr. Chairman and members of the Committee, I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of over 200 cooperatives who have a membership of nearly 200,000 Kansans.

Most of our members are marketing/supply cooperatives that are owned by the members they serve. The majority of their income comes from the marketing of grain and the sale of supplies to farmers and ranchers.

Approximately 170 of these cooperatives provide petroleum products for their members.

I'm not sure of the exact percentage, but after visiting with co-op managers, I think I'm safe in saying that a large percent are only in the petroleum business to provide a service to the member/owners.

In many small rural areas there is not enough margin or volume to make it a profitable part of their operation. The cooperative maintains the pump in these areas, so the people in the communities will not have to drive 15 to 20 miles for fuel.

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HB 3055 is asking each underground storage tank owner to pay a registration fee of \$500 per tank, to pay for third party liability.

This may not seem like much at first, but when you consider all the thousands of dollars that tank owners are spending now to get their tanks in compliance, it may be the "straw that breaks the camel's back."

Most of our small members would have at least three (3) tanks. The current margin on gasoline is 2 to 4 cents.

If you owned three (3) tanks and your average margin was 3 cents, you would have to sell 50,000 gallons to pay your yearly registration fee of \$1,500.

This is approximately two (2) months of sales for these small dealers.

If HB 3055 passes many of these small dealers will simply go out of business, meaning that many Kansans will have to drive 15 to 20 miles for fuel.

To prevent this drive many of them may resort to buying tanks and storing them on their own property.

I'm sure creating these additional tanks is not what EPA envisioned when they developed their storage tank regulations.

The Kansas Cooperative Council supports having the third party liability part of the Kansas Underground Storage Tank Law, but would like it funded by the Cleanup Fund.

The Council feels that a \$500 registration fee would put an additional financial burden on the tank owners and may cause many of them to close their doors, which would create hardships on certain Kansans.

The Kansas Cooperative Council opposes HB 3055.

Thank you and I will be happy to respond to questions.

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TESTIMONY ON HOUSE BILL NO. 3055

Mr. Chairman and Members of the Committee:

I am Bob Ott. I appear before you today on behalf of my company, Ott Oil Company, and the Kansas Oil Marketers Association. I am a member of this association and have been in the petroleum industry since 1962 and have been an independent businessman marketing motor fuel since 1968. My major supplier of motor fuel and other petroleum products is Phillips 66 Company, however, I also purchase from other suppliers as well. Our company makes tank-wagon deliveries to farmers and other commercial customers and also own and operate convenience stores.

I appreciate the opportunity to appear before you today and testify on House Bill No. 3055. The proposal currently under consideration clearly recognizes that legislation must be enacted to satisfy the federal government and EPA financial responsibility requirements of underground storage tank owners and operators. House Bill No. 3055 is a mechanism of implementing third party liability coverage which is one of the financial responsibility requirements. This bill represents one alternative for solving the current legislative need. We strongly support the implementation of a plan which provides for third party liability coverage. In order to understand the necessity for third party liability coverage, a broader explanation of the federal requirements is appropriate.

In 1984, federal regulations were adopted by the EPA to implement Subtitle I of the Resource Conservation and Recovery Act. The federal act contemplates possible enforcement of these regulations by state agencies, acting pursuant to appropriate enabling legislation.

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Last year, the Kansas Legislature passed Senate Bill No. 398 and K.S.A. 65-34,100 became law. This Kansas law authorizes the Kansas Department of Health and Environment to administer and enforce the federal regulations, and also authorizes the Kansas Department of Health and Environment to administer the Kansas Storage Tank Release Trust Fund, which is a part of the same law.

The federal act and now State law, requires owners and operators of underground storage tanks to perform, and pay for, stringent technical updates to existing and new equipment. These technical requirements include leak detection systems, corrosion protection, and spill and overfill prevention. Additionally, current legislation, both federal and state, requires owners and operators to meet certain financial responsibility requirements. Financial responsibility means that owners and operators of underground storage tanks must ensure, either through insurance or some other means, that there will be financial assurance to cover potential costs of third party liability and corrective action caused by a leak from an underground storage tank.

