Approved: 2-3-93
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on January 26, 1993 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:
Terry Leatherman, KCCI
Michael K. Torrey, Kansas Grain and Feed
Whitney Damron, Williams Natural Gas
Bill Craven, Kansas Sierra Club
Jim Ludwig, Western Resources
Written Testimony, John Freed, Citizens for A Reasonable Environment
Department of Health and Environment

Others attending: See attached list

Edward Moses, appeared before the committee to request a land reclamation bill concerning surface mining operations and providing for regulations and relating to the reclamation of land affected by surface mining. Attachment 1

Senator Vancrum, followed by a second by Senator Lawrence, moved to introduce the bill. The motion carried.

Whitney Damron appeared before the committee to request introduction of three bills: protection of title for natural gas wells; abandonment of underground storage facilities; have Corporation Commission promulgate rules and regulations.

Senator Wisdom moved, with a second by Senator Hardenburger, to introduce the bills. The motion carried.

SB-29 - air contaminant emission sources

Hearings continued on SB-29 with Terry Leatherman, KCCI, appearing in support of the bill. Mr. Leatherman noted that his organization felt state regulatory activities should be no more restrictive than the federal low and should encompass an approach which balances environmental protection with economic growth. Attachment 2

Edward Moses, Kansas Cement Council, Kansas Aggregate Producers Association, appeared in support of SB-29 noting the Kansas Cement Council was in total support of efforts to establish a reasonable air quality act. He further noted this bill will make it easier for the cement industry to comply with the provisions of the Federal Clean Air Act. Attachment 3 Mr. Moses also presented testimony from Kansas Aggregate Producer's Association noting that organization was in total support of efforts to establish a reasonable air quality act. Attachment 4

Michael K. Torrey, Kansas Grain and Feed, appeared in support of SB-29 noting it will give control for the administration of this act to the Kansas Department of Health and Environment. Attachment 5

Jim Ludwig, Western Resources, appeared in support of SB-29 noting environmental problems can be remedied more quickly and at less expense when regulatory jurisdiction is in the hands of the Kansas Department of Health and Environment. Attachment 6

Bill Cravens, Sierra Club, appeared concerning SB-29 and presented numerous changes and suggestions his organization felt should be made. These changes are presented in his written testimony. Attachment 7

Written testimony by John Freed, Citizens for A Reasonable Environment, was presented to committee members. Mr. Freed noted his organization was supportive of SB-29 but did express a major concern with new section 6a, lines 8-10. Attachment 8

Members were given copies of a water supply contract, negotiated by the Kansas Water Office in accordance with provisions of K.S.A. 82a-1301 (the Water Marketing Act). This contract has been reviewed and approved by the Kansas Water Authority which has determined that the sale of water supply service to PUblic Wholesale Water District No. 12 is in the best interests of the State of Kansas. Attachment 9

Requests for two bills from the Department of Health and Environment were presented. One deals with water pollution and related legal action intervention.
Attachment 10

Senator Lee, with a second from Senator Emert, moved introduction of the bill. The motion carried.

The second request deals with the Kansas Storage Tank Act. Attachment 11

Senator Lee, with a second from Senator Martin, moved introduction of the bill. The motion carried.

Minutes for January 13, 15, 20 and 21 were presented for correction and approval.

Senator Vancrum moved adoption of the minutes as corrected. Senator Wisdom seconded the motion and the motion carried.

The meeting adjourned at 8:45 a.m.

The next meeting is scheduled for January 27, 1993.

GUEST LIST

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE January 26, 1993

(PLEASE PRINT) NAME AND ADDRESS		ORGANIZATION
Al Stallard	Docking State Off Bldg	Ks. Dept of Transportation
Steve Miller		Sunflower Electric Power
Barry Mapes		Norton-Decatur REC
Tom Hestermann		Sunflower Electric Power Corp.
Mike Tovey		KGFA
Don Wells		Kansas Coop Council
Jerry Leatherman	Topeka	KCCI
Wendy Mayer	Topeka	KAPP
Joe McGuire	Topeka	Martin Marietta Aggregates
Russ Bishop	Houston Tx	Panhandle Eastern Pipeline
Jack Glaves	Wichita	" " "
Wayne Kitchen	Topeka	Western Resources
Jim Lumley	"	"
Bill Craven	Topeka	Sierra Club
ED SCHAUB	"	WESTERN RESOURCES
Mary Ann Bradford	"	League of Women Voters
Tom WHITAKER	"	Ks Motor Carriers Assn.
Rich McKee	"	KS Livestock Assn.
Joyce Wolf	LAWRENCE	Ks. Audubon Council
STEVE KEARNEY	TOPEKA	COASTAL
Carl Daugherty	Columbus	Empire District Elec.
KEVIN ROBERTSON	TOPEKA	ENRON CORP.
Bob Totten	Topeka	Ks Contractors Association
CR Duffy	Topeka	Ks Petroleum Council

Comments on KAPA sub 2195:

* Provides for the licensing of all mine operators and operations

* Provides for mine site registration and approval

* Provides for approved reclamation at closure

* Provides bonding to insure reclamation will take place

* Provides for administration by the Soil Conservation Commission (SCC) for the following reasons:

  1) SCC is familiar with reclamation procedures and how these procedures dovetail with watershed requirements.

  2) SCC has access and working relationship with county soil conservation offices. These office provides the maps, contours, and topographical data necessary to create and monitor good reclamation plans.

  3) SCC approved, conceptually, the matter of becoming the administrative agency at their 1/8/91 meeting.

Senate Energy & Nat'l Resources
January 26, 1993
Attachment 1

AN ACT concerning surface mining operations; providing for regulation thereof; and relating to the reclamation of land affected by surface mining.

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

Section 1. This act shall be known and may be cited as the land reclamation act.

Section 2. It is the policy of this state to provide for the reclamation and conservation of land affected by surface mining and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the citizens of this state.

Section 3. As used in this act:

(a) "Director" means the executive director of the state soil conservation commission or a designee.

(b) "Affected land" means the area of land from which overburden has been removed or upon which overburden has been deposited; but shall not include stockpile areas or roads.

(c) "Commission" means the state conservation commission.

(d) "Mine" means any underground or surface mine developed and operated for the purpose of extracting any materials except coal.

(e) "Operator" means any person, firm, partnership, or corporation, government or other agency

(f) "Overburden" means all of the earth and other materials which lie above the natural deposits of material being mined or to be mined.

(g) "Peak" means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(h) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining.

(i) "Ridge" means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(j). "Surface mining" means:

(1) The mining of material, except for coal, oil, and gas, for sale or for processing or for consumption in the regular operation of a business by removing the overburden lying above natural deposits and mining directly from the natural deposits exposed, or by mining directly from deposits lying exposed in their natural state. Surface mining shall include dredge operations lying outside the high banks of streams and rivers.

(2) Removal of overburden and mining of limited amounts of any materials shall not be considered surface mining when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of the natural deposit, if the materials removed during exploratory excavation or mining are not sold, processed for sale, or consumed in the regular operation of a business.

(k) "Topsoil" means the natural medium located at the land surface with favorable characteristics for growth of vegetation.

(l) "Active site" means a site where surface mining is being conducted.

(m) "Inactive site" means a site where surface mining is not being conducted but where overburden has been disturbed in the past for the purpose of conducting surface mining and an operator anticipates conducting further surface mining operations in the future.

(n) "Materials" means natural deposits of gypsum, clay, stone, sandstone, sand, shale, silt, gravel, volcanic ash,or any other minerals of commercial value found on or in the earth with the exception of coal, oil, and gas and those located within cut and fill portions of road rights of way.

(o) "Reclamation" means the reconditioning of the area of land affected by surface mining.

(p) "Stockpile" means the mining by surface mining of gypsum, clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash, or other minerals and removal from its natural position and deposited elsewhere for future use in the normal operation as a business.

Section. 4. Sections 2 through 24 shall not apply to:

(a) Affected land mined prior to the effective date of this act and shall apply only to those areas of land affected after the effective date of this act.

(b) in any way affect or control the stockpiling, method of stockpiling, or mining from stockpiles of gypsum, clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash, or other minerals which are consumed in the regular operation of the business.

(c) river sand producers subject to dredging permits as issued by the Chief Engineer of the Division of Water Resources.

Section 5. No person, firm, partnership, or corporation shall engage in surface mining or operation of an under ground mine or mines, as defined by this act without first obtaining a license from the Director.

(a) Licenses shall be issued upon application submitted on a form provided by the Director and shall be accompanied by a fee of fifty (50) dollars. Each applicant shall be required to furnish on the form information necessary to identify the applicant. Licenses shall expire on December 31 of each year and shall be renewed by the Director upon application submitted within thirty (30) days prior to the expiration date and accompanied by a fee of ten (10) dollars.

(b) A license to mine is only valid when approved by the commission and acknowledged by a certificate which has been signed by the director and lists the operator and the assigned license number.

Section 6. The Director may, with approval of the commission, commence proceedings to suspend, revoke, or refuse to renew a license of any licensee for repeated or willful violation of any of the provisions of this act. Proceedings for the suspension or revocation of a license pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act by the director or a hearing officer appointed by the director.

Section 7. (a) At least seven (7) days before commencement of mining or removal of overburden at a surface mining site not previously registered, an operator engaged in surface mining in this state shall register the site with the director. Application for registration shall be made upon a form provided by the director.

All site registrations shall expire on December 31 of each year. Application for renewal of registration shall be on a form provided by the director. Registration and registration renewal fees shall be established by the commission in an amount not exceeding the cost of administering the registration provisions of this chapter. The application shall include:

(1) A description of the tract or tracts of land where the site is located and the estimated number of acres at the site to be affected by surface mining

(2) The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands.

(3) A statement explaining the authority of the applicant's legal right to operate a mine on the land; and

(4) proof of compliance with with all applicable zoning codes or regulations.

(b) The registration application fees and registration renewal fees shall be established by the rules and regulations of the director.in an amount not exceeding the cost of administering the registration provisions of this act, as estimated by the commission.

(c) A mine site registered pursuant to this section or section 21 shall have, at the primary entrance to the mine site, a clearly visible sign which sets forth the name, business address, and phone number of the operator. Failure to post and maintain a sign as required by this subsection, within thirty (30) days after notice from the director, invalidates the registration.

(d) A person who falsifies information required to be submitted under this section shall be guilty of a simple misdemeanor.

Section 8. The application for registration shall be accompanied by a bond or security as required under sections 20 or 21. After ascertaining that the applicant is licensed under section 5 and is not in violation of this act with respect to any site previously registered with the director, the director shall register

the mine site and shall issue the applicant written authorization to operate a mine.

Section 9. (a) An operator may at any time apply for amendment or cancellation of registration of any site. The application for amendment or cancellation of registration shall be submitted by the operator on a form provided by the director and shall identify as required under section 7 the tract or tracts of land to be added to or removed from registration.

(b) If the application is for an increase in the area of a registered site, the application shall be processed in the same manner as an application for original registration.

(c) If the application is to cancel registration of any or all of the unmined part of a site, the director shall after ascertaining that no overburden has been disturbed or deposited on the land order release of the bond or the security posted on the land being removed from registration and cancel or amend the operator's written authorization to conduct surface mining on the site.

(d) No land where overburden has been disturbed or deposited shall be removed from registration or released from bond or security under this section.

Section 10. (a) If control of an active site or the right to conduct any future mining at an inactive site is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, the new operator shall within fifteen (15) days apply for registration of the site in the new operator's name. The application shall be made and processed as provided under sections 7 and 8 of this act. The former operator's bond or security shall not be released until the new operator's bond or security has been accepted by the director.

(b) The director may establish procedures for transferring the responsibility for reclamation of a mine site to a state agency or political subdivision which intends to use the site for other purposes. The director, with agreement from the receiving agency or subdivision to complete adequate reclamation, may approve the transfer of responsibility, release the bond or security, and terminate or amend the operator's authorization to conduct surface mining on the site.

Section 11. (a) An operator authorized under this act to operate a mine, after completion of mining operations and within the time specified in section 13 of this act, shall:

(1) Grade affected lands except for impoundments, pit floors, the high banks of sand pits, and highwalls, to slopes having a maximum of one (1) foot vertical rise for each three (3) feet of horizontal distance. Where the original topography of the affected land was steeper than one (1) foot of vertical rise for each three (3) feet of horizontal distance, the affected lands may be graded to blend with the surrounding terrain.

(2) Provide for the vegetation of the affected lands, except for impoundments, pit floors, and highwalls, as approved by the director before the release of the bond as provided in section 16.

(b) Notwithstanding subsection(a), overburden piles where deposition has not occurred for a period of twelve (12) months shall be stabilized.

(c) Topsoil that is a part of overburden shall not be buried in the process of mining.

(d) The director, with concurrence of the advisory commission, may grant a variance from the requirements of subsections (a) and (b).

(e) A bond or security posted under this act to assure reclamation of affected lands shall not be released until all reclamation work required by this section has been performed in accordance with the provisions of this act, except when a replacement bond or security is posted by a new operator or responsibility is transferred under section 10 of this act.

Section 12. (a) An operator shall file with the director a periodic report for each site under registration. The report shall make reference to the most recent registration of the mine site and shall show:

(1) The location and extent of all surface land area on the mine site affected by mining during the period covered by the report.

(2) The extent to which removal of mineral products from all or any part of the affected land has been completed.

(b) A report shall also be filed within 90 days after completion of all surface mining operations at the site regardless of the date of the last preceding report. Forms for the filing of periodic reports required by this section shall be provided by the director.

Section 13. (a) An operator of a mine shall reclaim affected lands within a period not to exceed 3 years, after the filing of the report required under section 12(b) indicating the mining of any part of a site has been completed.

(b) For certain post mining land uses, such as a sanitary land fill, the director, with the approval of the commission, may allow an extended reclamation period.

(c) An operator, upon completion of any reclamation work required by section 11, shall apply to the director in writing for approval of the work. The director shall within 90 days inspect the completed reclamation work. Upon determination by the director that the operator has satisfactorily completed all required reclamation work on the land included in the application, the commission shall release the bond or security on the reclaimed land, shall remove the land from registration, and shall terminate or amend as necessary the operator's authorization to conduct surface mining on the site.

(d) In the event the director fails to inspect the the completed reclamation work within the time specified in subsection (c). The operator and surety shall notify the commission of substantial completion of reclamation upon the affected area. Upon receipt of such notice the commission shall release the bond without further prejudice.

Section 14. The time for completion of reclamation work may be extended upon presentation by the operator of evidence satisfactory to the director that reclamation of affected land cannot be completed within the time specified by section 13 of this act without unreasonably impeding removal of material products from other parts of an active site or future removal of material products from an inactive site.

Section 15. (a) A bond filed with the director by an operator pursuant to this act shall be in a form prescribed by the director, payable to the state of Kansas, and conditioned upon faithful

performance by the operator of all requirements of this act and all rules and adopted by the director pursuant to this act. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Kansas as surety. In lieu of a bond, the operator may deposit cash, certificates of deposit, or government securities with the director on the same conditions as prescribed by this section for filing of bonds.

(b) The amount of the bond or other security required to be filed with each application for registration of a surface mining site, or to increase the area of affected land previously registered as required under section 9 of this act; shall be a minimum of $250 per acre and shall not exceed a maximum of $500 per acre.

Section 16. Any operator who registers with the director two (2) or more surface mining sites may elect, at the time the second or any subsequent site is registered, to post a single bond in lieu of separate bonds on each site. The amount of a single bond on two (2) or more surface mining sites may be increased or decreased from time to time in accordance with sections 8,9, and 13 of this act. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the director.

Section 17. No bond filed with the director by an operator pursuant to this act may be canceled by the surety without at least ninety (90) days notice to the director. If the license to do business in Kansas of any surety of a bond filed with the director is suspended or revoked, the operator, within ninety (90) days after receiving notice thereof from the director, shall substitute for the surety a corporate surety licensed to do business in Kansas. Upon failure of the operator to make substitution of surety as herein provided, the director shall have the right to suspend the operator's authorization to conduct surface mining on the site or sites covered by the bond until substitution has been made. The Kansas commissioner of insurance shall notify the director whenever the license of any surety to do business in Kansas is suspended or revoked.

Section 18. The director or the director's designee may, when accompanied by the operator or operator's designee, during regular business hours inspect any lands on which any operator is authorized to operate a mine for the purpose of determining whether the operator is or has been complying with the provisions of this act. The director shall give written notice to any operator who violates any of the provisions of this act or any rules adopted by the director pursuant to this act. If corrective measures approved by the director are not commenced within 90 days, the violation shall be referred to the commission. The operator shall be notified in writing of the referral.