The Kansas Storage Tank Release Trust Fund, which I referred to earlier, provides only for the corrective action requirement of financial responsibility. It does not satisfy the federal requirement of third party liability.

The legislature does recognize the need to implement a plan which provides for third party liability coverage to owners and operators of underground storage tanks. Without a plan, a very high percent of owners and operators in Kansas cannot comply with the financial responsibility

requirements and will be in violation of federal and state law.

Additionally, most owners and operators will not be able to qualify for use of the current storage tank release trust fund because current legislation requires that for an owner or operator to have eligibility to participate in the petroleum storage tank release trust fund, that individual must submit evidence of financial responsibility. This "catch-22" jeopardizes the very existence of hundreds of rural and urban service stations and convenience stores, cities, counties, school boards and other private businesses throughout the state of Kansas.

Congress and the State of Kansas have adopted strict laws and regulations, primarily because of their concern for our environment. We share this concern. The question is how can we provide for the clean up and the protection of our environment without putting hundreds of business people in the state of Kansas out of business.

The answer to this question is simple. The legislature will adopt a plan which provides for third party liability so that owners and operators have satisfied the federal requirements of financial responsibility. By adopting a plan which does not impose the requirement of expensive per tank fees on owners and operators, it will allow us to stay in business and to shift our focus and our resources to cleaning up the environment and satisfying the federal and state technical requirements.

Attached to my written testimony please find two charts entitled, "What do you have to do?" and "When do you have to act?" These pages were taken out of a publication entitled, Musts for USTs, which was published by the Environmental Protection Agency in September of 1988. These two charts

describe the technical requirements for leak detection, corrosion protection, spill and overfill prevention. These charts describe the stringent regulations which must be performed on all existing underground storage tanks and on all new underground storage tanks. Everything in these charts represent expenses that must be paid out of pocket by each individual owner and operator. No federal or state fund of any kind subsidizes or pays for the technical requirements which have been implemented. The general standards for new tanks and piping required by the regulations are that they be properly designed and constructed and protected from corrosion; equipped with leak detection devices; equipped with overfill protection; and be certified that they have been properly installed. Tank owners and operators are under a strict schedule to upgrade or replace existing tanks and piping. Leak detection requirements are phased in over a 5-year period, depending upon the age of the tank. Tanks that fail to meet the standards in the specified time must be closed.

According to figures compiled by the Kansas Department of Health and Environment, in September of 1989 there were 21,997 UST's registered with the Department. Of that amount, 17,994 were in active use and 3,975 had been removed or filled and left in place.

Attached also to my testimony please find a chart entitled, "Age of Tanks," which was put together by the Kansas Department of Health and Environment in September of 1989. This chart shows the breakdown on the respective age of the tanks in Kansas. In November of 1988, the Petroleum Marketing Association of America conducted a nationwide survey of petroleum

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marketers. The results of the survey indicated that, of the marketers who have already upgraded or replaced tanks, the average cost has been over \$37,000. In anticipation of complying with the new regulations, marketers anticipated spending an average of \$39,500 per location in 1989. Also attached to my testimony please find copies of actual invoices which represent the costs that I paid for upgrading one location in Ellsworth, Kansas, to meet the technical requirements imposed by the EPA. The total cost involved, including dispensers, was \$68,213.

As you can see, owners and operators of underground storage tanks in the state of Kansas will spend significant sums of money out of pocket in order to protect our environment and satisfy federal and state technical requirements. I stand before you today and ask you for the opportunity to allow me, and other tank owners, to spend our resources on satisfying the technical requirements and updating our systems without the immediate burden of paying the tank fee which is proposed in House Bill No. 3055.

The purpose for creating the underground storage tank releast trust fund is to satisfy the federal requirements for financial responsibility. Our legislation must be submitted to the EPA for state program approval. The basic purpose of financial responsibility is simply to establish reasonable assurance that someone has the funds to pay for the costs of corrective action and third party liability resulting from an underground storage tank release. Paragraph 10 of House Bill No. 3055, on page 2, line 14, provides that, "the plan shall provide for coverage only of claims for occurrences that commenced during the term of the policy and that are discovered and reported to the insurer within six months after the

effective date of the cancellation or termination of the policy; . . ." The storage tanks currently in use in our industry, as you can see by the attached chart, in many instances, are in excess of 25 years old. Contamination often is the result of a leak that occurred years ago. It would be difficult, if not impossible, to make an exact determination of when the leak began. We are concerned that the EPA would not approve a plan which implements an occurrence-based policy to satisfy financial financial responsibility requirements when the occurrences have been taking place over the past 30 to 40 years.