Section 19. Upon receipt of the referral, the commission shall schedule a hearing on the violation by the operator within thirty (30) days after the date of receipt. The commission shall upon written request afford the operator the right to appear before the commission at the hearing. The operator shall have the right to counsel, and may produce witnesses and present statements, documents, and other information with respect to the alleged violation. If the commission determines that the operator is in violation of this act or of any rule adopted by the director pursuant to this act, the commission shall request the attorney general to institute bond forfeiture proceedings.

Section 20. The attorney general, upon request of the commission, shall institute proceedings for forfeiture of the bond posted by an operator to guarantee reclamation of a site where the operator is in violation of any of the provisions of this act or any rule adopted by the director pursuant to this act. Forfeiture of the operator's bond shall fully satisfy all obligations of the operator to reclaim affected land covered by the bond. The director shall have the power to reclaim as required by section 11 of this act any surface mined land with respect to which a bond has been forfeited, using the proceeds of the forfeiture to pay for the necessary reclamation work.

Section 21. (a) The director, upon finding that the operator has failed to comply with any condition of a license or site registration with which the operator is required to comply pursuant

1-10

to this act, may impose upon the operator a civil penalty not exceeding $1,000 for each day of noncompliance.

(b) All civil penalties assessed pursuant to this section shall be due and payable within 35 days after written notice of the imposition of a civil penalty is served on the upon whom the penalty is being imposed, unless a longer period of time is granted by the director or unless the operator appeals the assessment as provided in this section.

(c) No civil penalty shall be imposed under this section except upon the written order of the director or the director's designee to the operator upon whom the penalty is to be imposed, stating the nature of the violation , the penalty imposed and the right of the operator upon whom the penalty is imposed to appeal to the director for a hearing on the matter. An operator upon whom a civil penalty has been imposed may appeal, within 15 days after service of the order imposing the civil penalty, to the director. If appealed, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The decision of the director shall be final unless review is sought under subsection (d).

(d) Any action of the director pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

Section 22. The director, with the approval of the commission, shall adopt such rules and regulations as necessary to administer and enforce the provisions of this act.

Section 23. This act shall take effect and be in force from and after its publication in the statute book.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 29

January 21, 1993

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
Senate Committee on Energy and Natural Resources
by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear before you today in support of SB 29.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

KCCI supports the establishment of policies and procedures to permit the Kansas Department of Health and Environment to be the enforcement agency in our state of the

Senate Energy & Nat'l Resources
January 26, 1993
Attachment 2

p .sions of the federal Clean Air Act. Further, the Kansas Chamber feels the sta regulatory activities should be no more restrictive than the federal law, and should encompass an approach which balances environmental protection with economic growth.

During deliberations over SB 542 last year, KCCI was convinced that bill met the objectives of the Kansas business community and urged the bill's adoption. Since SB 29 nearly mirrors SB 542, the Kansas Chamber is pleased to reiterate our support.

Thank you for considering KCCI's position on this issue. I would be pleased to answer any questions.

KANSAS CEMENT COUNCIL

800 S.W. Jackson - #1408, Topeka, Kansas 66612 913-235-1188

TESTIMONY

by

Kansas Cement Council

Before the

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Regarding SB 29 - Air Quality
January 21, 1993

Good Morning Mr. Chairman and members of the committee. Thank you for the opportunity to appear before you today with our comments on Senate Bill 29.

My name is Edward Moses. I represent the Kansas Cement Council. The Kansas Cement Council is a group of Kansas cement plants comprised of the Heartland Cement Company, Independence, Ash Grove Cement Company, Chanute and Lafarge, Inc., Fredonia.

The Kansas Cement Council appears before you in total support of your efforts to establish a reasonable air quality act. This bill will make it easier for the cement industry to comply with the provisions of the Federal Clean Air Act. We have worked closely with Kansas Department of Health and Environment on this measure and think the results are something with which this industry can comply and remain economically viable.

Our industry, and others, have already begun to make capital expenditures in order to achieve compliance by October 1, 1993 as mandated by the Federal law. Therefore, your swift and concise action to pass this measure as constructed by KDHE, with industry input, would be deeply appreciated.

Thank you for the opportunity to appear before you today. I will attempt to answer any questions you may have regarding the effect of this bill on our industry.

Senate Energy & Natural Resources
January 26, 1993
Attachment 3

Kansas Aggregate Producers' Association

TESTIMONY

by

Kansas Aggregate Producer's Association

Before the

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Regarding SB 29 - Air Quality
January 21, 1993

Good Morning Mr. Chairman and members of the committee. Thank you for the opportunity to appear before you today with our comments on Senate Bill 29.

My name is Edward Moses. I am the Managing Director of the Kansas Aggregate Producers Association. The Kansas Aggregate Producer's Association represents over 250 aggregate, concrete, and associate member firms of the Kansas construction industry engaged primarily in the extraction and processing of rock, sand & gravel. As quarries and gravel pits may produce particulate dust emissions our industry could be subject to the provisions of this air emission bill if passed.

We appear before you in total support of your efforts to establish a reasonable air quality act. This bill, as drafted, will make it easier for the aggregate industry to comply with the provisions of the Federal Clean Air Act. We have worked closely with Kansas Department of Health and Environment on this measure and think the results are something with which this industry can comply and remain economically viable.

As stated earlier, many industries have already begun to make capital expenditures necessary to achieve compliance by October 1, 1993 as mandated by the Federal law. Your swift and concise action to pass this measure as constructed by KDHE, with industry input, will greatly assist in achieving this compliance goal.

Thank you for the opportunity to appear before you today. I will attempt to answer any questions you may have regarding the effect of this bill on our industry.

1408 Merchants National Bank Bldg • 800 SW Jackson • Topeka, Kansas, 66612 • 913-235-1188 • FAX 913-232-0917

Senate Energy & Nat'l Resources
January 26, 1993
Attachment 4

KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT OF THE
KANSAS GRAIN AND FEED ASSOCIATION
TO THE
SENATE ENERGY & NATURAL RESOURCES COMMITTEE
SEN. DON SALLEE, CHAIRMAN
REGARDING S.B. 29
JANUARY 26, 1993

Mr. Chairman and Members of the Committee, I am Michael Torrey, Director of Legislative & Regulatory Affairs for the Kansas Grain and Feed Association. Our Association's approximately 1,000 member locations are involved in the handling, storage and processing of grain. We appreciate the opportunity to comment today in support of S.B. 29.

The 1990 federal Clean Air Act placed several restrictions on business and industry regarding air emissions. As you may know, grain elevators emit dust during the handling and processing of grain and consequently, it is estimated approximately 300 elevators across Kansas will be required to comply with the Clean Air Act. We are supportive of this legislation because it will give control for the administration of this act to the Kansas Department of Health and Environment, an agency with which we have a good working relationship.

We recently had a productive meeting with KDHE to discuss how this act will affect our members and what can be done to assist the grain elevators in complying with it. Since these meetings, we have started to develop a program which will minimize the cost and burden to our membership. Essentially

Senate Energy & Nat'l Resources
January 26, 1993
Attachment 5

P.O. BOX 2429 • Topeka, KS 66601-2429 • (913) 234-0461 • FAX (913) 234-2930

KGFA, through the assistance of a private contractor, will develop a general operating permit, which would require KDHE approval and would meet the compliance requirements for between 200 and 250 elevators. Emissions from the remaining 50-75 elevators are high enough that they may be required to develop their own permit. We understand that it will be more difficult to develop a general operating permit if EPA retains the authority to administer this act.

Another advantage of giving authority to the state would be cheaper compliance fees. The federal act allows fees up to $25 a ton for emissions, while KDHE has suggested they can administer the program for around $18 per ton emissions. As an industry that has seen a significant increase in regulatory fees during the last 10 years we would welcome this lower rate.

We encourage your favorable consideration of S.B. 29 and stand ready to answer any questions you may have.

TESTIMONY BEFORE THE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

by Jim Ludwig

WESTERN RESOURCES

January 26, 1993

Chairman Sallee and members of the Committee:

We appear before you as proponents of SB 29.

This bill enables the Kansas Department of Health and Environment (KDHE) to assume administrative jurisdiction of Kansas' implementation of the Federal Clean Air Act Amendments of 1990. Without this legislation, Kansas would become a federal enforcement state, which means the Environmental Protection Agency (EPA) would enforce the provisions of the Act.

Environmental problems can be remedied more quickly and at less expense when regulatory jurisdiction is in the hands of KDHE. Title V of the Act, the permitting fee section, is an example. EPA plans to impose emission fees 60 to 70 percent higher than those KDHE expects to impose. This difference in fees would afford Kansas obvious economic advantages over federal enforcement states; yet KDHE's projected fees are adequate to enforce the provisions of the Act without causing costly delays in the permitting process.

Because our major coal-fired power plants are equipped to minimize air emissions, and because we use low-sulphur coal, we already comply with the 1990 Clean Air Act amendments. Our emissions are generally well below the limits set in the Act. The entire state of Kansas already has "attainment" status, meaning our air quality passes the standards of the Act.

Western Resources has a staff of environmental engineers and ecologists to review regulations and ensure compliance. Few of our customers do. Small businesses - dry cleaners, gas stations, photographic laboratories, and many others - need the assistance of their regulators to comply with the Act. KDHE, without sacrificing environmental quality or subverting the letter or spirit of the Clean Air Act Amendments, will be much more helpful and responsive to these businesses than EPA.

KDHE created the Kansas Clean Air Act Implementation Advisory Group comprised of a broad cross-section of local units of government, businesses and industries, and environmental interests. This group reached a consensus to approve SB 29 and recommend its passage. We support and commend the efforts of KDHE to retain jurisdiction over Clean Air Act implementation and urge the committee to recommend SB 29 favorably for passage.

SIERRA CLUB

Kansas Chapter

Clean Air Act
S.B. 29
Testimony of William Craven
Legislative Coordinator, Kansas Sierra Club
Senate Energy and Natural Resources Committee
Jan. 26, 1993

Thank you for giving the Kansas Sierra Club an opportunity to express its opposition to parts of this proposal and to recommend amendments which would strengthen it. Whatever the costs to industry to clean up the air, those costs are more than offset by savings in expenditures for health care, to forests and vegetation, to buildings, and to other property.

I am aware that the Kansas Department of Health and Environment has advised the committee that failure to pass a Clean Air Act could result in the federal government withholding funds from Kansas or even taking over administration of the Clean Air Act in this state. The Sierra Club is not interested in Kansas losing money, but it is probably save to say that the U.S. Environmental Protection Agency, which will probably be reinvigorated under the new administration, will be more forceful in enforcing these important standards than KDHE.

As one example, the Aptus incinerator in Coffeyville, which is permitted to burn hazardous wastes, was caught burning radioactive materials shipped to it by the U.S. Department of Energy, a clear violation of its permit. KDHE failed to take any enforcement action whatsoever. If burning this material was knowing, it could have subjected the company to criminal penalty. Even if done without knowledge, it should have resulted in a civil action.

While on the subject of incinerators, this bill would be strengthened remarkably if a moratorium on incineration was included. According to the 1990-91 Green Index, Kansas leads the nation in municipal incineration and in the importing of hazardous wastes for eventual burning. This is done despite the fact that KDHE has no evidence giving these emissions a clean bill of health. To the contrary, what is emitted from incinerators is, in large measure, some of the most pervasive and long-lasting contaminants known.

The committee should have on record the fact that Kansas' spending for air pollution on a per capita basis ranks 48th in the nation.

You should also know that according to a recent U.S. Environmental Protection Agency release, ~~confirms~~ that all of the hazardous waste incinerators in the country potentially fail to meet the agency's requirements for near-total destruction of hazardous wastes, especially dioxins. EPA requires 99.99 percent destruction of all hazardous wastes and 99.9999 percent destruction of especially harmful wastes such as PCB's and dioxins.

Senate Energy & Nat'l Resources
January 26, 1993
Attachment 7

In addition to the Aptus facility in Coffeyville, KDHE has shown itself unwilling or unable to consider the possible human health effects in yet another instance, the proposed medical wastes incinerator in Kansas City, Kansas. My information is that KDHE does not look for or at evidence pointing to the bio-accumulation of such emissions in sensitive populations which live near or downwind from such a facility.

It is probably no accident that the Aptus facility is located in a county with traditionally high unemployment and poverty and that the Wyandotte County facility is proposed to be located in an area which is largely African-American. A recent National Law Journal special section documented the connection between low-income and minority areas and some of the nation's worse toxic nightmares.

These facilities also make it difficult, if not impossible, for KDHE to honor the Clean Air Act provision making Kansas responsible for emissions which affect life in other states.

Let me discuss briefly some of the Sierra Club's comments about this bill.

First, we support the replacement of the old confidential information section with the more appropriate trade secrets definition. Second, we support the higher limit on penalties and are particularly glad to see the requirement that penalties "shall constitute an actual and substantial economic deterrent."

But we do have other questions about the bill.

First, why is the preamble, or the statement of purpose, stricken in this amendment? This is some of the best language in the bill.

Second, it is not clear in the bill how KDHE intends to ensure adequate implementation of the Clean Air Act when relying on local units of government for monitoring and enforcement. Language tightening up that ability to control local units should be included.

Third, the definition of "air contaminants" in Sec. 2(a) is unclear. Does it also include pesticides, for example? How about oxygen or nitrogen?

Fourth, and this is a major point: Much too much of the bill is worded permissively. There are many examples of "the Secretary may" which should be replaced with "the Secretary shall."

Fifth, we object to the provision for eliminating mandatory public hearings. What is the possible justification for replacing this most important way for public participation and input with a less desirable system in which public hearings have to be requested? This is where old Section 5 (c) is replaced with new Section 6.

Sixth, we also object to the provision enabling permits to be renewed or extended by application alone, without a time for public comment or a hearing. This is in section 5 (d).

Seventh, we object to the the provision that a person may construct a stationary source unless the secretary finds a contribution to air pollution. Why not require a permit and a hearing for these applications as well?

Eighth, the issue of permissive versus mandatory regulations and fees again surfaces when dealing with businesses which are classified as small businesses. The fees and regulations should probably not be as stringent, but they should be set forth. Not having them written encourages arbitrary and capricious agency action. Also, the definition of "small business" seems to include some fairly large businesses.

Ninth, why exempt from the fee calculation, in Sec. 8(a), emissions of more than 4,000 tons per year of a single pollutant?

These are some, but by no means all, of the questions the Sierra Club has about this bill. We hope the bill is improved through the hearings process and look forward to working with the committee as that process continues.

P.O. Box 33
Holton, KS 66436
(913) 364-4784

CITIZENS FOR A REASONABLE ENVIRONMENT

A COALITION OF GRASSROOTS KANSANS DETERMINED TO PRESERVE THE FUTURE
JOHN FREED, CO-ORDINATOR

January 26, 1993

re: Hearing on Senate Bill No. 29
Senate Committee on Energy & Natural Resources

Senator Don Sallee, Chairman:

Please accept my apology for not appearing personally.

As co-ordinator of Citizens for A Reasonable Environment, I am very supportive of this piece of legislation.

There is, however, one major concern that I would like to address, that being found in New Section 6a, lines 8-10:

"The request for a public hearing on the issuance of a permit shall set forth the basis for the request and a public hearing shall be held if, in the judgment of the secretary, there is sufficient reason."

I would like to request a change in wording in this sentence, deleting the last 11 words so that the sentence would read:

"The request for a public hearing on the issuance of a permit shall set forth the basis for the request and a public hearing shall be held."

Having met with Secretary Harder on other matters, it is not this administration I fret over; I believe he will deal forthrightly with the concerns of the public. I am concerned though that if these few words remain, they may provide an opportunity in the future that would not be in the best interests of the residents of Kansas.

Because I have been involved in several environmental battles in this state, I believe it is imperative that we have the enforcement powers prescribed in SB 29 and your prompt endorsement of this bill will certainly head our state in the right direction.

Thank you.

Because Kansas must come clean,

John Freed

John Freed

Senate Energy & Nat'l Resources
January 26, 1993
Attachment 8

STATE OF KANSAS

Joan Finney, Governor

KANSAS WATER OFFICE
Stephen A. Hurst
Director

Suite 300
109 SW Ninth
Topeka, Kansas 66612-1249

913-296-3185
FAX 913-296-0878

January 21, 1993

Note to Committee Members:

The attached water supply contract, negotiated by the Kansas Water Office in accordance with the provisions of K.S.A. 82a-1301 *et seq.* (the Water Marketing Act), is submitted to the Legislature as required by K.S.A. 82a-1307. This contract has been reviewed and approved by the Kansas Water Authority which has determined that the sale of water supply service to Public Wholesale Water District No. 12 is in the best interests of the State of Kansas. The Legislature may disapprove a contract by passage of a concurrent resolution within the first 60 days after submittal or may choose to take no action, allowing the contract to stand.