It is our understanding that this assigned risk insurance proposal would spread the risk, and the obligation to underwrite insurance, to many companies who do not and have never written third party liability insurance against losses to persons and property from the release of an underground storage tank. We are concerned that these companies who have no experience history would provide inadequate and inefficient handling of claims. These inefficiencies could lead to greater per tank rates than those immediately implemented under the proposed bill. We believe that the Kansas Department of Health and Environment has been intimately involved with all aspects of the underground storage tank issue and would be a more suitable agency for handling third party liability claims.

In conclusion, we oppose this bill in its present form, but strongly support Senate Bill No. 554 which provides for third party coverage and is now assigned to this Committee. Thank you for the opportunity to address this body today and I stand for questions.

WHAT DO YOU HAVE TO DO? Minimum Requirements

You must have Leak Detection, Corrosion Protection, and Spill/Overfill Prevention.

For WHEN you have to add these to your tank system, see the chart on the right.

LEAK DETECTION	
NEW TANKS <i>2 Choices</i>	<ul style="list-style-type: none"> ● Monthly Monitoring* ● Monthly Inventory Control and Tank Tightness Testing Every 5 Years (You can only use this choice for 10 years after installation.)
EXISTING TANKS <i>3 Choices</i> <i>The chart at the bottom of the next page displays these choices.</i>	<ul style="list-style-type: none"> ● Monthly Monitoring* ● Monthly Inventory Control and Annual Tank Tightness Testing (This choice can only be used until December 1998.) ● Monthly Inventory Control and Tank Tightness Testing Every 5 Years (This choice can only be used for 10 years after adding corrosion protection and spill/overfill prevention or until December 1998, whichever date is later.)
NEW & EXISTING PRESSURIZED PIPING <i>Choice of one from each set</i>	<ul style="list-style-type: none"> ● Automatic Flow Restrictor ● Automatic Shutoff Device ● Continuous Alarm System ● Annual Line Testing ● Monthly Monitoring* (except automatic tank gauging)
NEW & EXISTING SUCTION PIPING <i>3 Choices</i>	<ul style="list-style-type: none"> ● Monthly Monitoring* (except automatic tank gauging) ● Line Testing Every 3 Years ● No Requirements (if the system has the characteristics described on page 11)
CORROSION PROTECTION	
NEW TANKS <i>3 Choices</i>	<ul style="list-style-type: none"> ● Coated and Cathodically Protected Steel ● Fiberglass ● Steel Tank clad with Fiberglass
EXISTING TANKS <i>4 Choices</i>	<ul style="list-style-type: none"> ● Same Options as for New Tanks ● Add Cathodic Protection System ● Interior Lining ● Interior Lining and Cathodic Protection
NEW PIPING <i>2 Choices</i>	<ul style="list-style-type: none"> ● Coated and Cathodically Protected Steel ● Fiberglass
EXISTING PIPING <i>2 Choices</i>	<ul style="list-style-type: none"> ● Same Options as for New Piping ● Cathodically Protected Steel
SPILL / OVERFILL PREVENTION	
ALL TANKS	<ul style="list-style-type: none"> ● Catchment Basins -and- ● Automatic Shutoff Devices -or- ● Overfill Alarms -or- ● Ball Float Valves
<p>* Monthly Monitoring includes: Automatic Tank Gauging Ground-Water Monitoring Vapor Monitoring Other Approved Methods Interstitial Monitoring</p>	

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WHEN DO YOU HAVE TO ACT? Important Deadlines