It may be of interest to committee members that a map of the service area for Public Wholesale Public Water Supply District No. 12 will be on display in the Capitol Rotunda on Tuesday, January 26, 1993, beginning at 7:50 a.m., as part of the Geographic Information Systems Awareness Day. Staff of the Kansas Water Office will be available near the display to answer questions.

Sincerely,

Stephen A. Hurst
Director

SAH:dk
Attachment

Senate Energy & Natural Resources
January 26, 1993
Attachment 9

STATE OF KANSAS
KANSAS WATER OFFICE

CONTRACT
Between the State of Kansas
and
Public Wholesale Water Supply District No. 12

for
A PUBLIC WATER SUPPLY
from
MELVERN RESERVOIR

Water Purchase Contract No. 93-1

TABLE OF CONTENTS

KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 93-1

This contract is executed and entered into this 29th day of October, 1992, by and between the State of Kansas (hereinafter referred to as the "State") as represented by the Kansas Water Office, and Public Wholesale Water Supply District Number 12 (hereinafter referred to as the "Purchaser").

WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a public water supply; and

WHEREAS, the State will sign an agreement with the United States of America for water supply storage space in the Reservoir; and

WHEREAS, the State has filed an appropriate water reservation right on December 12, 1990, to divert and store water in the Reservoir; and

WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-2615, as amended, and by K.S.A. 82a-1305, as amended, to negotiate contracts for the sale of water; and

WHEREAS, the Purchaser filed an appropriate application (or applications) with the State to negotiate the purchase of raw water from the Reservoir, in compliance with the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., as amended; and

WHEREAS, the Purchaser's immediate and projected water supply needs can be provided from the Reservoir; and

WHEREAS, the withdrawal and use of 547.43 million gallons of water annually from the Reservoir by the Purchaser is in the interest of the people of the State of Kansas and will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

WHEREAS, Purchaser's applications to purchase raw water from the Reservoir Number 124 and 126 are approved for a maximum total amount of 599.892 million gallons per year in accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

NOW, THEREFORE, in consideration of the foregoing, the parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

As used in this contract, unless the context otherwise requires:

(a) "Authority" means the Kansas Water Authority, or its successor.

(b) "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.

(c) "Point of withdrawal from the reservoir" means the point at which water is taken from the reservoir by pump, siphon, canal, or any other device; or released through the dam by gates, conduits, or any other means.

(d) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.

(e) "Reservoir" means Melvern Lake.

ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall be for a period of 40 years beginning on the date of execution of this contract or on any date not later than three years after the date of execution as provided in Article 9a and 9b, whichever occurs first, upon giving the State 45 days written notice of first use as provided in Article 12. The Purchaser may commence using water at any time after the execution of this contract by providing notice as provided in Article 12. This contract shall become effective when the State purchases water supply storage in the Reservoir from the United States of America.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

This contract, any amendment hereto, or renewal thereof is subject to disapproval and revocation by the Kansas Legislature as provided in K.S.A. 82a-1307, and amendments thereto.

ARTICLE 4. UNITED STATES APPROVAL

The Purchaser shall secure the right from the federal government to construct, modify, alter, or maintain installations and facilities when such installations and facilities are on federal lands. The Purchaser shall bear the cost of construction, modification, operation, and maintenance of Purchaser-owned installations and facilities.

The Purchaser shall provide the Director with proof of any easement granted by the federal government for rights-of-way across, in, and upon federal government land required for intake, transmission of water, and necessary appurtenances.

ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES

This contract is subject to such statutes as may be applicable, including specifically, but not by way of limitation, the State Water Planning Act, K.S.A. 82a-901 et seq., and amendments thereto; the State Water Plan, K.S.A. 82a-927 et seq., and amendments thereto; and the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., and amendments thereto; and the Purchaser agrees to comply with such statutes and any amendments to said statutes which may be enacted subsequent to the execution of this contract.

ARTICLE 6. QUANTITY OF WATER

a. Initial Quantity. During the term of this contract, defined in Article 2, subject to the conditions herein stated, the State will permit the Purchaser to withdraw not more than 21,897,187,200 gallons of raw water from the water supply storage in the Reservoir; provided, however, that the State shall not be obligated to furnish more than 547.43 million gallons of raw water in any one (1) calendar year. If the Purchaser in any calendar year does not withdraw the

entire annual amount obligated under terms of this contract, the unused amount of water shall not add to the Purchaser's entitlement in any subsequent year.

b. Graduated Use Schedule. An agreed upon graduated use schedule is attached as "Exhibit A" of this contract. Minimum annual payments shall be based upon this schedule and calculated as provided in Article 7 of this contract.

The maximum annual quantity the Purchaser is entitled to for each calendar year shall be determined by the graduated use schedule. The minimum annual payment shall be calculated in accordance with Article 7 based upon 50 percent or one-half the maximum quantity in the graduated use schedule for the calendar year.

c. Review and Adjustment. The Director shall review the quantity and purposes for which water is used on the sixth anniversary of the execution of this contract and on each annual anniversary for the remaining portion of the term of this contract. The Director may adjust the total amount of water contracted for on the sixth anniversary of the execution of the contract and on each annual anniversary thereafter, if the Purchaser does not begin full payment for the water under contract and another water user is ready, willing, and able to contract for such water.

d. Water Appropriation Rights. The Purchaser may use water withdrawn in accordance with the terms of this contract without obtaining a permit or water right under the Kansas Water Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same protection as any other vested property interest including vested water rights, water appropriation rights, and approved applications for permit to appropriate water.

ARTICLE 7. PRICE OF WATER

a. Price. The Purchaser agrees to pay the State at the rate fixed in accordance with K.S.A. 82a-1306, and amendments thereto, for each one thousand (1,000) gallons of raw water used or raw water which must be paid for under terms of this contract throughout the term of this

contract; provided, however, that the Purchaser is obligated and agrees to pay the minimum charges in accordance with this Article regardless of the quantity of raw water actually used, except as provided in Article 13. The rate for raw water which must be paid for under terms of this contract shall be $0.14179 for each one thousand (1,000) gallons during calendar year 1993.

b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether or not water is withdrawn during the calendar year. The minimum charge for each calendar year shall be determined as provided in K.S.A. 82a-1306, and amendments thereto. The minimum charge for calendar year 1993 and each succeeding calendar year, unless changed by amendment of State statutes, shall be the sum of the following two components:

(1) 50 percent of the total annual amount of water contracted for during the term of this contract (as shown in the attached graduated use schedule) multiplied by the rate established in accordance with paragraph (a) of this Article or as adjusted in accordance with paragraph (c) of this Article; plus (2) a charge on the remaining 50 percent of water contracted for during the year (as shown in the attached graduated use schedule) computed by multiplying the net amount of moneys advanced from state funds for costs incurred and associated with the conservation storage water supply under the State Water Marketing Program by the average rate of interest earned during the past calendar year by the Pooled Money Investment Board on 30 day repurchase agreements and by the portion of the remaining 50 percent under contract to the total conservation water supply capacity available under the State Water Marketing Program.

c. Review and Adjustment of Rates. The Director shall review the fixed rate stated in this article on July 15 of each year during the term of this contract and may adjust the rate effective January 1 of the following year to reflect any change in experience by substituting the adjusted rate for the fixed rate then applicable to the contract. Such adjusted rate shall be charged for all water used or water which must be paid for under terms of this contract as provided in Article 9.

The Director shall notify the Purchaser by restricted mail by July 31 of each year of the adjusted rate which will become effective on January 1 of the ensuing year and shall notify the Purchaser of the adjusted minimum payment which will be required under the terms and conditions of this contract. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the obligation to pay such adjusted rate.