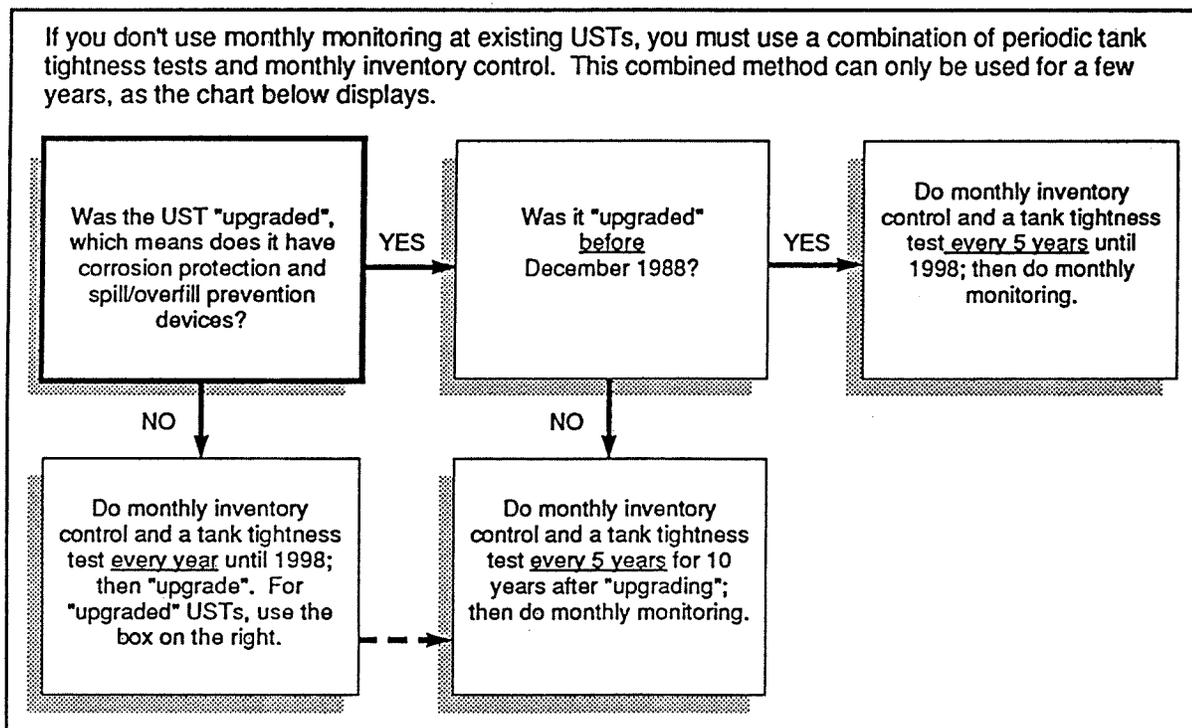
← For WHAT you have to do, see the chart on the left.

TYPE OF TANK & PIPING	LEAK DETECTION	CORROSION PROTECTION	SPILL / OVERFILL PREVENTION
New Tanks and Piping*	At installation	At installation	At installation
Existing Tanks** Installed: Before 1965 or unknown 1965 - 1969 1970 - 1974 1975 - 1979 1980 - December 1988	By No Later Than: December 1989 December 1990 December 1991 December 1992 December 1993	} December 1998	} December 1998
Existing Piping** Pressurized Suction	December 1990 Same as existing tanks	December 1998 December 1998	Does not apply Does not apply

* New tanks and piping are those installed after December 1988
 ** Existing tanks and piping are those installed before December 1988

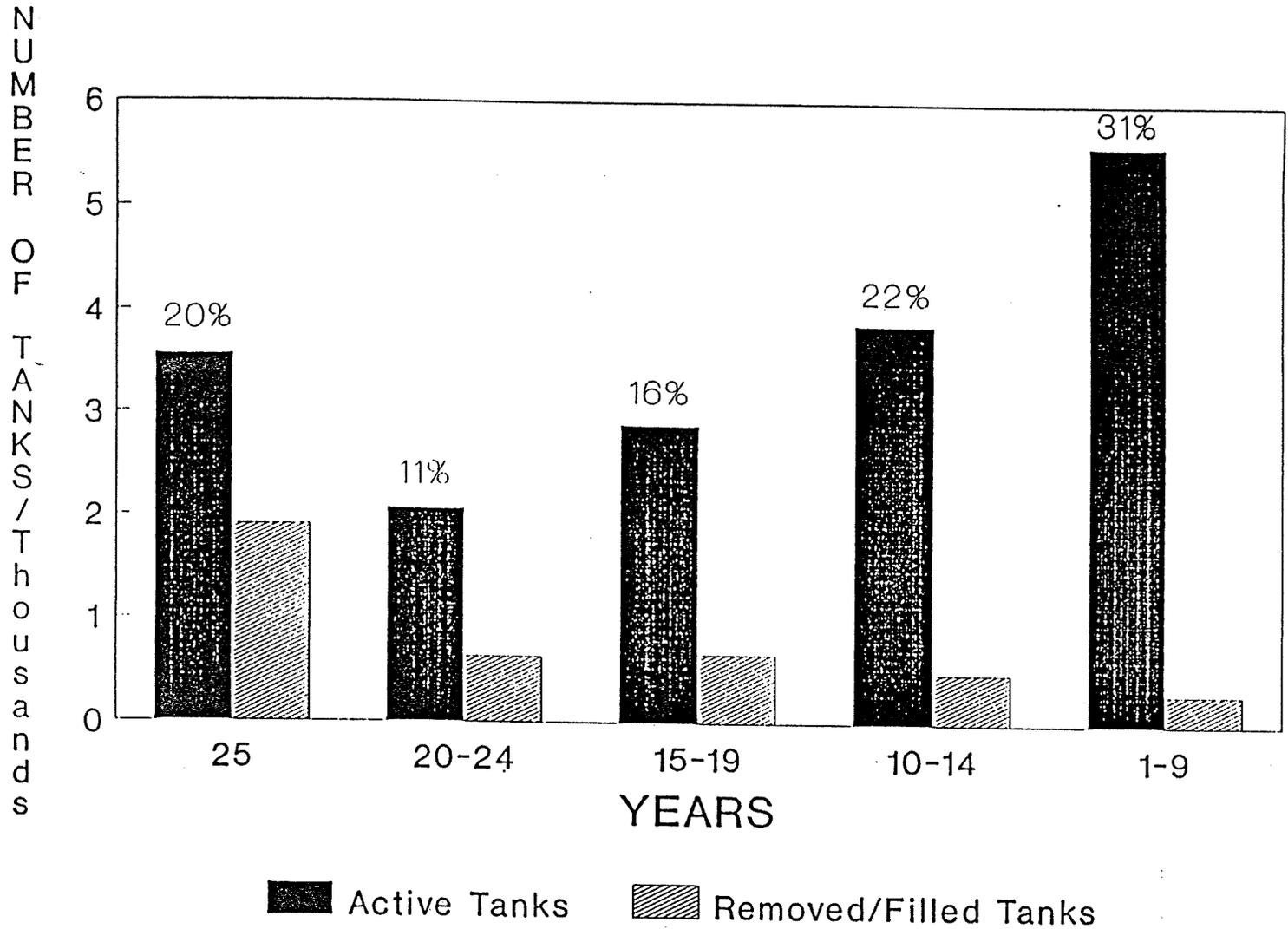
IF YOU CHOOSE TANK TIGHTNESS TESTING AT EXISTING USTs ...

If you don't use monthly monitoring at existing USTs, you must use a combination of periodic tank tightness tests and monthly inventory control. This combined method can only be used for a few years, as the chart below displays.