ARTICLE 8. PURPOSE AND PLACE OF USE

a. Purpose. Water purchased under this contract shall be used for purposes which are in the interest of the people of the State of Kansas and which will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated, and amendments thereto.

b. Place of Use. The place of use for water purchased under this contract shall be generally within the corporate limits of the cities of Lebo, Waverly, Williamsburg, Quenemo, Pomona, Melvern, Lyndon, and within the boundaries of Coffey County Rural Water District Number 3, Anderson County Rural Water District Number 4 and Osage County Rural Water District Number 4, but may be outside the corporate limits of these entities for those water users who are contracting with the cities or rural water districts for water supply as of the date of execution of this contract.

c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any water under this contract in excess of 12,000,000 gallons per year to any person or entity located outside the geographical limits described above. Whenever the Purchaser shall propose to enter into a contract to sell water purchased under this contract to any such person or entity outside the described geographical limits, the Purchaser shall, before execution thereof, submit a copy of such contract to the Authority for review. The Purchaser agrees not to execute and enter into any such contracts unless approved by the Authority.

d. Change in Use Subject to Water Transfers Act. Prior to any change in water distribution by the Purchaser which would result in 1000 acre-feet or more of water under this contract being used outside a ten mile radius of a point where the longitudinal axis of Melvern Dam crosses the center line of the Marais des Cygnes River, the Purchaser shall notify the State of such proposed change as provided for in the Water Transfers Act (K.S.A. 82a-1501 et seq.).

ARTICLE 9. BILLING AND PAYMENT SCHEDULE

a. Deferment. The beginning of the payment period shall be deferred for a period of up to three (3) years from the date of execution of this contract as provided in Article 2, or until such time as actual use of the water contracted for commences, whichever occurs first, if in order to use the water contracted for, bonds are required to be issued, or the construction of transmission or treatment facilities is required.

b. Payments. The Purchaser shall transmit all payments due hereunder to the Director. Remittance for minimum payments shall be paid to the Director in either one annual payment within thirty (30) days after date of billing by the State or in equal monthly installments during the calendar year in which the minimum payment is due, whether or not water is withdrawn during the calendar year. Remittance for payments due for water used in excess of the quantity obligated by the minimum payment shall be paid to the Director in full within thirty (30) days after date of billing by the State.

c. Determination of Charges. Charges for water for which payment is required shall be determined by the State. The formulas by which charges are computed shall be prepared by the Director with the approval of the Authority. The Purchaser acknowledges and agrees that said formulas and computations are subject to change, based on subsequent amendments to State statutes which may affect the terms of this contract.

d. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all water received under terms of this contract up to the maximum quantity obligated by this contract as described in the attached graduated use schedule. Any annual water use above the maximum annual quantity shown on the attached graduated use schedule shall be charged for at the current rate and the graduated use schedule may be adjusted as provided in Article 6c. In no event shall use above the maximum annual rate of 547.43 million gallons per year be permitted under this contract.

e. Initial Minimum Payment. Except as provided in Article 9a, the initial minimum payment shall become due on the day of execution of this contract as defined in Article 2. Remittance for the initial minimum payment shall be in accordance with Article 9b. The initial minimum charge shall be prorated by the number of months or portions thereof in service during the calendar year. Payment of the initial minimum charge shall entitle the Purchaser to receive during the remaining portion of the calendar year the prorated portion of one-half (1/2) of the maximum annual quantity of water as set forth in Article 6, without additional charge.

f. Subsequent Minimum Payments. On each succeeding January 1 following the due date of the initial minimum payment, subsequent minimum payments shall become due. Remittance for minimum payments shall be in accordance with Article 9b. Payment of the minimum payment shall entitle the Purchaser to receive during the calendar year, without additional charge, one-half (1/2) of the maximum annual quantity obligated under terms of this contract as shown on the attached graduated use schedule.

g. Water in Excess of Minimum. At the end of each calendar year throughout the term of this contract or within thirty (30) days after the end of each calendar year, the State shall bill the Purchaser for any water used during the calendar year in excess of one-half (1/2) of the total annual quantity of water used to compute the minimum charge. The Purchaser shall be given

credit for the proportionate share of the payment which was made as an interest charge on the net amount of monies advanced from the State funds for the costs incurred and associated with providing 50 percent of the total annual amount of water contracted for purchase.

h. Overpayment or Underpayment. If for reason of error in computation, measuring device malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser of the charges provided herein, such overpayment or underpayment shall be credited or debited, as the case may be, to the Purchaser's account for the next succeeding payment and the State shall notify the Purchaser thereof in writing. However, all charges made in any year shall be conclusively presumed to be correct six (6) months after the end of such year.

i. Adjustment for Apportionment. In the event the Purchaser is unable in any year due to apportionment under Article 13 herein to withdraw the amount which the Purchaser is entitled to receive after payment of the minimum payment, the amount of such minimum payment in excess of the amount of water actually received by Purchaser shall be credited to reduce the obligation of the Purchaser during the next succeeding calendar year.

j. Overdue Payments. If the Purchaser shall fail to make any of the payments when due, then the overdue payments shall bear interest, compounded annually at the rate prescribed in K.S.A. 82a-1317, and amendments thereto, during the term of this contract. This shall not be construed as giving the Purchaser the option of either making payments when due or paying interest, nor shall it be construed as waiving any of the rights of the State that might result from such default by the Purchaser.

ARTICLE 10. POINT OF WITHDRAWAL

The point of withdrawal from the Reservoir shall be in the Northwest Quarter of the Northwest Half of Section 12, Township 18 South, Range 15 East, of Osage County, Kansas.

ARTICLE 11. METERING OF WATER

The Purchaser shall, at its own expense, furnish, install, operate, and maintain at the place of diversion, a commercial measuring device as ordered by the Director.

The Purchaser shall test and calibrate as accurately as possible such measuring device or devices whenever requested by the Director, but not more frequently than once every twelve (12) months. A measuring device shall be deemed to be accurate if test results fall within a tolerance of plus or minus two (2) percent throughout the full range of diversion. Certification of measuring devices shall be obtained from a commercial testing company approved by the Director.

The previous readings of any measuring device disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test or one-half (1/2) the period since the last test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

If any measuring device fails to register for any period, the amount of water furnished during such period shall be determined by the Director, after consultation with the Purchaser.

The Purchaser shall read the measuring device on or before the last calendar day of each month, and shall send such reading to the Director within ten (10) days after it has been taken.

Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

The State may measure releases by means of a rating curve at the point of withdrawal, or by other suitable means, as an auxiliary measuring device to verify the accuracy of the Purchaser's measuring device or to measure the amount of water furnished when the Purchaser's measuring device fails to register.

ARTICLE 12. WATER WITHDRAWAL SCHEDULE

The Purchaser shall notify the Director, in writing, of the date for the initial withdrawal of water at least forty-five (45) days prior to such withdrawal. At such time the Purchaser shall

also notify the Director, in writing, of the amounts, times, and rates of withdrawal of water required during the remainder of the calendar year in which such initial withdrawal is made. The Purchaser agrees to submit a water withdrawal schedule for each succeeding calendar year to the Director on or before March 1 of each year.

Such proposed water withdrawal schedule shall be approved or disapproved by the Director within thirty (30) days of the filing of such schedule and, subject to his or her approval, such schedule may be amended upon written request from the Purchaser. The Director shall not unreasonably disapprove or withhold his or her approval of the water withdrawal schedule.

The Purchaser's approved water withdrawal schedule shall govern the rate of withdrawal, but in no event shall the Purchaser withdraw water in excess of the maximum daily rate of 2.3 million gallons. Whenever the Purchaser wishes to make a withdrawal of water provided under terms of this contract from the reservoir other than as approved in the annual withdrawal schedule, the Purchaser shall advise the Director at least two (2) working days prior to the time such water is to be withdrawn from the Reservoir. Such notice may be transmitted to the Director by oral communication, but the notice must be confirmed in writing within fifteen (15) days after the oral communication.

ARTICLE 13. CONTINUITY OF WATER SERVICE

(a) The Director shall make all reasonable efforts to perfect and protect the water reservation right necessary for the satisfaction of the water supply commitment. In the event it becomes necessary for any reason to apportion the water among the persons having contracts therefor, or to temporarily discontinue the furnishing of water to such persons, the Director will give each person an oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable.

(b) Neither the Director nor the Authority shall be responsible or have any legal liability for any insufficiency of water or the apportionment thereof, and the duty of the Director and the Authority to furnish water is specifically subject to the following conditions:

(1) If the total amount of water contracted for withdrawal by all purchasers from the Reservoir in the year is greater than the supply available from the conservation water supply storage in the Reservoir, the Director, with the approval of the Authority, will apportion the available water among all the purchasers having contracts therefor, as may best provide for the health, safety, and general welfare of the people of this State as determined by the Authority.

(2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such evaluation indicates that the sediment deposits have reduced the yield from the State's conservation water supply storage space, the Director will apportion available water among the persons having contracts in relation to the annual volume of all water contracted.

(3) If the United States temporarily discontinues or reduces water storage available to the State under its agreement with the United States for the purpose of inspection, investigation, maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by the United States, the Director will apportion the available water among the persons having contracts as determined by the State.

(4) If, because of an emergency, the Director deems it necessary for the health, safety, and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the Reservoir, the Director, with the approval of the Authority, will apportion any available water among the persons having contracts therefor as may best provide for the health, safety, and general welfare of the people of Kansas.

(c) In the event the Director finds it necessary to apportion the available water from the Reservoir among the persons having contracts therefor, and such apportionment results in the

Purchaser being unable during the year to receive the amount of water that has been purchased by payment of the minimum charge, the Purchaser shall pay the State only for the amount of water actually made available to the Purchaser during the year.

ARTICLE 14. LIABILITY

Neither the Director nor the Authority shall be liable for any claim arising out of the control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the point of withdrawal as described in this contract except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto; and the Purchaser shall hold the State harmless on account of damage or claim or damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water beyond the point of withdrawal. Nothing in this Article shall be construed to impair any protection of the rights of the Purchaser as set forth in Article 6.

ARTICLE 15. AMENDMENT OR NULLIFICATION

The contract may be amended or nullified by written agreement of the parties, as provided in K.S.A. 82a-1316, and amendments thereto. The fixed rate as stated in this contract may be subsequently adjusted on January 1 after the execution of the contract and on each January 1 thereafter, pursuant to the terms and conditions of this contract.

ARTICLE 16. ASSIGNMENT OF CONTRACT

No assignment, sale, conveyance, or transfer of all or any part of this contract, or of interest therein, shall be valid unless and until same is approved by the Authority under such reasonable terms and conditions as the Authority may impose.

Whenever the assignment, sale, conveyance, or transfer of all or any part of this water purchase contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the water purchase contract or portion thereof and make the water

available for purchase by persons who have filed applications in accordance with rules and regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., and amendments thereto.

ARTICLE 17. RENEWALS

When this contract expires, the Director shall give the Purchaser the opportunity to refuse any new offering of the water before offering the same to any other applicant.

ARTICLE 18. TERMINATION

In the event the Purchaser is unable to obtain, construct, maintain, or operate the necessary water treatment and distribution facilities, the Purchaser may terminate this contract upon giving the State thirty (30) days written notice of its intent to do so, and all rights and liabilities of the Purchaser hereunder shall cease. Provided, however, that nothing in this Article shall be construed to affect the duty of the Purchaser to pay the prorated share of the minimum charge for the year in which the contract is terminated or the actual charge for the quantity of water withdrawn, whichever is greater, before notice of termination is given.

ARTICLE 19. SEVERABILITY

In the event any provision of this agreement or any part of any provision of this agreement are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms hereof which can be given effect without the invalid provision or portion of such provision, and to that end the terms of this agreement are intended to be severable.

ARTICLE 20. WATER CONSERVATION PLAN

The Purchaser shall adopt and implement a water conservation plan, prepared in accordance with guidelines developed and maintained by the Kansas Water Office. Whenever lack of inflow causes the water supply storage space to fall below 67 percent capacity, a drought condition shall be considered to exist and the Purchaser agrees to implement the drought contingency plan

contained in their water conservation plan before any withdrawal in addition to the scheduled water withdrawals described in Article 12 will be allowed by the State.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

THE STATE OF KANSAS, BY:

Stephen A. Hurst, Director
Kansas Water Office

PUBLIC WHOLESALE
WATER SUPPLY DIST. 12

BY: Ben Bush
President

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY BY:

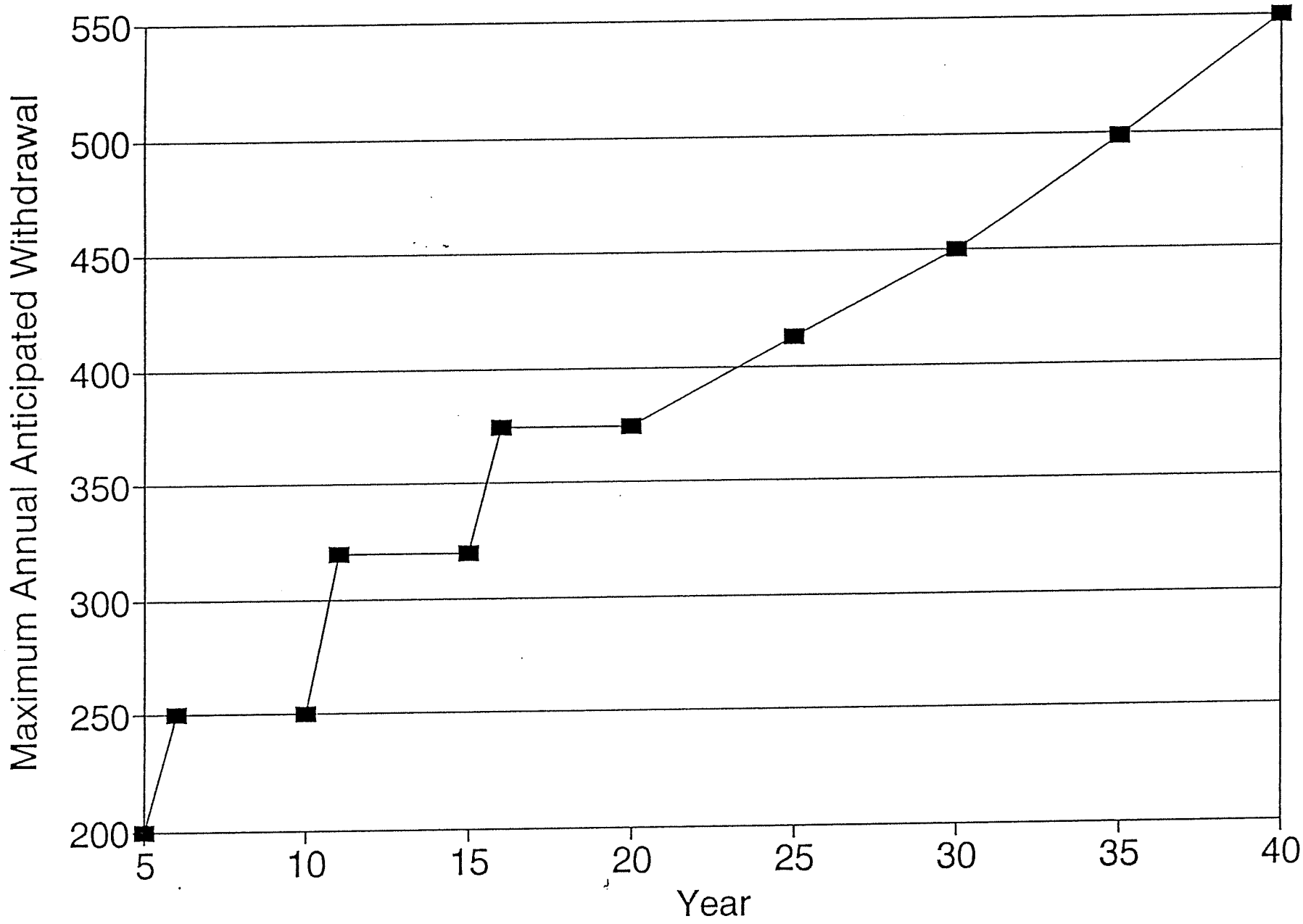
John L. Baldwin, Chairman
Kansas Water Authority

ATTACHMENT A

Graduated Use Schedule for Public Wholesale Water Supply District No. 12 of Kansas - 40 year projection.

Year	Maximum Annual Anticipated Withdrawl
1	200 million gallons
2	200
3	200
4	200
5	200
6	250
7	250
8	250
9	250
10	250
11	310
12	310
13	310
14	310
15	310
16	375
17	375
18	375
19	375
20	375
30	450
40	548

P.W.W.S.D. No. 12 Graduated Use Scale



KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

BILL REVIEW/FISCAL NOTE

Date: October 13, 1992

TITLE: PUBLIC INTERVENTION IN NPDES

I. Purpose/Reason for Proposed Legislation

This legislation is proposed to correct a deficiency in the public input element of KDHE's National Pollution Discharge Elemination System (NPDES) administrative enforcement procedures. Federal regulations -- which must be followed by states, such as Kansas, which have been delegated program primacy -- require that the public be allowed to intervene in enforcement activities related to NPDES. This bill would allow such intervention, thereby bringing State statutes into conformance with federal regulation requirements. KDHE beleives that public intervention in enforcement proceedings would be a constructive element in the regulatory program. Absent public access, regulatory actions are bereft of important input from concerned citizens and subject to suspicious conjecture about the closed process and its outcome.