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AGE OF TANKS



6-9

OTT OIL COMPANY
8TH & DOUGLAS
ELLSWORTH, KANSAS

ATTACHMENTS

#1	Removing Old Tanks	\$ 3190.00
#2	Purchase 2 New Tanks	10550.00
#3	Setting New Tanks, Piping, Required Tank Liner	17115.88
#4	Sub Pumps, Line/Leak Detector, etc.	5475.75
#5	Monitor System	6014.40
#6	MPD Dispensers	20592.08
	TOTAL:	\$62938.11

PROPOSALS FOR TANK LININGS:

ATTACHMENTS

#7	East Side Location (2 tanks)	\$15703.30
#8	Bulk Plant (7 tanks)	43657.70
	TOTAL:	\$59361.00

DATE	ARGES. AND CREDITS	BALANCE
	Tax Exempt: #14-0333 BALANCE FORWARD	(1)
	<u>For Excavation work done at Ellsworth</u>	
7/13	Dug out 4 tanks-790 Backhoe-4 Hours @ \$90.00/Hour	\$360.00
7/14	Dug out tank holes, load 5 tanks- 8 1/2 Hours @ \$90.00/Hour	\$765.00
7/14	Hauling off broken concrete-2 dump-trucks-9 1/2 Hours each @ \$40.00/Hour	\$760.00
7/14	Hauled off 3 loads of tanks with semi/low boy-8 Hours @ \$65.00 per hour	\$520.00
7/17	Dug on tank holes-790 backhoe-6 1/2 Hours @ \$90.00/Hour	\$585.00
7/17	Hauling off broken concrete-1 dump truck-5 hours @ \$40.00/Hour	\$200.00
	TOTAL AMOUNT DUE ON ACCOUNT	\$3,190.00

Thank You

Handwritten signature/initials

D & S SERVICE
533 N. Santa Fe
SALINA, KS 67401

(913) 827-1789

2
4600

TO Ott Oil
Box 707
Salina, Ks. 67402 0707

DATE	6-12-89
CUSTOMER ORDER NO.	
SALESPERSON	
VIA	Ellsworth

TERMS: Net 15 days - ~~1% FC after 30 days~~ Discount not allowed after 6-26-89

QUANTITY	DESCRIPTION	PRICE	AMOUNT
2	10,000 gal tanks	5,275.00	10,550 00
	Discount allowed if paid in 15 days from invoice date	-	1,980 78
	Freight		370 00
		Sub Total	8,939 22
		Tax	446 96
		Total	9,386 18

Handwritten: Paid 6/25/89 055
6-11

D & S SERVICE
533 N. Santa Fe
SALINA, KS 67401

(913) 827-1789

INVOICE

4443

4

TO Otto Shop
Box 707
Salina, Ks. 67402 0707

DATE	3-15-89
CUSTOMER ORDER NO.	
SALESPERSON	
VIA	Ellsworth

TERMS: Due on receipt

QUANTITY	DESCRIPTION	PRICE	AMOUNT
6	OPW Safety Valve	68.00	408 00
3	3/4 HP sub pump	680.00	2,040 00
3	24" manhole	82.00	246 00
3	20" manhole	59.00	177 00
3	leak detector	147.00	441 00
3	container manhole	255.00	765 00
6	2x1 1/2" stainless steel flex hose	84.00	504 00
6	2" stainless steel flex hose	89.00	534 00
	Freight		100 00
		Sub Total	5,215 00
		Tax	260 75
		Total	5,475 75

Handwritten notes: Paid 3/23/89 - B.O.H. CK # 2796

D & S SERVICE
533 N. Santa Fe
SALINA, KS 67401

(913) 827-1789

INVOICE

4502

5

Ott Oil
Box 707
Salina, Ks. 67402 707

DATE	4-19-89
CUSTOMER ORDER NO.	
SALESPERSON	
VIA	Ellsworth job

TERMS: Due on receipt

QUANTITY	DESCRIPTION	PRICE	AMOUNT
3	control boxes for sub pump	75.00	225 00
1	TLS 250 Monitor W/printer		2,295 00
3	9" tank probe	850.00	2,550 00
	in coming freight		42 00
2	Island form & dispenser box	308.00	616 00
		Sub total	5,728 00
		Tax	286 40
		Total	6,014 40

Handwritten notes: Paid 6/4/89 - B.O.H. CK # 2826

ORIGINAL

Thank You!