II. Bill Summary

The proposed bill will allow public intervention in NPDES-related administrative actions such as orders by the Secretary and subsequent appeal hearings. As presently worded, this is only allowed if the public is directly affected. Widening the statute would achieve compliance with federal requirements and enable greater public participation in the regulatory process.

III. Legislative History

Similar legislation has been introduced and has failed each of the past five sessions. In hindsight, earlier proposals were overly complex and confusing. Last year's proposal was simple and strightforward, but also failed. Opposition has come from a few members of the House Energy & Natural Resources Committee, namely Representative Kerry Patrick, Eugene Shore, and others. Opponents feel that the public should not be involved in regulatory or enforcement actions after the Department has taken legal action. The concern appeared to be that environmental busybodies would bog down the system and generally cause a problem. Given the dearth of manpower and resources among environmental groups, these concerns appear to be overestimated. On the other hand, input from the environmental commmunity -- or other concerned citizens -- could aid KDHE's environmental protection efforts. In point of fact, Texas is among a number of states which have appointed an omsbudsman to encourage public participation in State permitting processes. Public intervention has continued to be a major concern of the Kansas Natural Resources Council (KNRC). Having failed with the legislature, KNRC has pressed the EPA to take back the Kansas NPDES program unless and until State legislation complies with federal requirements for public intervention. In the summer of 1991, the Attorney General essentially agreed that our statutes do not meet the federal requirements. EPA Region VII concurs that current intervention provisions are inadequate, and has urged passage of the required language.

Senate Energy & Nat'l Resources
January 26, 1993
Attachment 10

IV. Impact on Other Agencies or KDHE Bureaus

Other agencies and bureaus will not generally be impacted. The exception will be our Legal Office in handling the bill and public involvement as it occurs in an enforcement action.

V. Fiscal Impact

None. There might be a minor impact related to lengthier actions but it is expected to be minor.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

FISCAL NOTE WORKSHEET

Bill No: 2824
Detailed Computation of Expenditures to Implement Bill:

	FY 1992	FY 1993
Salaries and Wages By Classifications		
Contractual Services (list items)		
Commodities (list items)		
Capital Outlay (list items)		
Aid to Local Units of Government		
TOTAL EXPENDITURES		

Detailed Computation of Revenue Impact (increase of decrease) Created by the Bill and the Funds Affected:

Other KDHE Organizational Units Affected by the Bill:

Bill No._____

By:_____

AN ACT relating to water pollution; concerning intervention in legal actions relating thereto; amending K.S.A. 1991 Supp. 65-170e and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 65-170e is hereby amended to read as follows: 65-170e. (a) The attorney general, upon the request of the secretary of health and environment, may bring an action in the name of the state of Kansas in the district court of the county in which any person who violates any of the provisions of this act may do business, to recover penalties or damages as provided by this act.

(b) Any person having an ~~identifiable~~ interest which is or may be adversely affected shall have the right to intervene in any civil actions brought under this section or K.S.A. 65-171b, and amendments thereto, or in administrative actions subsequent to the issuance of an administrative order by the agency pursuant to K.S.A. 65-164, 65-170d or 65-171d and amendments thereto or article 6 of chapter 77 of the Kansas Statutes Annotated to enforce the provisions of the national pollutant discharge elimination system program as approved by the administrator of the United States environmental protection agency pursuant to sections 318, 402 and 405 of the clean water act, as in effect on January 1, 1989, which seek:

(1) Restraint of persons from engaging in unauthorized activity which is endangering or causing damage to public health or the environment;

(2) injunction of threatened or continuing violations of this act, rules and regulations promulgated thereunder and permit conditions;

(3) assessment of civil penalties for violations of this act, rules and regulations promulgated thereunder, permit conditions or orders of the director of environment or secretary of health and environment.

Sec. 2. K.S.A. 1991 Supp. 65-170e is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Bill No._____

By:_____

AN ACT relating to water pollution; concerning intervention in legal actions relating thereto; amending K.S.A. 1991 Supp. 65-170e and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 65-170e is hereby amended to read as follows: 65-170e. (a) The attorney general, upon the request of the secretary of health and environment, may bring an action in the name of the state of Kansas in the district court of the county in which any person who violates any of the provisions of this act may do business, to recover penalties or damages as provided by this act.

(b) Any person having an ~~identifiable~~ interest which is or may be adversely affected shall have the right to intervene in any civil actions brought under this section or K.S.A. 65-171b, and amendments thereto, or in administrative actions subsequent to the issuance of an administrative order by the agency pursuant to K.S.A. 65-164, 65-170d or 65-171d and amendments thereto or article 6 of chapter 77 of the Kansas Statutes Annotated to enforce the provisions of the national pollutant discharge elimination system program as approved by the administrator of the United States environmental protection agency pursuant to sections 318, 402 and 405 of the clean water act, as in effect on January 1, 1989, which seek:

(1) Restraint of persons from engaging in unauthorized activity which is endangering or causing damage to public health or the environment;

(2) injunction of threatened or continuing violations of this act, rules and regulations promulgated thereunder and permit conditions;

(3) assessment of civil penalties for violations of this act, rules and regulations promulgated thereunder, permit conditions or orders of the director of environment or secretary of health and environment.

Sec. 2. K.S.A. 1991 Supp. 65-170e is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Bureau: Environmental Remediation
Date: September 18, 1992

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
BILL BRIEF

TITLE: Storage Tank Act Amendment

I. Purpose

The underground and aboveground funds will be abolished on July 1, 1994 unless the sunset provision contained within K.S.A. 65-34,123 is extended. These funds supply reimbursement to Underground Storage Tank (UST) and Aboveground Storage Tank (AST) owners for much of the costs of remedial action. Most of the tank owners would be unable to perform the required remediation without the assistance of this program.

There are about 600 sites which are now participating in the Underground fund with about 17 new sites being added each month. With the current projections, the number of sites is expected to continue to increase through December of 1998 before a decrease in sites is expected. This is the reason for the proposed extension of the program through the year 2004.

II. Bill Summary

Amend the current statute to extend the sunset date to July 1, 2004.

III. Legislative History

The original Storage Tank Act was created during the 1989 legislative session with the provisions pertaining to the underground fund becoming effective April 1, 1990. The bill was amended during the 1990 session to allow retroactive claims for remedial action of releases which were discovered on or after December 22, 1988.

The Storage Tank Act was again amended in 1992 to adjust the deductible amounts, allow self-insured refiners to be eligible for the fund, and to create a new trust fund for aboveground storage tanks.

IV. Impact on Other Agencies or KDHE Bureaus

The is no significant impact caused by this legislation as it is the continuation of an existing program.

V. Fiscal Impact

Senate Energy & Nat'l Resources
January 26, 1993
Attachment 11

The fiscal impact on the regulated community will be extremely high if this program is abolished. The trust funds fulfill financial responsibility requirements established by EPA and provide assistance to storage tank owners with the cost of remedial action. Without this program most UST owners would need to purchase pollution liability insurance which is not readily available for most UST owners. The insurance, if available, would supply resources to address future problems and would not assist with the existing problems as the trust funds do. Without this financial assistance most UST and AST sites will not be remediated due to cost which range between $50,000 and $500,000 per site for remedial action.

The funds for this assistance program are collected as a one cent per gallon fee on all petroleum products sold or consumed within the state. These fees collect up to $18,000,000 per year from the consumers of the petroleum products. Without this assistance program, however, many of the small petroleum marketing facilities will be unable to remain in business. Although this program costs tax payers a penny per gallon at the pump, abolishing this program would ultimately cause consumers to pay higher gasoline prices at the pumps due to lack of competition.

BILL NO._____
BY_____

AN ACT amending the Kansas storage tank act; amending K.S.A. 1992 Supp. 65-34,123 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS;

Section 1. K.S.A. 1992 Supp. 65-34,123 is hereby amended to read as follows: 65-34,123. Except as provided in K.S.A. 74-7246, and amendments thereto, the board, the underground fund and the aboveground fund shall be and are hereby abolished on July 1, ~~1994~~ 2004.

Sec. 2. K.S.A. 1992 Supp. 65-34,123 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after July 1, 1994.