6-13

ORIGINAL INVOICE
 REMITTING ADDRESS
 P.O. BOX 1
 WICHITA, KS 67277

WICHITA OFFICE
 3737 W. HARRY - P.O. BOX 12104
 WICHITA, KANSAS 67277
 316 - 942-136

CHANUTE OFFICE
 1100 N. LINCOLN - P.O. BOX 483
 CHANUTE, KANSAS 66720
 316 - 431-1710

GARDEN CITY OFFICE
 1616 E. FULTON - P.O. BOX 1324
 GARDEN CITY, KANSAS 67846
 316 - 275-7403

WHE PETROLEUM AND INDUSTRIAL EQUIPMENT
WHE
 P.B. HOIDALE CO., INC.
 MEMBER PEI

PLEASE REFER TO THIS NUMBER WHEN REMITTING

No. K 59158 **3**

Please Pay From Invoice
 Statements Issued only on request

INVOICE DATE
 6-29-88

SOLD TO	OTT OIL CO., INC.	SHIP TO	OTT Oil Co.	CUST. ORDER NO.	
	1315 BEVERLY		8th & Douglas	CUST. ACCOUNT NO.	
	P. O. BOX 707		Ellsworth, Kans	501100	
	SALINA, KANSAS 67401			WRITTEN BY	TERRITORY
				DRH	02101

TERMS: NET. NO DISCOUNT. DUE UPON RECEIPT.	PAGE 1	OF 1	SHIPPED VIA	DATE SHIPPED	PREPAID <input checked="" type="checkbox"/> COLLECT <input type="checkbox"/>	DATE WRITTEN
					PREPAID & CHARGE <input type="checkbox"/>	8-31-87

QUAN. ORDERED	DESCRIPTION	QUAN. SHIPPED	UNIT PRICE	DISC	NET	NET TOTAL
2	Tokheim 426 RCTC6 DISPENSORS	2	9,342.40	N		18684.80
	3 Product 6 Hose-Phillips Spbc					
	A Product SUPER CLEAN PREM UNLOADED					
	B Product Regular					
	C. Product SUPER CLEAN UNLOADED					
12	OPW Series Nozzles	12	24.95	N		299.40
	4 REG 11A Blue Couch					
	8 11A P UL (4 Red) (4 White)					
1	Tokheim 67-8 Interface Box	1	358.20	N		358.20
1	Tokheim 68 Control Panel	1	269.10	N		269.10

ACCEPTED: _____

BACK ORDER ON INVOICE # _____

A Service Charge of 1 1/2% per month (18% Annually) shall be made upon any balance past due. Minimum Charge \$5.00

No claim for reduction allowed after 10 days. Bills payable in Wichita Exchange, or subject to sight draft at maturity. We will not be responsible for material loss or damage by carrier company in transit. All agreements are subject to strikes, accidents or other causes beyond our control.

No credit will be allowed for goods returned without our written consent. Give as reference our Invoice date and Number. If accepted credit will be issued less 15 percent minimum restocking charge plus transportation expense.

"THE MERCHANDISE COVERED BY THIS INVOICE HAS BEEN MANUFACTURED IN ACCORDANCE WITH ALL PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938 AS AMENDED."

SHIPPING CHGS.	
SUB TOTAL	19611.50
SALES TAX	980.58
TOTAL	20592.08

CL# 3019 - Paid 7/31/88 → ~~20,592.08~~ 20,592.08

6-14

**Armor Shield
of Dodge City**
P.O. Box 449
Dodge City, Kansas 67801
316-225-0927

Proposal

PROPOSAL SUBMITTED TO Bob Ott STREET P.O. Box 707 CITY, STATE AND ZIP CODE Salina, Kansas 67402		PHONE 913-823-2331	DATE 2-15-90
ARCHITECT Armor Shield of D.C.		DATE OF PLANS 2-15-90	JOB PHONE
		JOB NAME	
		JOB LOCATION East Side Location	

We hereby submit specifications and estimates for:
Purging, cutting access holes, cleaning, sandblasting, Armor Shield fiber lining and resealing access holes, work to be done on (2) 12,000 gal. tanks.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:
Fifteen thousand, seven hundred, three & 30/100----- dollars (\$ 15,703.30)

Payment to be made as follows:
Upon completion. Price above includes sales tax.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature [Signature]
Note: This proposal may be withdrawn by us if not accepted within 30 Days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____
Signature _____

Date of Acceptance: _____

6-15

Proposal

PROPOSAL SUBMITTED TO Bob Ott		PHONE 913-823-2331	DATE 2-15-90
STREET P.O. Box 707		JOB NAME	
CITY, STATE AND ZIP CODE Salina, Kansas 67402		JOB LOCATION Bulk Plant	
ARCHITECT Armor Shield of D.C.	DATE OF PLANS 2-15-90	JOB PHONE	

We hereby submit specifications and estimates for:

Purging, cutting access holes, cleaning, sandblasting, Armor Shield fiber lining and resealing access holes, work to be done on (1) 12,000 gal., (4) 10,000 gal., and (2) 2000 gal. tanks. (2000 gal. tanks are \$4046.00 each.) Owner will be responsible for all local permits. Armor Shield of Dodge City will acquire all state and federal permits required. Owner will be responsible for all excavation work to return tanks to ground level.

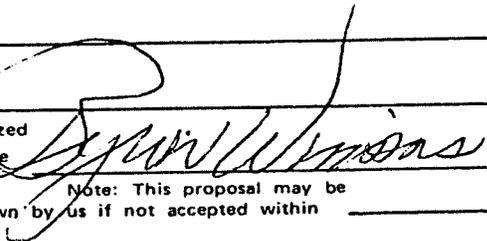
We Propose hereby to furnish material and labor – complete in accordance with above specifications, for the sum of: **Forty-three thousand, six hundred, fifty-seven & 70/100-----** dollars (\$ **43,657.70**)

Payment to be made as follows:

Upon completion. Price above includes sales tax.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature



Note: This proposal may be withdrawn by us if not accepted within **30** Days.

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date of Acceptance: _____

6-16



MID-AMERICA LUMBERMENS ASSOCIATION

MEMORANDUM

TO: Members of the House Energy and Natural Resources Committee
FROM: Art Brown, Regional Director, Mid-America Lumbermens Association
RE: House Bill NO. 3055
DATE: March 15, 1990

On behalf of the Mid-America Lumbermens Association, I want to express my appreciation for the opportunity to appear as a conferee today on House Bill No. 3055. I appear in opposition to this proposal, however.

I have followed this issue throughout the 1990 session because several of the members of our Association have underground storage tanks and are quite concerned about the potential costs of showing financial responsibility, depending upon what the State of Kansas does to insulate them from certain federal requirements. I do not pretend to be an expert in this area and would probably be unable to answer any technical questions you might have. I understand, however, that House Bill No. 3055 would impose a \$500 per tank fee to fund an assigned risk plan intended to cover third party liability.

My review of the terms and conditions of this type of insurance causes me to wonder whether a "per occurrence" plan would provide adequate protection to the owners of these storage tanks. Furthermore, it seems to me that the funding mechanism under Senate Bill No. 554, which spreads the costs to a larger segment of the population, would be a far superior method of funding. It makes more sense to us to have the tank owner spending his money fixing the problem.

Senate Bill No. 554 is now in this Committee. We would urge you to give serious consideration to its enactment instead of the concept under House Bill No. 3055.

H ENERGY AND NR
3-15-90

ATTACHMENT 7

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

**Testimony on HB 3055
before the
House Energy & Natural Resources Committee**

by

**Bill Curtis, Assistant Executive Director
Kansas Association of School Boards**

March 15, 1990

Mr. Chairman and members of the Committee, we appreciate the opportunity to testify on behalf of the 302 member school districts of the Kansas Association of School Boards. KASB appears today as a reluctant opponent to HB 3055.

HB 3055 does serve a need for Kansas school districts. It provides a source of third party liability insurance for underground storage tanks. However, at this point our association would prefer the provisions of SB 554 for the solution of the third party liability problem. We are also of the opinion that once everyone has complied with EPA regulations concerning the underground storage tanks, the insurance industry will be willing to enter the marketplace. HB 3055 may be necessary some time in the future. But we would urge the Committee to give SB 554 a chance to work as it provides third party liability protection at a very minimal cost.

We thank the Committee for their time and attention.

*H ENERGY AND NR
3-15-90*

ATTACHMENT 8